

GAHC010028732017



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

Case No. : WP(C)/3880/2017

MEHJABIN KHABIR HAZARIKA
C/O MR. A HAZARIKA, MILANPUR TINIALI, PO-BAMUNIMAIDAN,
GUWAHATI-21, ASSAM

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER and SECRETARY, EDUCATION DEPTT., GOVT.
OF ASSAM, DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GHY-19

3:THE INSPECTOR OF SCHOOLS K.D.C M GUWAHATI-19

4:THE HEADMASTER PUB GUWAHATI HIGH SCHOOL JYOTINAGAR
GUWAHATI-2

Advocate for the Petitioner : MS.P P DUTTA

Advocate for the Respondent : SC, SECONDARY EDUCATION

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

DATE : 21.06.2024

ORDER

Heard Mr. H. Rahman, learned senior counsel, assisted by Ms. P. P. Dutta, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Bedanta Kaushik, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1, 2 & 3. None has appeared on behalf of

respondent No. 4.

2. The petitioner, by way of instituting the present proceeding, has prayed for the following reliefs:

"It is therefore prayed that Your Lordship may be pleased to admit this petition, issue a Rule calling upon the Respondents to show cause as to why a writ in the nature of Mandamus shall not be issued and call for records of the cases and after hearing the parties, a direction may be issued to the respondent to set aside the order of dismissal for violation of the Rules and to re-instate the petitioner in her post with full benefits of pay, seniority and promotion, etc. from the date of dismissal order and pass such necessary order or orders as your Lordship's may deem fit and proper.

3. The facts as requisite for adjudication of the issue as arising in the present proceeding, is briefly noticed as follows:

The petitioner contends that she was initially appointed as an Assistant Teacher in Maligaon Girls' High School vide order, dated 17.05.1991 and thereafter, she contends that she was transferred and posted in the same capacity to Pub Guwahati High School vide order, dated 02.03.2004.

4. The petitioner applied for being granted leave for 15 days w.e.f. 15.02.2008 to 29.02.2008, which was duly sanctioned by the competent authority. The petitioner was thereafter sanctioned extra-ordinary Leave(EOL) w.e.f. 10.03.2008 to 31.05.2009, vide order, dated 20.05.2009. However, on completion of her period of leave on 31.05.2009, the petitioner did not resume her service. Thereafter, it is contended that the petitioner had resumed her service on 21.12.2012 i.e. after a period of around more than 3 years and had attended her duties for around 10 days. The petitioner, thereafter, again

submitted an application for extra-ordinary Leave(EOL) and left the said school. It is further contended that as the petitioner was out of Guwahati, she could not join her duties but she had submitted her leave application from time to time through registered post. The petitioner, thereafter, came across a noticed published in "The Assam Tribune" on 24.06.2016, wherein, it was contended that she was unauthorizedly absent from the school w.e.f. 01.06.2009 and Show Cause Notices seeking her reply for her such unauthorized absence, were issued to her on 23.05.2016 and 10.06.2016, but, no response for the same was received and accordingly, it was directed that she should submit her reply to the said Show Cause Notices within a period of 10 days from the date of publication of the said Notice. It is contended by the petitioner that on coming across the said notice, she had submitted her reply in the matter on 27.06.2016, stating all her facts.

A perusal of the petitioner's reply to the said notice, reveals that the petitioner had contended that therein that she had submitted an application for leave without pay on 01.06.2009 and had resumed her service on 21.12.2012, and discharged her duties in the said school for a period of 10 days w.e.f. 21.12.2012.

The petitioner had further contended that as she has been permitted to perform her duties in the month of December, 2012, accordingly, the allegation of her remaining unauthorizedly absent from the said school w.e.f. 01.06.2009, would not be maintainable and accordingly, she submitted that her reply be considered and she was willing to resume her duties.

It is the contention of the petitioner that vide order, dated 04.03.2017, her service came to be dismissed w.e.f. 01.06.2009 holding her to be unauthorisedly absent with effect from the said date. Accordingly, being aggrieved; the petitioner has instituted the present proceeding.

4. Mr. Rahman, learned senior counsel appearing on behalf of the petitioner, has, by reiterating the above-noted facts, submitted that the dismissal of the writ petitioner from her service as effected vide order, dated 04.03.2017, was so done in clear violation of the Assam Services(Discipline and Appeal) Rules, 1964, in-as-much as no opportunity of hearing was afforded to the petitioner in the matter and accordingly, in violation of the procedure as mandated in the said Rules of 1964; the order, dated 04.03.2017, would not be sustainable and accordingly, the same requires to be interfered with by this Court with further direction for reinstatement of the petitioner in her service.

