

(2023) 04 GAU CK 0036
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 594 Of 2019

Rudra Prasad Das

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 19-04-2023

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 6(1)

Citation : (2023) 04 GAU CK 0036

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : D. J. Das, R. Dhar, S. K. Medhi

Final Decision : Disposed Of

Judgement

1. Heard Mr. D. J. Das, the learned counsel appearing on behalf of the petitioner and Mr. R. Dhar, the learned Standing counsel appearing on behalf of the Social Welfare Department. I have also heard Mr. S. K. Medhi, the learned Standing counsel appearing on behalf of the Office of the Accountant General (A&E), Assam.

2. The case of the petitioner herein is that the petitioner was put under suspension vide an order dated 11.08.2009 by the Principal Secretary to the Government of Assam, Social Welfare Department in exercise of the powers under Rule 6(1) of the Assam Services (Discipline and Appeal) Rules, 1964. The petitioner thereupon was paid his subsistence allowance. However, vide an order dated 02.11.2011, the respondent authorities i.e. the Social Welfare Department after a period of more than 2 (two) years had re-instated the petitioner and posted the petitioner as CDPO, Ujani Majuli ICDS proect, Jorhat.

3. It is the case of the petitioner that although the petitioner was re-instated vide the order dated 02.11.2011, there was no indication as to how the period of suspension was to be treated. Subsequent thereto, vide an order dated 29.11.2013, the petitioner was transferred and posted as Superintendent of

VTRC Kachukata, Baksa and the petitioner claims to be serving in the same capacity till date. It is the case of the petitioner that even after a period of 9 years have elapsed from the date of the suspension, the suspension period from 11.08.2009 to 20.11.2011 was not regularized by granting full pay and allowance to the petitioner thereby treating the period of suspension as on duty. A reference was made to a communication issued by the Senior Accounts Officer, Office of the Accountant General (A&E), Assam dated 30.07.2015 which was marked to the petitioner wherein clarification was sought for as to how to treat the period of suspension of the petitioner. As the respondent authorities have not taken any steps to do the needful for treating the period of suspension as on duty, the instant writ petition was filed by the petitioner seeking a Writ of Mandamus thereby directing the respondent authorities to pass necessary orders for releasing the full pay and allowances admissible to the petitioner during the period of suspension and also for treating the said period as period spent on duty for all purposes. Further to that, the petitioner has also sought for a direction upon the respondent authorities to release the yearly increments due to the petitioner from the year 2009 till date.

4. It appears on record that the said writ petition was filed on 24.01.2019 and this Court vide an order dated 30.01.2019 has issued notice making it returnable by 4 (four) weeks. Till date, the respondents have not filed their affidavit.

5. It may be relevant herein to take note of an order being passed by this Court on 11.06.2019 wherein this Court categorically observed that as there was no apparent progress in the Departmental Inquiry which was instituted in the year 2011, the matter would be disposed of on the next date on the basis of the available materials, if the authorities do not file affidavit-in-opposition or produce the relevant records on the next date. In spite of the said order, the respondents have not filed their affidavits. This Court also find it relevant to take note of another order dated 07.11.2022 wherein the learned Standing counsel appearing on behalf of the Accountant General (A&E) submitted that by efflux of time, the matter appears to have become infructuous as the grievance of the petitioner has been redressed and the learned counsel for the petitioner on the said occasion sought for time to obtain instructions.

6. Today, when the matter has been taken up, the learned counsel for the petitioner submitted that the Government of Assam, Social Welfare Department vide an order No.SWD.74/2019/41 dated 07.08.2019 had treated the period of suspension i.e. w.e.f. 11.08.2009 to 02.11.2011 as on duty for all purposes including payment of arrear salary, retirement benefits etc. as per Rule 54-B of the FR. He further submitted that the Office of the Principal Accountant General (A&E) had also instructed for release of the arrear pay and allowances vide its Office Pay/Leave Salary Slip No.GE-6/PS/SW/2675-76 dated 20.03.2020. However, it is the case of the petitioner that the respondent authorities have not released the said amount to the petitioner. In fact, the petitioner has also submitted representation to the concerned respondent authorities.

7. I have heard the learned counsels for the parties. Mr. R. Dhar, the learned Standing counsel for the Social Welfare Department submits upon instructions that no Departmental Proceedings have yet been initiated against the petitioner till date. Be that as it may, it is relevant to note that the Government of Assam, Social Welfare Department vide order dated 07.08.2019 have already treated the period of suspension of the petitioner i.e. for the period from 11.08.2009 to 02.11.2011 as on duty for all purposes including payment of the arrear salary, retirement benefits etc. as per Rule 54-B of the FR. Under such circumstances, the question of the petitioner for not getting the arrear pay for the said period does not arise. In fact, the Office of the Principal Accountant General (A&E) have also released the arrear pay and allowances vide the Office Pay/Leave Salary dated 20.03.2020 and to the said aspect, the Office Pay/Leave Salary Slip dated 20.03.2020 have also been produced before this Court.

8. Under such circumstances, this Court therefore disposes of this writ petition with a direction upon the respondent authorities more particularly the Principal Secretary, Social Welfare Department to ensure that the petitioner receives the arrear salary for the period from 11.08.2009 to 02.11.2011 after deducting the amount of subsistence allowance to which the petitioner has already received.

9. The said exercise be complied with within a period of 2 (two) months from the date a certified copy of this order is served upon the Principal Secretary, Social Welfare Department.

10. The instructions so produced by Mr. S. K. Medhi, is kept on record and marked with the letter "X".

11. With above observations and directions, the instant petition stands disposed of.