

GAHC010035732021



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

Case No. : WP(C)/1311/2021

NAHIM UDDIN MAZARBHUIYA AND 5 ORS
S/O. LT. MAHMUD ALI MAZARBHUIYA, VILL. LAKHIRBOND PART-11, P.O.
LAKHIRBOND, DIST. HAILAKANDI, ASSAM, PIN-788155.

2: MOSTUFA AHMED MAZUMDER

ABDUR NOOR MAZUMDER
VILL. BHATIRKUPA PART-1
P.O. CHANDIPUR
DIST. HAILAKANDI
ASSAM
PIN-788150.

3: TAZ UDDIN LASKAR
S/O. LT. JACHIM ALI LASKAR
VILL. MOHANPUR PART-V
P.O. MOHANPUR
DIST. HAILAKANDI
ASSAM
PIN-788150.

4: ABUL FAZAL DIDAR AHMED MAZUMDER
S/O. LT. ATAUR RAHMAN MAZUMDER
VILL. BONDUKMARA
P.O. RATANPUR
DIST. HAILAKANDI
ASSAM
PIN-788151.

5: GUL NEHAR BARLASKAR
D/O. LT. MOYNUL HAQUE BARLASKAR
VILL. NITAINAGAR PART-3
P.O. NITAINAGAR
DIST. HAILAKANDI

ASSAM
PIN-788155.

6: BIJIT KUMAR NATH
S/O. LT. BIJAN BIHARI NATH
VILL. MOHANPUR PART-11
P.O. MOHANPUR
DIST. HAILAKANDI
ASSAM
PIN-788150

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE ASSTT. COMMISSIONER AND DIST. MISSION CO-ORDINATOR SSA
MISSION

HAKLAKANDI
P.O. AND DIST. HAILAKANDI
ASSAM
PIN-788155.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

HAILAKANDI
P.O. AND DIST. HAILAKANDI
ASSAM
PIN-788151.

5:THE DY. INSPECTOR OF SCHOOLS

HAILAKANDI
P.O. AND DIST. HAILAKANDI
ASSAM
PIN-788151.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER HAILAKANDI

P.O. AND DIST. HAILAKANDI

ASSAM
PIN-788151

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT

Date : 23-02-2022

Heard Dr. B. Ahmed, learned counsel for the petitioner. Also heard Mr. P.N. Sarma, learned counsel for the respondents No.1, 2, 4, 5 & 6 being the authorities under the Elementary Education Department of the Govt. of Assam and Mr. B. Gogoi, learned counsel for the respondent No.3.

2. The petitioners who are the teachers in their respective L.P. and M.E schools were all placed under suspension as per the order dated 04.09.2017 of the Director of Elementary Education, Assam. Subsequently all the petitioners were reinstated in service as per the order of the Director of Elementary Education, Assam dated 08.08.2018. By an order dated 11.01.2019 of the Director of Elementary Education, Assam the period of suspension of the six petitioners were treated to be on duty for all purpose. Subsequently by another order dated 02.09.2019 there was a punishment imposed for stoppage of increment without cumulative effect and further to release the increment w.e.f. the date of the suspension i.e. 04.09.2017.

3. In the circumstance, this petition is instituted for a direction that the petitioners be paid their arrear salary for the aforesaid period of suspension. For the purpose, the petitioners refer to a communication dated 11.12.2019 of the Block Elementary Education Officer, Hailakandi made to the District Elementary

Education Officer, Hailakandi, wherein, a prayer made by the petitioner along with a calculation sheet as regards their arrear salary was forwarded to the District Elementary Education Officer. The District Elementary Education Officer, Hailakandi in turn by the communication dated 02.01.2020 made to the Director of Elementary Education, Assam considers the forwarding of the aforesaid document to be a proposal for release of arrear salary and makes a request to the Director for doing the needful. As the matter did not proceed any further and no progress had taken place, this petition is instituted.

4. Dr. B. Ahmed, learned counsel for the petitioner submits that the order dated 11.01.2019 treating the petitioners to be on duty for all purpose had been passed in exercise of the powers under F.R.54-B(1)(b). By referring to the said order passed under F.R.54-B(1)(b) it is submission of the learned counsel that as the petitioners were treated to be on duty for all purpose, therefore, they should also be paid their arrear salary.

5. We have taken note of that the order treating the petitioners to be on duty was made by the order dated 11.01.2019 which apparently was passed under F.R.54-B(1)(b), whereas, F.R.-54-B(1)(a) provides for the pay and allowance to be paid to a government servant for the period of suspension. As F.R. 54 B-(1) (a) and F.R.-54 B(1)(b) are two separate provision, we are unable to accept the contention of Dr. B. Ahmed merely because there is an order under F.R- 54 B(1) (b) treating the petitioner to be on duty during the period of suspension, therefore, it would have to be construed to be implied that there is also an order for payment of the pay and allowance for the suspended period. As payment of the pay and allowance is governed by a separate provision under the FR-54 B(1)(a) for a decision to be taken thereof, we are of the view that it would otherwise be more appropriate for the departmental authorities to take a

decision under FR 54 B(1)(a) on the question of payment of pay and allowance to the petitioners for the suspended period.

6. But in doing so, we also take note of the order dated 02.09.2019 of the Director of Elementary Education, Assam by which a punishment was imposed on the petitioners by following the procedure under the Assam Services (Discipline & Appeal) Rules, 1964. A reading of the order goes to show that the punishment of stoppage of increment without cumulative effect was passed by ordering the authorities to release the increment w.e.f. the date of their suspension i.e. 04.09.2017. Understanding of the order dated 02.09.2019 would go to show that there was a requirement to release the increment even for the suspended period. If it is so, we cannot envisage a situation that on one hand there will be a decision not to pay the pay and allowances for the period under suspension but at the same time, the petitioners would also entitled to the increment for the same period of suspension. It will be meaningless to understand that they will get the increment for the suspended period but will not get their salary and allowances for the said period.

7. Accordingly, the Director of Elementary Education, Assam is directed to pass a reasoned order by taking note of the conclusion arrived at by the Court hereinabove which also includes the conclusion regarding the consequence of the order dated 02.09.2019 as indicated.

8. The reasoned order to be passed within a period of one month from the date of receipt of the certified copy of the order.

Writ petition stands allowed as indicated above.

JUDGE

Comparing Assistant