

GAHC010078412021



2026:GAU-AS:10689

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

Case No. : WP(C)/3027/2021

DR. HIMAJIT KUMAR BARMAN
S/O SRI NARENDRA BARMAN, SANTIPATH, R.G. BARUAH ROAD, P.O.-ZOO
ROAD, P.S.-GITANAGAR, GUWAHATI-781024

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM, HEALTH
AND FAMILY WELFARE (B) DEPARTMENT, DISPUR, GUWAHATI-6, ASSAM

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE
DISPUR
GUWAHATI-6

3:ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
ASSAM
DISPUR
GUWAHATI-6
ASSAM

4:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
GUWAHATI-2

Advocate for the Petitioner : MR. P J SAIKIA, MS M NIROLA,MR. P BORDOLOI

Advocate for the Respondent : SC, HEALTH AND F W,

Linked Case : WP(C)/2455/2021

DR. HIMAJIT KUMAR BARMAN
S/O SRI NARENDRA BARMAN

SANTIPATH
R.G BARUAH ROAD
PO ZOO ROAD
P.S GITANAGAR
GUWAHATI 781024

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPARTMENT
DISPUR GUWAHATI 06 ASSAM

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE
DISPUR
GUWAHATI 06

3:THE ADDITIONAL SECRETARY
TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
ASSAM
DISPUR GUWAHATI 06 ASSAM

4:THE DIRECTOR OF MEDICAL EDUCATION

ASSAM
SIX MILE
GUWAHATI 22

5:THE PRINCIPAL CUM CHIEF SUPERINTENDENT

GAUHATI MEDICAL COLLEGE AND HOSPITAL
BHANGAGARH 5
DIST KAMRUP (M)

6:THE SUPERINTENDENT
STATE CANCER INSTITUTE

GAUHATI MEDICAL COLLEGE
GUWAHATI 5

7:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
SILCHAR MEDICAL COLLEGE AND HOSPITAL
SILCHAR
788014

Advocate for : MR. P J SAIKIA
Advocate for : SC
HEALTH AND F W appearing for THE STATE OF ASSAM AND 6 ORS

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 03.08.2026

Whether the pronouncement is of
the operative of the judgment? : No

Whether the full judgment has been
pronounced? : Yes

JUDGEMENT & ORDER (ORAL)

Heard Mr. P. J. Saikia, learned Senior Counsel assisted by Ms. M. Nirola, learned counsel for the petitioner. Also heard Mr. D. P. Borah, learned Standing Counsel, Health and Family Welfare Department, for respondents.

2. Challenges made in these writ petitions are to the suspension order dated 18.03.2021, passed by the Principal Secretary to the Government of Assam,

Health and Family Welfare Department, whereby the petitioner was placed under suspension; the disciplinary proceedings initiated pursuant thereto; and the order rejecting the petitioner's application for resignation due to pendency of the disciplinary proceedings.

3. Having considered that both the writ petitions are interconnected, same are taken up for hearing and disposed of by this common judgment and order.

4. The petitioner was appointed as Registrar of Oncology in the Gauhati Medical College & Hospital vide Notification dated 08.02.2012, pursuant to the advertisement dated 01.11.2011 issued by the Assam Public Service Commission inviting applications for various posts of Registrar/Resident Physician etc. in different departments of various Medical Colleges in the State of Assam, including one post of Registrar/Resident Physician in the Department of Oncology. Prior to his appointment, the petitioner, after completing his MBBS and Master of Surgery in ENT from Silchar Medical College, had joined as Resident Surgeon at Cachar Cancer Hospital and Research Centre, Meherpur, Silchar, and thereafter joined as Senior Resident in the Department of Head & Neck Oncology at B. Baruah Cancer Institute, Guwahati, on contract basis vide order dated 14.09.2010. After his appointment as Registrar in the Department of Oncology, the petitioner was serving at the Gauhati Medical College & Hospital and was subsequently placed at the State Cancer Institute, Gauhati, where he continued to discharge his duties.

5. While the petitioner was availing vacation with effect from 01.02.2020 to 29.02.2020, the Superintendent of the State Cancer Institute, Gauhati Medical College & Hospital, forwarded to him the Notification dated 06.02.2020

issued by the Government of Assam, Health and Family Welfare Department, whereby his services were attached to the Department of ENT, Silchar Medical College & Hospital and he was released from all duties at the Gauhati Medical College & Hospital with a direction to report to the Principal-cum-Chief Superintendent, Silchar Medical College & Hospital. Aggrieved thereby, the petitioner submitted a representation by e-mail dated 08.02.2020 to the respondent authorities seeking cancellation of the said Notification dated 06.02.2020 and the consequential office order dated 07.02.2020. A copy of the representation was also submitted physically before the respondent authorities. However, no decision was communicated to the petitioner on the said representation.

