

GAHC010205632022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6656/2022

AJIT KALITA
S/O- SRI. CHANA RAM KALITA,
R/O- VILL. AND P.O.- BARPALAHA,
DIST.- KAMRUP(R), ASSAM,
PIN- 781121.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
JURIPAR
PANJABARI
GUWAHATI- 37.

3:THE DEPUTY COMMISSIONER
KAMRUP-CUM- EXECUTIVE DIRECTOR
DRDA
KAMRUP
AMINGAON
GUWAHATI- 31.

4:THE CHIEF EXECUTIVE OFFICER-CUM-PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY
KAMRUP
AMINGAON
GUWAHATI- 31.

5:THE BLOCK DEVELOPMENT OFFICER
KAMALPUR DEVELOPMENT BLOCK
KAMALPUR
KAMRUP(R)
ASSAM

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 11/01/2024

Heard Mr. I.H. Saikia, learned counsel for the writ petitioner. Also heard Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department, Assam as well as Mr. D. Bora, learned Government Advocate, Assam, appearing for the official respondents.

The writ petitioner herein was serving as Block MIS Manager under the Bejera Development Block when he was released from duty with effect from 12/08/2016 upon termination of his service. Assailing the order of termination from service, the petitioner had approached this Court by filing WP(C) No. 5611/2017, which was disposed of by the learned Single Judge by judgement and order dated 14/05/2018. The operative part of the order dated 14/05/2018 is as follows :-

“In view of the discussions made hereinabove, this writ petition succeeds and accordingly the communication dated 01.07.2016 written by the respondent No. 4 and the order dated 12.08.2016 passed by the respondent No. 5 are set aside and quashed. The respondents are directed to forthwith reinstate the petitioner back into his contractual engagement. However, considering the nature of the case, this Court is not inclined to give any direction for payment of back wages. The matter is however left open to the respondents. The respondents are also given the liberty to take appropriate steps against the petitioner, if so advised, but in accordance of law.”

Pursuant to the order dated 14/05/2018, a consequential order was passed by the Chief Executive Officer on 16/11/2018 "reappointing" the petitioner in the post of MIS Manager in purported compliance of the order dated 14/05/2018 passed by this Court. Thereafter, the petitioner had submitted a representation dated 15/06/2022 seeking the benefit of his past services. In the representation, the petitioner had projected that pursuant to his reinstatement in service, he was entitled to the benefit of past services including the salary from the period from 12/08/2016 to 19/08/2018. However, the fact remains that by the order dated 16/11/2018, the petitioner was "reappointed" and not "reinstated" in service. His prayer for back wages was, therefore, not considered by the authorities.

By filing the instant writ petition, the petitioner has prayed for an order directing the respondents to make payment of back wages and his arrear salaries along with interest. During the pendency of this writ petition, this Court has noticed that although there was a clear direction from this Court by order dated 14/05/2018 to reinstate the petitioner, he was actually reappointed. Under the circumstances, the prayer of the petitioner for past service benefit would obviously not be maintainable.

In so far as the prayer for back wages is concerned, the said prayer was not granted by the learned Single Judge by order date 14/05/2018 and the matter was left open to the respondents. The respondents have not yet considered such prayer of the petitioner. Therefore, the question of considering the same in the present proceeding does not arise in the eyes of law. Whether the petitioner is entitled to back wages and notional service benefits pursuant to his reinstatement in services, is a matter which would have to be properly agitated before the competent authority before approaching this Court. In view of the corrigendum dated 22/12/2023 by means of which, the order dated 16/11/2018 was amended by replacing the expression "reappointed" with "reinstated", it would now be open for the writ petitioner to make a fresh representation before the competent authority,

seeking the benefit of past services including back wages.

If the petitioner continues to remain aggrieved in the matter even thereafter, only then, he would have the right to approach this court seeking a Writ of Mandamus by filing proper application.

Therefore, this writ petition stands disposed of by granting liberty to the petitioner to submit appropriate representation before the respondent no. 2, in the light of the present order and in the wake of the corrigendum dated 22/12/2023, within six weeks from today.

If such representation is submitted by the petitioner, the same shall be examined in accordance with law and appropriate order be passed therein, within a further period of eight weeks thereafter.

A copy of the corrigendum dated 22/12/2023 be retained in the record of this case.

Writ petition stands disposed of, accordingly.

JUDGE

sukhamay

Comparing Assistant