GAHC010101632022

2025:GAU-AS:4422

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

Case No. : WP(C)/3631/2022

KAMALUDDIN
S/O. LT. ARPIN ALI, R/O. NORTH RAILWAY GATE, P.O. PATHARKANDI, DIST. KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM, EDUCATION (SECONDARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS

KARINGANJ DISTRICT CIRCLE (KDC)
KARIMGANJ
P.O. AND AMP
DIST. KARIMGANJ
ASSAM
PIN-788710

Advocate for the Petitioner : MR H R CHOUDHURY, MR. R. AHMED,MS J AKTAR,MR. M KHAN,MR N HAQUE

Advocate for the Respondent : SC, SEC. EDU.,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 19-08-2026

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. P.P. Dutta, learned standing counsel, Secondary Education, Assam appearing for the respondents.

2. As consented to by the learned counsel for the parties, the present writ petition is taken up for final consideration at the admission stage and is being disposed of by the present order.

3. The petitioner in the present order has assailed an order dated 16-12-2014, issued by the Director of Secondary Education, Assam, imposing upon the petitioner the penalty of dismissal from service after conclusion of the departmental proceeding instituted against him, in the matter. The petitioner has also assailed an order dated 21-02-2022, issued by the Special Commissioner, Education Department, rejecting the prayer of the petitioner for grant of lien for the period the petitioner had proceeded to Sultanate of Oman for taking an employment therein.

4. The facts, in brief, requisite for adjudication of the issue arising in the present writ petition, is noticed as under:-

The petitioner was initially appointed as a Subject Teacher in English in the Model Higher Secondary School, Patherkandi in the district of Karimganj, vide order dated 02-05-1989. The said order had effected the appointment in respect of the petitioner, herein, for a period of 03 (three) months. Thereafter, on his selection by the State Selection Board, the appointment of the petitioner as a Subject Teacher in English in the said school

was regularized. While the petitioner was so continuing in his services, the petitioner vide a communication dated 20-03-2006, approached the Director of Secondary Education expressing his desire to join a new assignment in the Sultanate of Oman for a period of 03 (three) months, which was projected to be further extended. Accordingly, the petitioner had prayed for granting him lien/ quasi lien w.e.f. 05-04-2006, and also station leave permission. The said permission not being granted, the petitioner proceeded to move to the Sultanate of Oman and undertook an assignment, therein, initially for a period of 14 (fourteen) months. The said aspect of the matter was communicated by the petitioner to the Director of Secondary Education, Assam, vide communication dated 05-07-2006. The petitioner, thereafter, vide a communication dated 12-07-2007, prayed for extension of his leave till 30-06-2008. The said application of the petitioner was forwarded by the Principal of the School, wherein, the petitioner was initially appointed as well as by the jurisdictional Inspector of Schools. The said applications were, however, not favourably considered by the respondent authorities. Accordingly, the petitioner again vide a communication dated 05-06-2008 had prayed for extension of his leave till 30-06-2009 as his contract in the Sultanate of Oman was extended for a period of 01 (one) more year.

On completion of his engagement in the Sultanate of Oman, the petitioner returned to the State and vide a communication dated 15-07-2010, informed the respondent authorities that he had availed leave till 14-07-2010 and had reported back for his duties on 15-07-2010, before the Principal, Model Higher Secondary School and accordingly, he prayed that he be granted lien leave w.e.f. 05-04-2006 to 14-07-2010, with further permission to resume his service w.e.f. 15-07-2010. The applications submitted by the

petitioner on being processed, the Director of Secondary Education, Assam vide communication dated 09-08-2010 forwarded the application submitted in the matter by the petitioner for lien leave, as well as for resumption of his duties, w.e.f. 15-07-2010, at Model Higher Secondary School to the Government in the Education (Secondary) Department, for necessary instruction. However, it is seen that no decision was arrived at by the respondent authorities with regard to the said communication dated 09-08-2010 as issued by the Director, Secondary Education, Assam. The petitioner, accordingly, approached this Court by way of instituting a writ petition being W.P.(C) No. 5375/2013, praying for a direction upon the respondent authorities to allow him to resume his duties in the Model Higher Secondary School and also for grant of lien leave for the period of his absence. Notices in the matter was issued by this Court on 16-09-2013. It is projected that on receipt of the said notice, the Director of Secondary Education, Assam, proceeded to issue a show-cause notice dated 26-11-2013, instituting a departmental proceeding against the petitioner. In the said show-cause notice, it was projected that the petitioner was directed to show cause as to why a penalty under Clauses (i) to Clause (iii) of Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964 (hereinafter referred to as the Rules of 1964) would not be inflected upon him. The petitioner had submitted his reply to the said show-cause notice on 03-01-2014.

Not being satisfied with the reply submitted by the petitioner, the respondent authorities proceeded to appoint an Enquiry Officer in the matter and the Enquiry Officer, thereafter, proceeded to enquire into the charges framed against the petitioner, vide the show-cause notice dated 26-11-2013. On conclusion of the enquiry, the Enquiry Officer

had submitted her report in the matter, which was forwarded to the petitioner by the Director of Secondary Education, Assam vide communication dated 10-10-2014. The petitioner submitted his representation against the enquiry report dated 01-12-2014 disputing the conclusions drawn, therein, by the Enquiry Officer.

The Director, Secondary Education, Assam, thereafter, on consideration of the enquiry report as well as the materials coming on record in the enquiry and the representation submitted by the petitioner against the Enquiry Report, proceeded vide order dated 16-12-2014, to concur with the conclusions reached by the Enquiry Officer and imposed the penalty of dismissal from service upon the petitioner. The period of absence of the petitioner was directed to be not treated as on duty for the purpose of authorizing salary and also for the purpose of pension.

The petitioner had assailed the order of dismissal from service dated 16-12-2014, before this Court by way of instituting a writ petition being W.P.(C) No. 5233/2015. A Coordinate Bench of this Court vide order dated 14-05-2018, noticing the circumstances arising, therein, including the communication dated 09-08-2010, issued by the Director of Secondary Education to the Commissioner & Secretary to the Govt. of Assam in the Secondary Education Department, requiring the later to take a decision with regard to the prayer of the petitioner for grant of lien leave and also permission to resume his services, proceeded to dispose of said writ petition, directing the Commissioner & Secretary to pass a reasoned order with regard to the communication dated 09-08-2010, issued by the Director of Secondary Education, Assam in the matter. It was further provided that depending on the order that would now be passed by the Commissioner & Secretary, a

further decision be also taken as to whether the order imposing the penalty of dismissal from service upon the petitioner dated 16-12-2014 is to be retained or the same would also mandate a modification.

Basing on the directions passed by this Court vide order dated 14-05-2018, in W.P. (C) No. 5233/2015, the Special Commissioner to the Govt. of Assam, Secondary Education, Assam vide order dated 21-02-2022, on considering the prayer of the petitioner for grant of lien leave, proceeded to reject the same and thereby, affirmed the order dated 16-12-2014, issued by the Director of Secondary Education, Assam imposing penalty of dismissal from service upon the petitioner.

Being aggrieved, the petitioner has instituted the present writ petition.

5. Mr. M. Khan, learned counsel for the petitioner after reiterating the facts noticed, hereinabove, has submitted that the petitioner had proceeded to take up an assignment in the Sultanate of Oman, after submission of due application in this connection and therein, disclosing the fact that he intended to take up such employment in the Sultanate of Oman. Mr. Khan, has further submitted that the petitioner was all along submitting applications praying for extension of his lien leave and also for continuation of his lien. Mr. Khan submits that the respondent authorities having not rejected the prayers made by the petitioner in the application submitted by him seeking leave and thereafter, for extension of lien leave, the petitioner was under an impression that the same was already granted to him. Mr. Khan submits that on completion of his assignment in the Sultanate of Oman, the petitioner had reported back for duties before the Principal, Model Higher Secondary School on 15-07-2010, however, he was not permitted to resume his services

and accordingly, the petitioner after having approached the respondent authorities praying for permission for resuming his services, had approached this Court by way of instituting a writ petition being W.P.(C) No. 5375/2013. He submits that it is only after the notice was issued in the said writ petition by this Court on 16-09-2013, that the respondent authorities had initiated a departmental proceeding against the petitioner by way of issuance of a show-cause notice dated 26-11-2013.

5.1. By referring to the said show-cause notice, Mr. Khan submits that, therein, it was projected that the Disciplinary Authority intended to impose upon the petitioner penalties as prescribed in Clauses- (i) to (iii) of Rule 7 of the Rules of 1964. Accordingly, he submits that the petitioner had proceeded in the matter keeping in view the penalty that was now proposed to be imposed upon him. Mr. Khan submits that although a minor penalty was proposed to be imposed upon the petitioner in the show-cause notice dated 26-11-2013, the Disciplinary Authority on conclusion of the departmental proceeding instituted against it, had proceeded vide order dated 16-12-2014, to impose upon the petitioner, penalty of dismissal from service which penalty is not covered by the penalties as prescribed under Clauses-(i) to (iii) of Rule 7 of the Rules of 1964. He submits that it was not permissible for the Disciplinary Authority to impose a penalty of dismissal from service vide order dated 16-12-2014, when the show-cause notice had specified the penalties that were so proposed to be imposed upon him. Mr. Khan submits that the show-cause notice dated 26-11-2013, more particularly, the prescription, therein, of the penalties proposed to be imposed upon the petitioner was never amended by the respondent authorities prior to passing of the order dated 16-12-2014. He submits that the petitioner was never given a

notice to the effect that a major penalty was being contemplated to be now imposed upon the petitioner before issuance of the order dated 16-12-2014.

5.2. Mr. Khan, learned counsel for the petitioner in support of the submissions has placed reliance on the decision of a Division Bench of this Court rendered in the case of ***Amulya Chandra Das Vs. Assam Administrative Tribunal*** reported in ***1988 (2) GLJ 386***. Mr. Khan has also relied upon a decision of the Coordinate Bench of this Court rendered in the case of ***Suresh Das Vs. the State of Assam & Ors.*** (judgment & order dated ***19-10-2023*** in ***W.P.(C) No. 2555/2020***). Mr. Khan has, thereafter, submitted that the proceeding as instituted against the petitioner was so instituted in clear violation of the provisions of Rule 9 of the Rules of 1964. He submits that a list of documents and a list of witness had not accompanied the show-cause notice dated 26-11-2023 and accordingly, the said anomaly had the effect of vitiating the proceeding initiated against the petitioner, therein. In support of his such submission, Mr. Khan has relied upon a decision of this Court rendered in the case of ***Guna Kanta Tamuli Vs. State of Assam & Ors.*** reported in ***2015 (1) GLT 237***.

5.3. In the above premises, Mr. Khan submits that the impugned order dated 16-12-2014, would mandate interference from this Court and the period of absence of the petitioner, w.e.f. 05-04-2006 till 14-07-2010, would be mandated to be so regularized as on duty with all consequential benefits. Mr. Khan has further submitted that the petitioner having made himself available for resuming his service, w.e.f. 15-07-2010 and the respondent authorities having not permitted him to discharge his duties, the period, w.e.f. 15-07-2010 till the date of his superannuation occasioning in the year 2019, would also

be mandated to be regularized as on duty with all consequential benefits and the petitioner would now be entitled to be authorized his pension and pensionary benefits.

6. Mr. P.P. Dutta, learned standing counsel, Secondary Education, Assam submits that mere prescription of a penalty in the show-cause notice dated 26-11-2013, would be of no consequence, inasmuch as, the provisions of Rule 9 of the Rules of 1964, does not mandate for specification of such penalty in the show-cause notice issued to the delinquent. Mr. Dutta by referring to Rule 9(10) and Rule 9(11) of the Rules of 1964, submits that it is only on conclusion of a departmental proceeding, the Disciplinary Authority is to take a decision as to whether basing on the materials coming on record, a major penalty or a minor penalty is required to be imposed upon the delinquent. He submits that there is only a single procedure under the provision of Rule 9 for conduct of departmental proceeding and the nature of the said proceeding is not determined when the show-cause notice is issued to the petitioner. He submits that rules having empowered the Disciplinary Authority to decide as to what penalty is to be imposed upon the delinquent only after completion of the enquiry, the mere prescription of a minor penalty in the show-cause notice dated 26-11-2013, would be of no consequence and the Disciplinary Authority of the petitioner had not committed any error in the imposing penalty of dismissal from service upon the petitioner vide order dated 16-12-2014, inasmuch as, the said penalty was so imposed strictly in accordance with the procedure laid down for conduct of departmental proceeding under the provision of Rule 9 of the Rules of 1964. He submits that the petitioner in the present proceeding had admittedly violated the conduct rules and commission of a grave misconduct by him in the matter

being writ large on the face of the records, the penalty of dismissal from service imposed upon the petitioner, herein, is proportionate to the charges framed against him in the matter and the same would not mandate interference from this Court.

7. I have heard the learned counsel for the parties and have also perused the materials available on record.

8. At the outset, this Court would like to examine the factors leading to the issuance of the show-cause notice dated 26-11-2013, instituting a departmental proceeding against the petitioner, herein. It is seen that the petitioner being desirous to join an assignment in the Sultanate of Oman had submitted a communication dated 20-03-2006, before the Director of Secondary Education, Assam praying for grant of 03 (three) months lien/ quasi lien, w.e.f. 05-04-2006 and also to accord station leave permission. This Court finds that the leave as prayed for by the petitioner was not sanctioned by the competent authority of the department. In-spite of the said position, it is found that the petitioner, without having a prior approval from the departmental authority, had proceeded to join the assignment in Sultanate of Oman. Rule 12 of the Assam Civil Service (Conduct) Rules, 1965 clearly bars a Govt. servant from engaging himself directly or indirectly in any trade or business or undertake any other approved employment, without the prior sanction of the Government. The taking up of a new assignment by the petitioner in the Sultanate of Oman falls within the term, "any other employment". Further, the petitioner is found to have moved to a foreign country and taken up an assignment, therein, without previous sanction of the Government. Such steps taken by the petitioner in the matter amounts to commission of a gross mis-conduct by him, exposing him to be proceeded by way of

instituting a departmental proceeding. The plea taken by the petitioner in the matter is that he had moved and taken up an assignment in the Sultanate of Oman, after informing the matter to the respondent authorities. It is a settled position of law that mere applying for a sanction of leave by itself would not mean grant of the same. Mere submission of an application for grant of lien/ leave by itself does not confer right to perform act so involved. It would have been permissible for the petitioner to leave his station and take up an assignment in a foreign country only after the sanction in this connection was granted by the competent authority. No right is seen to have accrued upon the petitioner on mere submission of an application seeking leave. Accordingly, it was not permissible to the petitioner to leave his station and proceed to the Sultanate of Oman for taking up an assignment, therein, without being permitted for the same by the respondent authorities. There is no concept of a deemed sanction in such matters. Sanction for leave and/ or lien is to be affirmatively granted and communicated by the competent authority before the Govt. servant proceeds on leave and takes an assignment, which in the present case was in the Sultanate of Oman. The petitioner having proceeded abroad for employment only by submitting an application, without awaiting or securing the actual order of sanction, is found to have acted without authority of law and such conduct is not protected merely because a request was pending before the competent authority. Accordingly, the Disciplinary Authority was within its rights to institute appropriate departmental proceeding against the petitioner by deeming the absence of the petitioner to be unauthorized absence coupled with violation of conduct rules holding the field.

9. In view of the above discussions, this Court is of the considered view that the

action on the part of the petitioner in proceeding to the Sultanate of Oman and taking up an assignment, therein, without receiving prior sanction for the purpose from the competent authority of the department, amounted to commission of misconduct by him and the period of his absence has to be deemed to be unauthorized. Accordingly, the institution of a departmental proceeding against the petitioner was permissible.

10. Having drawn the said conclusion, this Court would now examine the penalty as imposed upon the petitioner.

11. The Disciplinary Authority of the petitioner in the show-cause notice dated 26-11-2013, had required the petitioner to submit show-cause reply basing on the allegation levelled against him, therein, as to why any of the penalties prescribed in Clauses- (i) to (iii) of Rule 7 of the Rules of 1964, would not be inflicted upon him. Rule 7 of the Rules of 1964, mandates the penalty permissible to be imposed upon a Govt. servant. Rule 7(i) prescribes penalty of 'censure', while Rule 7(ii) prescribes penalty of "withholding of increments of promotion". Rule 7(iii) prescribes a penalty of "recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the Govt. of Assam or the Central Government or any other State Govt., or any local or other authority to whom services of a Govt. servant has been lent." This Court finds that on conclusion of the departmental proceeding instituted against the petitioner, basing on the findings recorded in the enquiry by the appointed Enquiry Officer, the Disciplinary Authority of the petitioner vide order dated 16-12-2014, proceeded to impose upon him, the penalty of dismissal from service. The penalty of dismissal from service is prescribed under the provision of Rule 7(vii) of the Rules of 1964. Accordingly, the penalty now

imposed upon the petitioner vide order dated 16-12-2014, was not the penalty as proposed to be imposed upon the petitioner vide the show-cause notice dated 26-11-2013. At this stage the submission made by Mr. P.P. Dutta, learned standing counsel, Secondary Education is required to be noticed. Mr. Dutta has submitted that given the procedure mandated for conduct of a departmental proceeding under Rule 9 of the Rules of 1964, there is no requirement for prescribing the penalty proposed to be imposed upon the delinquent in the show-cause notice issued to him under Rule 9(2) of the said Rules of 1964. Mr. Dutta has further submitted that as to whether a major penalty and or minor penalty is to be imposed would be at the discretion of the Disciplinary Authority, on conclusion of the departmental proceeding instituted against the petitioner.

12. The said argument appears to be attractive but would not mandate an acceptance in view of the decision of the Division Bench of this Court rendered in the case of ***Amulya Chandra Das (Supra)***. This Court, in the said decision, in this connection, had drawn the following conclusions:-

> *2. Shri D. N. Choudhury appearing for the petitioner has assailed the finding and the order of removal passed on 10.8.85 on three grounds. The first ground of attack is that the petitioner having been asked to show cause as to why the punishments provided under clauses (i) to (iii) of the Rules should not be awarded, the penalty of removal could not have been inflicted, inasmuch as the three clauses mentioned in the notice visualise punishments of (1) censure, (ii) withholding of increment, or promotion, and (in) recovery from pay of the whole or part of any pecuniary loss caused to the Government. Shri C. Choudhury, learned Government Advocate, states that it was not necessary to mention in the show cause as to what penalty would be imposed. It may be that a show j cause is not required to state as to what penalty would be imposed, but if penalty is mentioned we do not think if higher penalty can be imposed. On the facts of the case, however, it may be that a higher penalty was called for; but then, the delinquent having been asked to show cause as to why a minor penalty should not be imposed, a major penalty of removal could not have been awarded.*

13. A perusal of the conclusions drawn by the Division Bench of this Court in the case of ***Amulya Chandra Das (Supra)***, would go to reveal that the Division Bench had also accepted the fact that it may not be required to be specified in the show-cause notice as to the penalty that would be imposed, but in the event the penalty is so mentioned, a higher penalty would not be permissible to be so imposed. The said prescription, as made in the decision by the Division Bench, is also found to have been so made by a Coordinate Bench of this Court in the case of ***Suresh Das (Supra).*** The Coordinate Bench of this Court in this case had drawn the following conclusions:-

> "*35. In the facts of the present case, from a bare perusal of the show cause notice, it is evident that while the authority initiated the proceedings asking the petitioner to show cause as to why punishments prescribed under Clause (i) to (iii) of Rule 7 of the Rules should not be imposed, the final order passed by the Disciplinary Authority and which is impugned in the present proceedings reveals that the Disciplinary Authority passed the order imposing the punishment of removal from service which is not included in any of the punishment prescribed under Rule 7(i) to Rule 7(iii). In other words, the punishment imposed is from Rule 7(iv) to Rule 7(vii). The show cause notice was issued to the petitioner to show cause in respect of a punishment proposed to be imposed on the petitioner which is contemplated as minor punishment under Rule 9(xi) of the said Rules whereas the impugned order dated 03.10.2017 which was passed by the Disciplinary Authority is imposed the punishment of dismissal from service which is a major penalty as prescribed under Rule 9(x) of the said Rules. As such on the fact of it, it appears that the order imposing punishment was imposed without following the procedure prescribed under the Discipline and Appeal Rule, 1964. There is no order or communication pointed out to the Court by the respondents or is available in the pleadings which show that the initial show cause notice was subsequently amended to impose major penalties and an opportunity to show cause was given to the petitioner."*

14. Applying the decision of this Court noticed, hereinabove, to the facts of the present case, this Court is of the considered view that in the show-cause notice dated 26-11-

2013, issued to the petitioner, a minor penalty being proposed to be imposed upon him, the Disciplinary Authority without first amending the said show-cause notice dated 26-11-2013, could not have proceeded vide the order dated 16-12-2014, to impose a penalty which did not find a mention in the show cause notice dated 26-11-2013. This Court also is of the considered view that the petitioner having been proceeded against for imposition of a minor penalty vide issuance of the show-cause notice dated 26-11-2013, he could not have been imposed a major penalty like dismissal from service, without first informing him that in his case a major penalty is being contemplated to be so imposed. It is seen from the materials brought on record that even in the communication forwarding the Enquiry Report to the petitioner, there was no prescription made that it is proposed that a major penalty would be mandated to be imposed upon the petitioner, herein.

15. In view of the above discussions, this Court is of the considered view that the order dated 16-12-2014 would not mandate acceptance and accordingly, the same stands set aside.

16. Having interfered with the order dated 16-12-2014, this Court would now consider the further relief that would be mandated to be so granted to the petitioner, herein. As noticed, hereinabove, the petitioner in proceeding to the Sultanate of Oman and taking up an assignment, therein, without prior sanction of the respondent authorities, admittedly amounted to commission of a misconduct by him and the said position is not disputed. However, this Court on a technicality was required to interfere with the order of penalty imposed upon him. The petitioner has also superannuated from his services in the year 2019 and accordingly, a fresh proceeding in the matter would not be mandated to be

directed to be instituted against him at this stage, in view of the prescriptions made in Rule 21 of the Assam Services (Discipline and Appeal) Rules, 1964.

17. Accordingly, this Court holds that the petitioner would not be entitled to any back wages for the period w.e.f. 05-04-2006 to 14-07-2010. However, the said period would be reckoned for the purpose of computing his pension and pensionary benefits. With regard to the period w.e.f. 15-07-2010, till the date of superannuation of the petitioner, occasioning in the year 2019, this Court in the facts and circumstances of this case; appreciating that the petitioner had not discharged his duties during the said period, holds that the petitioner would also not be entitled to back wages for the period. However, said period is mandated to be reckoned for the purpose of computation of the pension and pensionary benefits of the petitioner.

18. In view of the above discussions, this Court directs the respondent authorities to compute the pay receivable by the petitioner, on the date of his superannuation, by notionally fixing his pay, w.e.f. 05-04-2006 till the date of his superannuation. The pay of the petitioner as on the date of his superannuation being fixed in the above manner, the respondent authorities would proceed to prepare a pension proposal in respect of the petitioner by reckoning the pay, the petitioner would now draw on the date of his superannuation and on preparation of such proposal, submit the same before the Director of Pension, Assam, for disbursement of his pension and other pensionary benefits.

19. The said exercise be initiated and completed within a period of 06 (six) months from the date of receipt of a certified copy of this order. Till the finalization of the pension and pensionary benefits of the petitioner, the petitioner be authorized a provisional

pension, w.e.f. the date of his superannuation along with other retiral benefits like provisional DCRG, leave encashment, GIS etc., which are to be so authorized by the department concerned. The said authorization of provisional pension and other retiral benefits be made to the petitioner within a period of 02 (two) months from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant