

GAHC010268922022



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

Case No. : WA/250/2023

DEBASHIS PUZARI
S/O SRI TARUN CHANDRA PUZARI R/O WEST MILAN NAGAR (K-LANE),
P.O.C.R. BUILDING, DIST. DIBRUGARH, ASSAM PIN - 786001

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC WORKS DEPARTMENT, DISPUR, GUWAHATI -6, ASSAM.

2:THE COMMISSIONER AND SPECIAL SECRETARY

GOVT OF ASSAM

PUBLIC WORKS DEPARTMENT (ROADS)

DISPUR
GUWAHATI -6
ASSAM

3:THE SECRETARY

GOVT. OF ASSAM
PUBLIC WORKS DEPARTMENT (ROADS)

DISPUR
GUWAHATI -6
ASSAM.

4:THE DEPUTY SECRETARY

PUBLIC WORKS DEPARTMENT (ROADS)

ESTABLISHMENT BRANCH
DISPUR
GUWAHATI-6
ASSAM.

5:THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT (ROADS)

CHANDMARI
GUWAHATI
ASSAM-3.

6:THE SUPERINENDING ENGINEER

PUBLIC WORKS DEPARTMENT

DIBRUGARH RUADL ROAD
DIVISION

DIBRUGARH
ASSAM
PIN - 786001

For the Appellant : Mr. S.P. Sharma, Advocate

For the Respondents : Mr. D. Nath, Sr. GA, Assam

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 29-05-2024

(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellant being aggrieved with the order dated 18-11-2022 whereby while allowing the writ petition filed by the appellant the learned Single

Judge has directed the respondents that the appellant be treated to be in service from the date of his initial appointment till his service came or would come to an end as per law and accordingly, with all such benefits that he may be entitled.

2. The facts of the case are that the petitioner while working as Assistant Engineer (Civil) in the Public Works Department (PWD) of the State of Assam sought for leave from 01-07-2004 to 30-07-2004. However, after his leave period was over he has not joined his duties and overstayed the leave. He returned back in the year 2006 and immediately was placed under suspension by order dated 29-03-2006. The department has also initiated disciplinary proceeding against the appellant under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 read with Article 311 of the Constitution of India primarily on the charges that he remained unauthorizedly absent for the aforesaid period. On 18-06-2010, the appellant gave an undertaking on a non-judicial stamp paper to the effect that he will not claim any pay and allowances for the period from 31-07-2004 till his suspension is revoked. Considering the same, the disciplinary proceeding initiated against the appellant was closed and he was reinstated in service vide order dated 09-11-2012. While reinstating the appellant the respondents have passed an order whereby his entire service period, prior to end of his suspension period was treated as *dies-non*. The appellant has approached this Court by filing the writ petition challenging the notification dated 12-10-2016 with a prayer for providing him *inter-se* seniority in the cadre and has also challenged the action of the respondents of treating his service of relevant period as *dies-non*. The learned Single Judge has observed that the action of the respondents of treating the whole services of the appellant as *dies-non* cannot be sustained and

therefore, the writ petition was allowed in the terms as noticed earlier.

3. The appellant has filed this appeal claiming that he is entitled for subsistence allowance as per law for the period he remained under suspension.

4. Having heard the learned counsel for the petitioner and after taking into consideration the fact that the appellant has given an undertaking to the department on 18-06-2010 with a declaration that he shall not claim any pay and allowances for the period from 31-07-2004 till revocation of his order of suspension dated 29-03-2006, we do not find any good reason to issue direction to the respondents to pay subsistence allowance to the appellant for the period he remained under suspension.

Hence, the writ appeal is dismissed.

We make it clear that we have not commented on the merits of the impugned judgment dated 18-11-2022 passed by the learned Single Judge on all other aspects.

JUDGE

CHIEF JUSTICE

GS

Comparing Assistant