

GAHC010232002016



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

Case No. : WP(C)/909/2016

SMTI DEEPIKA PHUKAN
W/O SHRI NABIN SARMA, R/O CLUB ROAD, NEAR CHEKONIDHARA
NAMGHAR, P.O. and P.S. and DIST- JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
HEALTH AND F.W.A DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGABARI
KAHILIPARA
GHY-36

3:THE JT. DIRECTOR OF HEALTH SERVICES
JORHAT
ASSAM
PIN-785001

4:THE JT. DIRECTOR OF HEALTH SERVICES
DIBRUGARH
ASSAM

5:THE DISTRICT TREASURY OFFICER
JORHAT
ASSA

Advocate for the Petitioner : MS. R DEKA

Advocate for the Respondent : SC, FINANCE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 27.06.2024

Heard Mr. P. K. Goswami, learned Senior Counsel along with Mr. S. S. Goswami, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel for Health & Family Welfare Department and Mr. P. Naik, learned Standing appearing for the Finance Department representing the respondent no. 5.

The petitioner, by way of filing the present proceeding has prayed for a direction upon the respondent authorities for releasing to her pay and allowances, which are stated to be in arrears w.e.f. April, 2015.

At the outset, Mr. S. S. Goswami, learned counsel for the petitioner has submitted that he would be satisfied, if this Court directs the respondent authorities to reinstate the petitioner in her services forthwith and the period w.e.f. April, 2015, till the date of her such reinstatement be treated notionally. The learned counsel for the petitioner also submits that the petitioner would not claim back wages for the period w.e.f. April, 2015, till the date of her such reinstatement.

The said prayer of the petitioner is not objected to by the learned

counsel for the respondents, however, Mr. B. Gogoi, learned Standing Counsel for Health & Family Welfare Department submits that there is a doubt with regard to the initial appointment of the petitioner in her services as well as the promotion effected in her case and prays that liberty be granted to the departmental authorities, to proceed against the petitioner in a manner known to law.

I have considered the submissions as made in the matter by the learned counsels appearing for the parties and perused the materials brought on record.

The materials available on record, reveals that the petitioner, after April, 2015, for whatever reason that may have so existed, was not discharging her duties in the establishment where she was so posted as a Junior Assistant and her salaries from the said date was also not being released to her. It is further revealed that the said period, even if construed to be a period of unauthorized absent, the departmental authorities have also not instituted appropriate proceedings against the petitioner in the matter.

In that view of the matter, this Court, hereby directs the respondent authorities to reinstate the petitioner as an Junior Assistant in the establishment wherein she was last posted.

The petitioner, on such reinstatement, would be released her monthly salaries, after the same is so fixed by notionally fixing the increments w.e.f. April, 2015, till the date of her reinstatement in her services.

It is provided that for the period the petitioner was not rendering her services i.e. w.e.f. April, 2015, till the date of her reinstatement, the petitioner would not be entitled to any pay and allowances, applying the principle of "No work No pay", however, the said period would be notionally fixed for the purpose of determining the pay of the petitioner on the date she is so reinstated and also for the purpose of her seniority in service as well as for calculating her pension and pensionary benefits.

The reinstatement of the petitioner shall be so effected within a period of 30(thirty) days from the date of receipt of a certified copy of this order by the Director of Health Services, Assam.

The materials on record having also demonstrated that there is doubt with regard to the initial recruitment against a Grade-IV post and her subsequent promotion against the post of LDA/Junior Assistant, the respondent authorities are at liberty to proceed against the petitioner, after her reinstatement in her services in a manner known to law and thereafter, providing due opportunity of hearing to the petitioner by following the provisions of the Assam Services (Discipline & Appeal Rules), 1964 to come to a conclusion with regard to the said aspect of the matter and pass appropriate order(s) thereon.

With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant