



GAHC010223092021

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

Case No. : WP(C)/729/2022

BIMAL PAYENG

S/O- SRI PURNA KANTA PAYENG, R/O- PRAGATI APARTMENT, LAKHIMI
PATH, BELTOLA, P.S. BASISTHA, DIST.- KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY ITS PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, FINANCE
DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE ADDITIONAL CHIEF SECRETARY
GOVT. OF ASSAM
P AND PG DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-781006.

4:THE DIRECTOR OF PENSION
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006.

5:THE SECRETARY TO THE GOVT. OF ASSAM
AND DIRECTOR OF FINANCIAL INSPECTIONS
ASSAM
DISPUR
GUWAHATI-781006.

6:THE DEPUTY SECRETARY



PENSION AND PUBLIC GRIEVANCES DEPARTMENT AS ENQUIRY OFFICER
DISPUR
GUWAHATI-6.

7:THE DEPUTY INSPECTOR OF SCHOOLS
BARPETA
ASSA

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioner: Shri J. Payeng, Advocate

Advocates for respondents : Shri C.S. Hazarika, Advocate,
Ms. P. Das, Advocate, Finance Department.

Date of hearing : 26.09.2023

Date of judgment : 26.09.2023

1. An order of penalty dated 30.08.2019 imposed in a Disciplinary Proceeding, namely, stoppage of one increment with cumulative effect in respect of the petitioner is the subject matter of challenge in this writ petition. Since there is a chequered history including past litigation, it would be convenient if the facts of the case are stated in brief.

2. The petitioner was serving as a Senior Assistant in the Department of Pension, Government of Assam. A Disciplinary Proceeding was initiated against the petitioner

on certain charges regarding genuineness of a case of family pension and in that connection the petitioner was also suspended vide order dated 15.05.2013. The said Disciplinary Proceeding had culminated in an order dated 19.02.2015 by which the petitioner was dismissed from service. The departmental appeal preferred by the petitioner was also rejected vide order dated 16.05.2015.

3. The said orders were the subject matter of challenge in a writ petition filed by the petitioner which was registered as WP(C)/3272/2015.

4. This Court, after hearing the parties had passed an order dated 15.05.2019 whereby the penalty of dismissal was interfered with and the matter was remanded for passing a fresh order of penalty. This Court had however also directed that the petitioner would not be entitled to back wages but he would be entitled to notional benefits for pension and other retirement benefits.

5. For ready reference, the operative part of the aforesaid judgment is extracted herein below:

“19. Accordingly, this Court is inclined to set aside the (i) Order No. PPG(P) 129/2013/164 dated 19.02.2015 issued by the Commissioner & Secretary to the Govt. of Assam, Pension & Public Grievances Deptt. (ii) Office Order under Memo No. /DP/81/92/84 dated 23.02.2015 issued by the Director of Pension, Assam, and (iii) Order No. PPG(P) 129/2013/229 dated 16.05.2015 passed by the Addl. Chief Secretary to the Govt. of Assam, Pension & Public Grievances Deptt., without affecting the Enquiry Report in connection with the Disciplinary Proceeding. The matter is remanded back to the Disciplinary Authority to re-examine the punishment inflicted upon the petitioner afresh and to pass appropriate orders in the case of the petitioner without being influenced by the 3 (here) orders that have been set aside. In order to facilitate the same, the petitioner shall be deemed to be in service only for the limited purpose of the Departmental Proceeding from the date of his dismissal from service till the date the fresh order is passed by the disciplinary authority. It is further provided that the petitioner shall not be entitled to back wages, but he shall be entitled to



notional benefits for pension and other retirement benefits.”

6. On such remand, the Disciplinary Authority, namely the Commissioner and Secretary, Govt. of Assam, Pension and Public Grievances Department had passed an order dated 30.08.2019 by imposing a new penalty namely, stoppage of one increment with cumulative effect. Subsequently, vide order dated 06.12.2019, the petitioner was conveyed that he would not be entitled to any back wages.

7. The petitioner had thereafter filed Review Petition No. 01/2021. This Court however vide order dated 23.04.2021 dismissed the above review application however by giving liberty to the petitioner to challenge the fresh order of penalty.

8. I have heard Shri J. Payeng, learned counsel for the petitioner. I have also heard Shri C.S. Hazarika, learned State Counsel for the State respondents whereas Ms. P. Das, learned counsel is present for the Finance Department.

9. Shri Payeng, the learned counsel for the petitioner has fairly submitted that his scope of challenge is limited in view of the orders of this Court passed in WP(C)/327/2015 and the Review Petition No. 01/2021. However, by referring to the Assam Services (Discipline and Appeal) Rules 1964, he submits that the penalty imposed though stated to be under Rule 7 (iii), a reading of the said provision would not substantiate the contents of the penalty order as no such penalty is prescribed under Rule 7 (iii). Secondly, the learned counsel, by referring to the part of the impugned order dated 30.08.2019 whereby the period of his suspension from 15.05.2013 to 18.02.2015 has been regularized for all purposes has submitted that there cannot be two yardsticks while reinstating the petitioner wherein only notional benefits have been granted. The learned counsel further submits that in the disciplinary proceedings, none of the charges would be established against the

petitioner and therefore, even if the impugned penalty is not interfered with, denial of back wages till the period of this reinstatement would not be justified at all.

10. *Per contra*, Shri Hazarika, the learned State Counsel has submitted that the present challenge and relief prayed for would not even be maintainable in this writ petition as the issue was already determined by this Court in the earlier round of litigation namely WP(C)/3272/2015 which was disposed of vide order dated 15.05.2019. He submits that in the operative part of the judgment, there is a clear direction that while the matter was remanded only for the purpose of reconsideration of the aspect of penalty, the petitioner would not be entitled to any back wages. It is the contention of the learned State Counsel that since the aforesaid direction was not put to further challenge, it would not even lie on the part of the petitioner to raise the same issue before a Co-ordinate Bench in a subsequent writ petition. He also submits that rejection of the Review Petition No. 01/2021 vide order dated 23.04.2021 has made the case of the petitioner even worse whereby his prayer for review of that part of the judgment dated 15.05.2019 regarding back wages was rejected and the order passed in the review dated 23.04.2021 was also not put to further challenge in an appeal.

11. With regard to the contention raised that the impugned penalty does not tally with the provision quoted namely Rule 7 (iii), the learned State Counsel submits that wrong quoting of any provision of law would not be fatal and an examination of the relevant Rules would show that the penalty imposed is under Rule 7 (ii). It is also submitted that since the disciplinary proceeding as such was the subject matter of the earlier writ petition in which the interference was only on the aspect of penalty, the legality of the said disciplinary proceeding cannot be re-agitated in a new writ petition.

12. The rival submission advanced by the learned counsel for the parties have been



duly considered and the materials placed before this Court have been carefully examined.

13. Certain facts which are not in dispute are required to be noted before taking up the issue which has arisen for adjudication.

(I) The disciplinary proceeding initiated against the petitioner which had culminated in the order of dismissal from service dated 19.02.2015 was the subject matter of challenge in WP(C)/3272/2015.

(II) The said proceeding as such was not interfered with by this Court in the judgment dated 15.05.2019 and the interference was only on the issue of imposition of penalty whereby the matter was remanded for a reconsideration of the said aspect.

(III) In the aforesaid judgment dated 15.05.2019, there is a clear direction that the petitioner shall not be entitled to the back wages and this direction is not the subject matter of challenge in any further appeal.

(IV) The review application filed by the petitioner being Review Petition 01/2021 in respect of the aforesaid observation disentitling the petitioner from back wages was rejected vide order dated 23.04.2021 and the said order is also not the subject matter of any further challenge. The present order dated 30.08.2019 by which penalty has been imposed of stoppage of one increment with cumulative effect had clarified that while the suspension period from 15.05.2013 to 18.02.2015 was regularized for all purpose, the period from 19.02.2015 has been regularized only for the purpose of giving notional benefits by treating the same as relief without pay.



14. The aforesaid order dated 30.08.2019 is clarified vide a further communication dated 06.12.2019 in response to a letter by the petitioner that he was not entitled to any back wages as per the direction of this Court in the judgment dated 15.05.2019.

15. This Court is of the view that under the aforesaid undisputed facts, whether any relief can be granted in the present petition is itself doubtful. The legality/ validity of the disciplinary proceeding cannot be gone into by this Court as the same was the subject matter in the earlier writ petition which was dismissed vide order dated 15.05.2019 and the said order had attained finality as there was no challenge by preferring any appeal. Though in the order dated 23.04.2021, this Court has granted liberty to the petitioner in the Review Petition 01/2021 to challenge the present penalty order dated 30.08.2021, the grounds of challenge does not appear to have any substance. While wrong quoting of a provision of law cannot be fatal as in substance, such powers is prescribed under Rules 7 (ii) of the Rules, the argument whereby the action of the authorities in equating a period of suspension *vis-a-vis* the period after reinstatement cannot be accepted. The object of suspension is only to keep a delinquent away from the Office so as to ensure a fair enquiry and to avoid any scope of tampering with the witnesses. Further, in the instant case, there is an order of this Court dated 15.05.2019 that the petitioner would not be entitled to back wages on his reinstatement and until the said order is interfered with by a higher Court, the scope of granting any relief to the petitioner by this Court is minimal.

16. In view of the aforesaid facts and circumstances, this Court is of the opinion that there is no merit in this present writ petition and accordingly the same is dismissed.

JUDGE

Comparing Assistant