

GAHC010237892022



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

Case No. : WP(C)/7481/2022

SIRAJ UDDIN CHOUDHURY S/O. LT. WATIR ALI CHOUDHURY, TEACHER,
SIRAJUL ALI H.S. SCHOOL, P.O. BARJATRAPUR, DIST. CACHAR, VILL. AND
P.O. BARJATRAPUR, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF SECONDARY EDUCATION, DISPUR, GUWAHATI-781006, ASSAM.

2:THE DIRECTOR SECONDARY EDUCATION ASSAM KAHILIPARA
GUWAHATI-781019 ASSAM.

3:THE DEPUTY COMMISSIONER CACHAR P.O. SILCHAR DIST. CACHAR
ASSAM PIN-788001.

4:THE DISTRICT DEVELOPMENT COMMISSIONER I/C EDUCATION
CACHAR SILCHAR ASSAM PIN-788001.

5:THE INSPECTOR OF SCHOOLS CDC SILCHAR CACHAR P.O. SILCHAR
DIST. CACHAR PIN-788001 ASSAM.

6:THE PRINCIPAL IN CHARGE SIRAJUL ALI H.S. SCHOOL
P.O. BARJATRAPUR DIST. CACHAR ASSAM PIN-788110

Advocate for the Petitioner : MR. A R TALUKDAR

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 18.03.2024

Heard Mr. A. R. Talukdar, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceedings; has assailed the communication, dated 15.10.2022, issued by the Inspector of Schools, Cachar District Circle, Silchar, thereby, directing the Principal of the school, wherein, the petitioner is serving, to cut the pay of the petitioner for one day from his salary for the month of September, 2022, and in the event, if the salary has already been drawn by the petitioner for the month of September, 2022; the deduction to be made from the salary for the month of October, 2022.

3. The petitioner, herein, is working as a Persian Teacher in Sirajul Ali Higher Secondary School, Borjatrappur, Cachar, since 22.02.1999. On 01.09.2022, during an inspection made by the Deputy Commissioner, Cachar, in the said school, it was found that the petitioner was absent without prior permission. Accordingly, the petitioner was denoted as absent on 01.09.2022, in the attendance Register. Thereafter, a Show Cause Notice, dated 07.09.2022, was issued against the petitioner requiring him to Show Cause as to why disciplinary action should not be taken against him as per Rule, for gross negligence, dereliction of duty and disobedience.

4. The petitioner, vide his reply, dated 09.09.2022, explained the circumstances under which he was absent from the school for a short duration. It was the contention

of the petitioner that on 01.09.2022, he had attended his duties on time and had put his signature in the Attendance Register and had also taken a class. However, on receipt of a phone call from his wife who was undergoing medical treatment at NEIGRIHMS, Shillong, requiring the petitioner to deposit money in her account for the purpose of her treatment; the petitioner after taking verbal permission from the Principal of the school, had proceeded to the Bank to deposit the money in his wife's account. It was at that juncture, that the Deputy Commissioner, Cachar, had visited the said school and on not finding the petitioner physically present in the said school; had marked absent over the signature as made by the petitioner in the Attendance Register maintained in the said school.

5. It is seen that the Principal of the school in question, also vide his communication, dated 09.09.2022, supported the contention raised by the petitioner in his show cause reply and had stated that the petitioner, for the purpose of sending money to his ailing wife at NEIGRIHMS, Shillong, had gone to the Bank after taking verbal permission from him.

6. In spite of the said clarifications as submitted in the matter; the Inspector of Schools, Cachar District Circle, vide his communication, dated 15.10.2022, directed the Principal of the school to cut the pay of the petitioner for one day from his salary for the month of September, 2022, and in the event, if the salary has already been drawn by the petitioner for the month of September, 2022; it was required to be cut from the salary for the month of October, 2022. Being aggrieved, the petitioner has filed this present proceedings, challenging the legality and validity of the said order, dated 15.10.2022.

7. The facts, as narrated hereinabove, are not disputed by the respondents.

8. It is seen that vide Show Cause Notice, dated 07.09.2022, it was alleged against the petitioner that he was absent in the said school without prior permission on 01.09.2022 and his such absence amounted to gross negligence, dereliction of duty and disobedience; and as such, the petitioner was directed to show cause as to why disciplinary action should not be initiated against him as per Rule.

9. The petitioner vide his reply, dated 09.09.2022, in categorical terms, has stated that his absence from the school in question, on 01.09.2022, was not deliberate and he had to proceed to the Bank to deposit money in his wife's account who was undergoing medical treatment at NEIGRIHMS, Shillong, and had left school, after taking verbal permission from the Principal of the school.

10. It is seen that the Principal of the school in question, had also supported the contention as raised by the petitioner in the matter. In spite of the said position and without instituting any proceeding as may be called for in the matter; the respondent No. 5 had proceeded to direct for a pay cut of one day from the salary of the petitioner, in the manner as indicated hereinabove.

11. The allegation as levelled against the petitioner that he had remained absent from his duty in the said school on 01.09.2022, is clearly perverse in-as-much it is evident that the petitioner had attended the school on the said date and has also taken a class and thereafter, had gone to the Bank for depositing money in his wife's account after obtaining verbal permission from the said Principal. The Principal of the school had also vouched the veracity of the said contention of the petitioner.

12. The contentions as made in the matter by the petitioner and the Principal of the

said school, having not been disputed by the respondents, the allegation levelled against the petitioner of his absence on 01.09.2022, in the said school without prior permission; is rendered unsustainable.

13. The absence of the petitioner having been explained by the petitioner as well as the Principal of the said school with sufficient cause; it was not open for the respondent authorities to proceed to impose upon the petitioner any penalty in the matter. Further, it is to be noted that the penalty as imposed upon the petitioner is not the result of any proceedings as instituted under the provisions of the Assam Services(Discipline and Appeal) Rules, 1964, but, was in pursuance to a Show Cause Notice issued to the petitioner, which can only be deemed to be a communication seeking explanation. The petitioner having justified his absence from the school on 01.09.2022, and that too, with due permission from the Principal of the said School; it is the considered view of this Court that there was no occasion to impose any penalty upon the petitioner.

14. Accordingly, the order, dated 15.10.2022, directing to cut the pay of the petitioner for one day from his salary for the month of September, 2022, and in the event, if the salary has already been drawn by the petitioner for the month of September, 2022; it is to be cut from the salary for the month of October, 2022, as the case may be; is not justified and the same accordingly, stands set aside and quashed insofar as it concerns the petitioner.

15. In view of the interference made by this Court with the order, dated 15.10.2022; the respondents are now required to refund to the petitioner, the pay which was so cut for one-day. The said refund be effected within a period of 30(thirty) days from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant