

GAHC010272372023



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

Case No. : WP(C)/7016/2023

TAPANJIT DEKA, AFS
RESIDENT OF - KAILASH NAGAR,
1ST BYELANE, HOUSE NO. 18,
BELTOLA, GUWAHATI, ASSAM,
PIN- 781028.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY (FINANCE) TO
THE GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE (ESTT.-B) DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE (ESTT.-B) DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE DEPUTY COMMISSIONER
BISWANATH CHARIALI
ASSAM- 784179

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

01.03.2024

Heard Mr. N. Borah, learned counsel for the petitioner. Also heard Ms. A. Talukdar, learned Government Advocate, Assam and Mr. R. Borpujari, learned Standing Counsel, Finance Department.

2] The petitioner was serving as a Treasury Officer in Biswanath Treasury. During his service some allegations were made against the petitioner. It was reported that the petitioner was involved in double payment of GPF final withdrawal bills amounting to Rs.3,60,541/- (Rupees Three Lakhs Sixty Thousand Five Hundred Forty One) in respect of one Shri Robin Nath, Khalasi. In view of such allegation made against the petitioner, he was placed under suspension by notification dated 17.02.2023 under Rule 6 (1) of the Assam Services (Discipline and Appeal) Rules, 1964 issued by the Secretary to the Government of Assam, Finance (Estt-B) Department. In this regard although Chargesheet No.242010/74 was served on the petitioner by the said Department on 12.04.2023, however, the requirement of continuation of suspension of the petitioner was not reviewed and therefore, the petitioner being aggrieved has approached this Court. Further prayer in the writ petition is

that his subsistence allowances have not been released. The petitioner has challenged the impugned suspension order dated 17.02.2023 praying for setting aside of the same. The further prayer is also made that while he was in suspension, his case was put up for promotion but the decision of the same was kept in sealed cover as he was under suspension and therefore, after setting aside of the suspension order, the authorities may be directed to open the sealed cover and pass necessary orders restoring the seniority of the petitioner.

3] Notice in the matter was issued on 29.01.2024.

4] On that date when the notice was issued, it was submitted by Mr. R. Borpujari, learned Standing Counsel, Finance Department that the authorities had decided to pass the final order imposing a penalty withholding 10% of the pensionary benefits of the petitioner since he will be retired on superannuation on 31.01.2024. A copy of this order issued by the Department authority on 17.02.2024 is placed before the Court today.

5] On perusal of the said order it is seen that although the suspension period of the petitioner was treated as 'on duty' for pension purpose, however, he will not be entitled to any salary for the period under suspension except the subsistence allowance

6] In view of this order being passed by the authority, the prayers made in

the writ petition largely have become infructuous. The order dated 17.02.2024 is not put to challenge in the present proceedings. However, there are two prayers made in the writ petition which the petitioner claims have not been redressed. The petitioner submits that his subsistence allowance, which is due for the period he was under suspension, has not been released. Further, it is submitted that since the Disciplinary Proceedings are culminated, his case for promotion should be taken out of the seal cover and appropriate order shall be passed.

7] Having heard the learned counsel for the parties and upon perusal of the writ petition and also the order dated 17.02.2024 passed by the Secretary to the Government of Assam, Finance (Establishment-B) Department, imposing a penalty on the petitioner, this Court finds that the prayer made for interference of the impugned suspension order dated 17.02.2023 has become infructuous as on date. However, if any subsistence allowance is left to be paid to the petitioner, the same shall be forthwith released to the petitioner as per the procedure of law. Further, since the Department vide the order dated 17.02.2024 has imposed a penalty of withholding 10% of pensionary benefits of the petitioner pursuant to the findings of the Departmental Proceeding, the respondent authorities can also proceed with the prayer of the writ petitioner in respect of considering his case for promotion by examining any recommendation in his favour by taking it out from a sealed cover. In case of

any such recommendation, the respondent authorities will proceed to take up the promotional case of the petitioner stated to have been kept in a sealed cover during the period of his suspension as well as during the Departmental Proceedings and thereupon, will pass appropriate orders as per the provision of law.

8] It is made clear that no observation has been made by the Court on the merits of the order dated 17.02.2024 issued by the Secretary to the Government of Assam, Finance (Establishment-B) Department, imposing a penalty to withhold 10% of the pensionary benefits of the petitioner in the present proceeding.

9] With the above observations, the writ petition stands disposed of.

JUDGE

Comparing Assistant