6. In the aforesaid circumstances, the petitioner approached this Court by filing WP(C) No. 1423/2020 challenging the Notification dated 06.02.2020 and the consequential office order dated 07.02.2020. During the pendency of the said writ petition, the petitioner did not report at the Silchar Medical College & Hospital, stating, *inter alia*, that he was suffering from ill health and was also faced with family constraints. The petitioner states that he had been communicating his inability to undertake the journey and join at Silchar to the concerned authorities from time to time through e-mails and applications. In the meantime, on 19.02.2021, the petitioner tendered his resignation from service before the Principal-cum-Chief Superintendent, Silchar Medical College & Hospital, which was received by the authorities on 26.02.2021.

7. In the meanwhile, WP(C) No. 1423/2020 came to be disposed of by this Court vide order dated 16.03.2021, whereby the Notification dated 06.02.2020 was set aside, having found that the action of attaching the

petitioner to the Department of ENT, Silchar Medical College & Hospital was not in accordance with the applicable statutory rules, including Rule 3(3)(ii) of the Assam Medical Education Service Rules, 2008. The relevant observations made by this Court in the said order are extracted hereinbelow:

"13. Though the affidavit-in-opposition states that one patient, Shri Pratap Bora who had been initially treated by the petitioner in the State Cancer Institute, had been diverted from State Cancer Institute to Aruna Medical Hospital, the documents annexed to the respondents affidavit shows that Shri Pratap Bora was treated in the State Cancer Institute on 16.08.2018 and later on in a private hospital, i.e. Aruna Memorial Hospital on 16.08.2019. This Court is of the view that the time gap between the two periods of treatment being one year, the same may not conclusively prove that the petitioner had diverted patients from the State Cancer Institute to a private hospital. Further, the official records do not make any mention of any patient being diverted. No patients names are mentioned. In any event, this issue may require an enquiry to be made by the respondents, which has not been done till date.

Further, while the writ petition was filed on 24.02.2020, the affidavit-in-opposition has been filed by the respondents only on 02.03.2021, wherein for the first time, the respondents have come up with the plea that the petitioner had been transferred due to diverting patients from the State Cancer Institute to a private hospital. This allegation had never been indicated in the transfer order and no communication has been made to the petitioner with regard to the above allegation, prior to the filing of the writ petition.

14. In the case of Union of India and Others vs. Janardhan Debnath and Another (supra), the Apex Court has held that for the purpose of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirements of holding an elaborate enquiry was to be insisted upon, the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated.

The above proposition of law is not in doubt. However, it is unfortunate that even though more than a year has passed since the impugned transfer was issued, the respondents have till date not even attempted to have a preliminary enquiry on the allegation made against the petitioner. Further, as held by the Apex Court in the State of UP and Others vs. Gobardhan Lal (supra), an order of transfer can be interfered with if it is violative of any statutory provision. As this Court has already come to a finding that the transfer of the petitioner had not been made in terms of Rule 3(3)(ii) of the 2008 Rules, the impugned transfer order has to be interfered with.

15. *In view of the reasons stated above, the impugned Notification dated 06.02.2020, in so far as it relates to the petitioner, being unsustainable in law, is set aside."*

8. Thereafter, the Principal Secretary to the Government of Assam, Health and Family Welfare Department, issued the impugned Notification dated 18.03.2021, whereby the petitioner was placed under suspension with immediate effect, pending drawal of disciplinary proceedings. It was alleged, *inter alia*, that despite the Notification dated 06.02.2020 attaching his services to the Department of ENT, Silchar Medical College & Hospital and directing him to comply with the said order, the petitioner had never physically reported at the said Medical College. It was further alleged that the petitioner had not applied for leave during the period of his absence and had merely sent e-mails/applications from time to time informing the authorities about his illness, without submitting any medical certificate. The conduct of the petitioner was alleged to constitute unauthorized absence, negligence in duty towards the patients and the Government during the unprecedented public health emergency, insubordination and gross misconduct.

9. The petitioner thereafter submitted a representation through e-mail, apprising the respondent authorities of the order dated 16.03.2021 passed by this Court in W.P.(C) No. 1423/2020, as well as the resignation already tendered by him on 19.02.2021, and requested that the order of suspension be recalled. However, no decision was taken on the said representation at that stage and both the question of acceptance of the petitioner's resignation and the contemplated disciplinary proceedings remained pending.