5. Per contra, Mr. Kaushik, learned standing counsel, Secondary Education Department, by referring to the affidavit-in-opposition filed in the matter by the Director, Secondary Education Department, Assam, that the petitioner after 01.06.2009, had not resumed her service and she was not granted any leave for the period after 01.06.2009, and accordingly, her absence from 01.06.2009, was clearly unauthorised. It was submitted that the contention of the petitioner that she had resumed her service on 21.12.2012, cannot be accepted in-as-much as such joining of the petitioner in her service after her unauthorised absence was not so done with the permission of the competent authority. Accordingly, it is contended that the said purported joining of the petitioner in service on

21.12.2012, would be of no consequence.

6. It is submitted that the petitioner by her conduct, had abandoned her service and accordingly, the conduct of the petitioner led to the issuance of the order, dated 04.03.2017, by which penalty of dismissal from service was imposed upon the petitioner. It is further submitted that the respondent authorities had provided the petitioner with due opportunity to have her say in the matter and it was only after appreciating the conduct of the petitioner in the matter; the Director, Secondary Education Department, Assam, had proceeded to impose the penalty of dismissal from service on the petitioner, vide order, dated 04.03.2017.

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

8. At the outset, the challenge as made by the petitioner to the order of her dismissal, is being considered. It is an admitted position that after the submission of her show cause reply, dated 27.12.2016, it is seen that the petitioner had not made any attempt to resume her services. Perusal of the contents of her show cause reply would reveal that the petitioner had admitted to the charge of remaining unauthorized absent from her service w.e.f. 01.06.2009 and no material was brought on record to justify her such absence. In view of the admission of the petitioner of the charge as levelled against her in the proceeding so initiated against her, the action on the part of the respondent authorities in proceeding to impose upon the petitioner, the penalty

of dismissal from service, cannot be held to be erroneous.

9. The challenge presented by the petitioner to the penalty of dismissal as imposed upon her on the ground that the same was so issued in clear violation of the Rules holding the field, when viewed in the light of the conduct of the petitioner in the matter and her unilateral decision to remain away from her duties w.e.f. 01.06.2009, does not persuade this Court to consider such contention of the petitioner that the allegation of she having unauthorisedly absent w.e.f. 01.06.2009, is not maintainable in-as-much as the petitioner had resumed her service on 21.12.2012. While it is true that the petitioner had joined her service on 21.10.2012, but, after working for around 10 days, had again left the school without any permission from the departmental authorities. Thereafter, it is contended that the petitioner was out of Guwahati for personal reasons. No materials

have been produced by the petitioner as to the reasons that may have existed for remaining absent from her service, after having joined on 21.12.2012, and worked for about 10 days. The next step taken in the matter by the petitioner was on 27.06.2016 when she submitted her show cause reply in the matter. As such, the conduct of the petitioner as noticed hereinabove, does not call for any sympathetic consideration in her case.

10. The conduct of the petitioner as revealed from the materials available on record reveals that she had deliberately abandoned her service w.e.f. 01.06.2009 for her own personal interest and such a conduct having revealed that the petitioner did not have an inclination to continue with her service; the

termination as effected in her service, vide order, dated 04.03.2017, in the considered view of this Court, would not call for any interference.

11. The petitioner being a teacher was required to teach the students of her school which was the greater public interest involved and the same when compared with the unauthorized absence of the petitioner for long period, for personal reasons, it is the public interest that has to be given precedence and not the private interest of the petitioner, herein, and accordingly, the prayer of the petitioner for being reinstated in her service with effect from the date of her dismissal, would not mandate any consideration from this Court. The conduct of the petitioner in the matter would also not call for any sympathetic consideration in-as-much as w.e.f. 01.06.2009, it is an admitted position that the petitioner had not carried-out her assigned duties and the same was only on account of her personal interest.

12. The petitioner has also made a prayer for being considered for grant of voluntary retirement in the matter. However, the Director, Secondary Education Department, in the affidavit-in-opposition, has categorically dealt with this aspect and has submitted that the petitioner having been remained on Extra-ordinary Leave(EOL) without pay on private affairs and thereafter, being unauthorisedly absent w.e.f. 01.06.2009, excluding the period of such unauthorized absence and also the period she was permitted to remain absent by grant of extra-ordinary Leave(EOL); the petitioner had not completed the qualifying period of service requisite for being considered for grant of voluntary retirement and accordingly, the said prayer of the petitioner also does not merit

any consideration.

13. In view of the conclusions reached by the Court hereinabove and also considering the conduct of the petitioner; this Court holds that the writ petition is devoid of any merit and accordingly, the same is hereby dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant