

GAHC010070082024



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

Case No. : WP(C)/7691/2016

RAFIQUL ISLAM
S/O. LT. ABU BAKKAR SIDDIQUE
R/O. ROOPNAGAR
JHOGRAPAR PART-III
NEAR CIVIL HOSPITAL
DHUBRI
P.S. and DIST. DHUBRI
ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HEALTH and FAMILY WELFARE B DEPTT.
DISPUR
GUWAHATI-6.

2:THE JOINT SECRETARY TO THE GOVT. OF ASSAM

HEALTH AND FAMILY WELFARE B DEPTT.
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF AYUSH
ASSAM

1 NO. BANPHOOL PATH
BELTOLA ROAD
GUWAHATI-781006.

4:THE PRINCIPAL

SWAHID JADAV NATH HOMEOPATHIC MEDICAL COLLEGE and HOSPITAL
GUWAHATI
PANJABARI
GUWAHATI-37

ASSAM.

Advocate for : MR.S RAHMAN

Advocate for : MR.D P BORAHSC

HEALTH appearing for THE STATE OF ASSAM and 3 ORS.

**BEFORE
HONOURABLE MR. JUSTICE K. SEMA**

ORDER

23.04.2024

None appears for the petitioner.

Mr. D.P. Borah, learned Standing Counsel, Health Department, Assam, appears for all the respondents.

2. The present writ petition was filed seeking for the following relief:-

“In the premises aforesaid, it is therefore, prayed that Your Lordships may be pleased to admit this petition, call for the records and issue a Rule calling upon the respondents to show cause as to why a writ in the nature of Certiorari should not be issued to declare the action of the respondent authorities in issuing the transfer order dated 05.10.2016 so far it relates to the petitioner as illegal and null and void and/or as to why a writ in the nature of Certiorari should not be issued for setting aside and quashing the impugned order dated 05.10.2016 issued by the respondent No. 2, i.e. the Joint Secretary to the Government of Assam, Health & Family Welfare (B) Department and/or as to why a writ in the nature of Mandamus should not be issued for directing/commanding the respondent authorities to allow the petitioner to continue his service at Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati and

after perusal of records and/or cause or causes being shown if any and upon hearing the parties make the rule absolutely and/or be pleased to pass any other appropriate order/orders or direction as Your Lordships may deem fit and proper.”

3. By the impugned Notification dated 05.10.2016, issued by the Government of Assam, Health & Family Welfare (B) Department, Dispur, Guwahati, the petitioner, who was serving as a Lecturer of Surgery, Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati was transferred and posted as Lecturer of Surgery at Assam Homeopathic Medical College and Hospital, Nagaon, w.e.f. the date of taking over charge and until further orders.

4. By the Order dated 23.12.2016, passed by this Court, the impugned Notification dated 05.10.2016 was stayed until further orders and consequently, the petitioner was allowed to continue as Lecturer of Surgery in Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati, and it was further directed that the petitioner’s salary from November, 2016 be released forthwith. In terms of the said Order passed by this Court, the petitioner is continuing as a Lecturer of Surgery in Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati.

5. Today, when the matter is listed, Mr. D.P. Borah, learned Standing Counsel, Health Department, Assam, has placed a copy of the Notification dated 29.11.2022, issued by the Government of Assam, Medical Education & Research Department, Dispur, Guwahati, in the connected IA(Civil)/1052/2024. The Notification dated 29.11.2022 has *inter alia* provided that, the Government of Assam has amalgamated the three Homeopathic Colleges & Hospitals of Assam, namely:-

(i) Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati,
(ii) Assam Homeopathic Medical College & Hospital, Nagaon, and
(iii) Dr. J.K. Saikia Homeopathic Medical College & Hospital, Jorhat,
into a single Homeopathic College in Guwahati, namely, "Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati".

6. Mr. D.P. Borah, learned Standing Counsel, Health Department, Assam, accordingly submits that in view of the Notification dated 29.11.2022, the present writ petition no longer survives and is liable to be dismissed.

7. This Court has perused the Notification dated 29.11.2022, issued by the Government of Assam, Medical Education & Research, Dispur, Guwahati, amalgamating the three Homeopathic Medical College & Hospitals of Assam, namely:-

(i) Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati,
(ii) Assam Homeopathic Medical College & Hospital, Nagaon, and
(iii) Dr. J.K. Saikia Homeopathic Medical College & Hospital, Jorhat,
into a single Homeopathic College in Guwahati, namely, "Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati".

8. In the writ petition, the petitioner has challenged the Notification dated 05.10.2016 by which the petitioner, who was serving as Lecturer of Surgery, Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati, was transferred and posted as Lecturer of Surgery at Assam Homeopathic Medical College & Hospital, Nagaon, with effect from the date of taking charge and until further orders. However, in view of the

Notification dated 29.11.2022, issued by the Government of Assam amalgamating the three Homeopathic Medical College & Hospital, Assam, into one entity, namely, Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati, this Court is of the view that the cause of action in the writ petition no longer survives against the State respondents.

9. The writ petition, is therefore, disposed as infructuous.

10. With regard to the issue of non-payment of salary and allowances etc., if any, necessary representation shall be submitted by the petitioner to the concerned authorities, who shall address the same without any delay.

JUDGE

Comparing Assistant