10. Thereafter, the petitioner, being aggrieved by the suspension, instituted the present WP(C) No. 2455/2021 before this Court. This Court, vide order

dated 01.04.2021, while issuing notice, granted interim relief by suspending the operation of the order insofar as it debarred the petitioner from private practice and fixed his headquarters at Silchar.

11. Subsequently, vide order dated 05.04.2021, the Additional Secretary to the Government of Assam, Health and Family Welfare Department, rejected the petitioner's application for resignation dated 19.02.2021 on the ground that disciplinary proceedings is contemplated against him in respect of his alleged unauthorized absence and negligence in the discharge of his duties towards the patients and the Government during the unprecedented public health emergency which amounts to insubordination and gross misconduct. Thereafter, vide communication dated 13.04.2021, the Additional Secretary to the Government of Assam, Health and Family Welfare Department, issued Charge-Sheet against the petitioner and directed him to show cause. The statement of allegation against the petitioner was, *inter alia*, that he had remained unauthorizedly absent from duty and had been negligent towards the patients as well as the Government during the unprecedented public health emergency caused by the COVID-19 pandemic which amounts to insubordination, gross misconduct and violation of Rule 3(1) of the Assam Civil Services (Conduct) Rules, 1965.

12. The petitioner has accordingly instituted this second WP(C) No. 3027/2021 challenging, *inter alia*, the order dated 05.04.2021 rejecting his resignation and seeking a direction to the respondent authorities to relieve him from service pursuant to his resignation dated 19.02.2021. The petitioner has also questioned the legality of the disciplinary proceedings initiated against him, contending, *inter alia*, that the same are founded upon his alleged non-

compliance with the Notification dated 06.02.2020, which had already been set aside by this Court vide order dated 16.03.2021 in WP(C) No. 1423/2020.

13. Mr. P. J. Saikia, learned Senior Counsel for the petitioner, submits that the impugned order of suspension dated 18.03.2021 is wholly unsustainable, inasmuch as the same has been passed on the allegation of non-compliance with the Notification dated 06.02.2020, which had already been set aside by this Court vide order dated 16.03.2021 in WP(C) No. 1423/2020. He submits that the very foundation of the disciplinary proceedings having ceased to exist, the consequential suspension and disciplinary proceedings cannot be sustained in law. Learned Senior Counsel further submits that the petitioner had already tendered his resignation on 19.02.2021, which was duly received by the authorities and therefore, the subsequent rejection thereof vide order dated 05.04.2021, on the ground of pendency of disciplinary proceedings, is also unsustainable. Therefore, he submits that the impugned orders may be set aside and the petitioner be relieved from service pursuant to his resignation.

14. On the other hand, Mr. D. P. Borah, learned Standing Counsel, Health and Family Welfare Department, submits that despite being directed to report at Silchar Medical College & Hospital pursuant to the Notification dated 06.02.2020, the petitioner never joined his duties there and remained absent without sanctioned leave. The petitioner merely communicated about his illness from time to time without furnishing any medical certificate. Therefore, his absence during the COVID-19 pandemic was alleged to constitute unauthorized absence, negligence in duty, insubordination and gross misconduct, for which he was placed under suspension vide order dated 18.03.2021 and disciplinary proceedings were initiated against him.

15. Learned Standing Counsel further submits that, as disciplinary proceedings were pending against the petitioner, his resignation dated 19.02.2021 was rejected vide order dated 05.04.2021 in larger public interest. He submits that the order dated 16.03.2021, passed by this Court in WP(C) No. 1423/2020, whereby the Notification dated 06.02.2020 was set aside, has been assailed by the respondent authorities in WA No. 110/2021, which is presently pending adjudication. Therefore, he submits that the petitioner cannot contend that the disciplinary proceedings are rendered non est merely on account of the order dated 16.03.2021, particularly when the allegations against him relate to his conduct and absence from duty and as such, the impugned orders do not warrant interference and the writ petitions are liable to be dismissed.

16. I have considered the submissions of learned counsel for the parties and also perused the materials available on record, including the order dated 16.03.2021, passed by this Court in WP(C) No. 1423/2020.

17. From the pleadings of the parties and the materials placed on record, it is evident that the entire controversy involved in these proceedings has its genesis in the Notification dated 06.02.2020, whereby the services of the petitioner, while serving at the State Cancer Institute, Gauhati Medical College & Hospital, were attached to the Department of ENT, Silchar Medical College & Hospital, with a direction to report to the Principal-cum-Chief Superintendent, Silchar Medical College & Hospital. The petitioner challenged the said Notification before this Court by filing WP(C) No. 1423/2020. The said writ petition came to be disposed of by this Court vide order dated 16.03.2021, whereby the Notification dated 06.02.2020 was set aside having found the same to be not in accordance with the applicable statutory rules.

18. Thereafter the impugned order dated 18.03.2021 came to be passed placing the petitioner under suspension pending drawal of disciplinary proceedings. A perusal of the said order as well as the stand taken by the respondents in their affidavit-in-opposition would show that the allegation against the petitioner is that, despite the Notification dated 06.02.2020 and the consequential direction to report at Silchar Medical College & Hospital, he did not join his duties there and remained absent. The subsequent disciplinary proceedings also proceed substantially on the same allegation of unauthorized absence and negligence in duty.

19. On consideration of the matter, this Court is of the view that once the very Notification dated 06.02.2020, which required the petitioner to report at Silchar Medical College & Hospital, had already been set aside by this Court vide order dated 16.03.2021, passed in WP(C) No. 1423/2020, the respondents could not have continued to treat the said Notification as a valid and existing order for the purpose of founding adverse consequences against the petitioner for his alleged failure to comply with the same. Therefore, the basis on which the impugned action was initiated had ceased to exist by the time the order of suspension dated 18.03.2021 was passed.

20. This Court is also conscious of the submission of the learned Standing Counsel that the order dated 16.03.2021, passed in WP(C) No. 1423/2020, has been assailed by the respondent authorities in WA No. 110/2021. However, mere pendency of an appeal against the said order, in the absence of any order staying its operation, does not negate the effect of the order passed by the learned Single Judge. Consequently, so long as the order dated 16.03.2021 remains operative, the respondents cannot proceed on the premise that the

Notification dated 06.02.2020 continued to bind the petitioner and that his alleged non-compliance therewith constituted misconduct warranting disciplinary action.

21. The subsequent order dated 05.04.2021 rejecting the petitioner's resignation also requires to be examined in the aforesaid context. It is not in dispute that the petitioner had tendered his resignation on 19.02.2021, prior to the order of suspension dated 18.03.2021. The resignation was thereafter rejected mainly on the ground that disciplinary proceedings is contemplated against the petitioner in respect of the alleged unauthorized absence and misconduct. When the very basis of such disciplinary action, insofar as it emanates from the alleged non-compliance with the Notification dated 06.02.2020, cannot be sustained in view of the order dated 16.03.2021, passed by this Court in WP(C) No. 1423/2020, the rejection of the petitioner's resignation on the said ground also cannot be allowed to stand.

22. This Court is not called upon, in the present proceedings, to examine or adjudicate upon any independent allegation of misconduct which may be wholly unconnected with the Notification dated 06.02.2020. However, from the materials placed before this Court, the allegations forming the basis of the suspension and the disciplinary proceedings are essentially connected with the petitioner's alleged failure to report at Silchar Medical College & Hospital pursuant to the said Notification. The respondents, therefore, cannot sustain the impugned action by relying upon an order which has already been set aside by this Court.

23. It is also relevant to notice that the order dated 16.03.2021, passed by this Court in WP(C) No. 1423/2020, was prior to the impugned suspension order

dated 18.03.2021. Thus, when the respondents proceeded to place the petitioner under suspension, the Notification dated 06.02.2020 had already ceased to have any legal validity by virtue of the order of this Court. The subsequent initiation of disciplinary proceedings, founded upon the alleged non-compliance with the said Notification, therefore, cannot be sustained.

24. In view of the foregoing discussion, this Court is of the considered opinion that the impugned order dated 18.03.2021 placing the petitioner under suspension and the consequential disciplinary proceedings initiated against him cannot be sustained. Consequently, the order dated 05.04.2021 rejecting the petitioner's resignation on the ground of pendency of the disciplinary proceedings also cannot survive.

25. Accordingly, the present writ petitions, being WP(C) No. 2455/2021 and WP(C) No. 3027/2021, stand allowed. The order dated 18.03.2021, passed by the Principal Secretary to the Government of Assam, Health and Family Welfare Department, placing the petitioner under suspension and the consequential disciplinary proceedings initiated against him are hereby set aside. The order dated 05.04.2021, passed by the Additional Secretary to the Government of Assam, Health and Family Welfare Department, rejecting the petitioner's application for resignation is also set aside.

26. Consequently, the respondent authorities are directed to re-instate the petitioner in service and to consider the petitioner's resignation application dated 19.02.2021 in accordance with law and pass appropriate consequential orders thereon.

27. It is, however, made clear that this Court has not expressed any opinion

on the merits of any allegation against the petitioner which is independent of and unconnected with the Notification dated 06.02.2020. The present order is confined to the legality of the impugned actions in the facts and circumstances noticed hereinabove.

28. Both the writ petitions stand disposed of in the above terms.

JUDGE

Comparing Assistant