



GAHC010064382021

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

**Case No. : WP(C)/2400/2021**

JOYASHRI DEY  
W/O- AMLAN NAG, KABIURA, MEHERPUR, SILCHAR, CACHAR, DIST.-  
CACHAR, ASSAM, PIN- 788015.

VERSUS

THE UNION OF INDIA AND 6 ORS.  
REP. BY THE SECRETARY, MINISTRY OF HUMAN RESOURCE  
DEVELOPMENT, GOVT. OF INDIA, HAVING ITS OFFICE AT SHASTRI  
BHAWAN, NEW DELHI- 110001.

2:THE SECRETARY  
MINISTRY OF HUMAN RESOURCE DEVELOPMENT  
GOVT. OF INDIA  
HAVING ITS OFFICE AT SHASTRI BHAWAN  
NEW DELHI- 110001.

3:THE ASSAM UNIVERSITY  
THROUGH THE VICE CHANCELLOR  
ASSAM UNIVERSITY HAVING HIS OFFICE AT SILCHAR- 788011  
ASSAM.

4:THE VICE CHANCELLOR  
ASSAM UNIVERSITY  
HAVING HIS OFFICE AT SILCHAR- 788011  
ASSAM

5:THE CHAIRMAN  
EXECUTIVE COUNCIL  
ASSAM UNIVERSITY HAVING HIS OFFICE AT SILCHAR-788011  
ASSAM



6:THE REGISTRAR  
THE ASSAM UNIVERSITY HAVING HIS OFFICE AT SILCHAR- 788011  
ASSAM.

7:THE CHAIRMAN  
UNIVERSITY GRANTS COMMISSION HAVING HIS OFFICE AT BAHADUR  
SHAH ZAFAR MARG  
NEW DELHI- 110002

**Advocate for the Petitioner** : MR. K M MAHANTA

**Advocate for the Respondent** : ASSTT.S.G.I.

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**JUDGMENT & ORDER (ORAL)**

**Date : 05-04-2021**

Heard Mr. S. Chattarjee, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel for the respondents, Assam University and Mr. P. Sarmah, learned counsel for the respondents No.1 & 2 being the authorities under the Ministry of Education, Government of India.

2. The petitioner was engaged as an Assistant Professor in the Social Works Department in the respondent Assam University in its Silchar campus on a lien vacancy which had arisen against a lien being granted to another Assistant Professor, namely, Dr. Anupam Hazra. Upon the lien granted to Dr. Anupam Hazra coming to its end, the authorities have also terminated the engagement of the petitioner as per the order dated 24.12.2020. The said order of termination is assailed in this writ petition.

3. Mr. S. Chattarjee, learned counsel for the petitioner relies upon the provisions of Clause 28(3) of the Statutes of the Assam University and seeks to make out a case that she is entitled to continue for another period of three weeks in lieu of the notice mentioned in the Clause-28(3). Clause-28(3) of the Statutes of the Assam University is extracted as below:



*“ Clause-28(3)- Save as aforesaid, the Executive Council, or as the case may be, the appointing authority shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after three months notice or on payment of three months salary in lieu thereof.”*

4. It is stated that the petitioner had also offered her candidature in a regular recruitment process for the post of Assistant Professor in Social works in the Assam University, which had fallen vacant upon the lien granted to Dr. Anupam Hazra coming to an end.

5. We have taken note of Clause 28(3) of the Statutes of the Assam University which provides that the Executive Council or the Appointing Authority, as the case may be, shall not be entitled to remove any teacher, member of the academic staff or any other employee except on a good cause and after three months notice or on payment of three months salary in lieu of such notice. The requirement of payment of three months salary apparently is applicable in a case of a removal from service. In the instant case, although the order dated 24.12.2020 refers that the petitioner was terminated from service, but such termination is not a removal from service but a discontinuation from service after the lien vacancy came to an end. Once the lien vacancy came to an end there cannot be a situation entitling the petitioner to continue in her engagement in a lien vacancy. An employee can be removed from service only when otherwise, such employees would have continued in service had he not been removed. In the instant case, as the lien vacancy came to an end the petitioner could not have continued in service and therefore, such discontinuation of service cannot be termed as removal from service inasmuch as she could not have continued in service as the lien vacancy itself came to an end. In view of such conclusion arrived, the provisions of Clause-28(3) of the Statutes of the Assam University would not be applicable in the present case and therefore, the claim for three months salary in lieu of removal from service would be inapplicable.

6. As the petitioner had offered her candidature in the regular selection process, the respondent, Assam University may process her candidature as per law and bring the process to its logical end without, being influenced by the petitioner assailing the order of termination dated 24.12.2020 in this writ petition.



7. In view of the above, this writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**