



GAHC010176632015



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

**Case No. : WP(C)/3254/2015**

MD. SHAHJAHAN ALI  
S/O LT. SAMAN ALI MUNSHI R/O VILL and P.O. RAMPUR P.S. MUKALMUA,  
DIST. NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS  
TO BE REP. BY THE SECRETARY TO THE GOVT OF ASSAM, EDUCATION  
DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM  
KAHILIPARA  
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS

NALBARI DISTRICT CIRCLE  
NALBARI  
P.O. and DIST. NALBARI  
ASSAM

**Advocate for the Petitioner : MR.S R BARBHUIYA**

**Advocate for the Respondent :**



**WP(C)/5864/2015**

MD. SHAHJAHAN ALI  
S/O LT. SAMAN ALI MUNSHI  
R/O VILL. and P.O. RAMPUR  
P.S. MUKALMUA  
DIST- NALBARI  
ASSAM

**VERSUS**

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ASSAM

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Advocate for : MR.M HUSSAIN  
Advocate for : appearing for THE STATE OF ASSAM AND 2 ORS

**BEFORE**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

For the Petitioner : Shri HRA Choudhury, Sr. Advocate,  
Shri FU Barbhuiya, Advocate.

For the Respondents : Shri NJ Khataniar, SC, Education  
Department, Assam.

Dates of Hearing : 09.05.2024.

Date of Judgment : 09.05.2024.



**JUDGMENT & ORDER**

Both these writ petitions being connected and filed by the same petitioner, those were heard analogously and are disposed of by this common judgment and order.

**2.** The controversy raised in these matters is relating to the action of the respondents in completing a disciplinary proceeding culminating in an order dated 10.08.2015 of recovery from the pensionary benefits of the petitioner.

**3.** Bereft of the details, the facts projected are that the petitioner was the founder Headmaster of the Char Anchalik High School, Kalarchar (hereafter referred to as School) which was established on 01.03.1982. The said School was provincialised on 19.11.1991 and the petitioner continued as the Headmaster. The School was upgraded to a Higher Secondary School vide order dated 21.05.1993. Subsequently, vide an order dated 13.03.1996, the posts for the Higher Secondary School, including the post of Principal were allotted. Vide an order dated 25.03.1996, it was directed that the Headmaster of the High School will act as the In-charge Principal of the Higher Secondary School and the petitioner continued as Principal of the Higher Secondary School. The petitioner had submitted representation on 10.11.2011 with a request to give the status as a regular Principal and the aforesaid representation was forwarded by the Inspector of Schools, Nalbari vide communication dated 19.01.2012. However, instead of taking care of the situation, an order was passed on 16.09.2014 by which the petitioner was placed under suspension. The petitioner had accordingly preferred an appeal under Rule 14 of the Assam Services



(Discipline and Appeal) Rules, 1964 (hereinafter referred to as the Rules) against the aforesaid order of suspension. The authorities thereafter had issued a show cause notice on 20.10.2014 which the petitioner claims to have replied on 28.10.2014. However, another show cause notice dated 02.01.2015 was issued. It has been highlighted that the issuing date of the show cause notice was 07.02.2015 and it was served on the petitioner on 12.02.2015. In the meantime, on 31.01.2015, the petitioner had retired from service on attaining the age of superannuation. The petitioner thereafter had filed the first writ petition, being WP(C)/3254/2015. During the pendency of the same, the impugned order dated 10.08.2015 was passed which is the subject matter of challenge in the second writ petition.

**4.** I have heard Shri HRA Choudhury, learned Senior Counsel assisted by Shri FU Barbhuiya, learned counsel for the petitioner. The Education Department is represented by Shri NJ Khataniar, learned Standing Counsel.

**5.** Shri Choudhury, learned Senior Counsel for the petitioner has submitted that the allegations are without any basis as at no point of time, any misconduct of the petitioner can be pointed out. He submits that the High School was upgraded to a Higher Secondary School and the action of the petitioner to act as the Principal of the upgraded Higher Secondary School was within the knowledge of the authorities. It is submitted that the letter dated 19.01.2012 of the Inspector of Schools, Nalbari would bear the testimony to the effect that all actions taken by the petitioner were within the knowledge of the authorities and those were done in the greater interest of the institution.



**6.** Apart from lack of any basis for leveling charges, the learned Senior Counsel has submitted that there is gross violation of the procedures laid down in the Rules. By referring to Rule 9 of the said Rules, it is submitted that the charges are required to be proved on the basis of evidence. Though in a given case, the Disciplinary Authority may act as the Inquiry Authority, the procedure for establishing the charges cannot be dispensed with on the mere pretext that no defence statement was furnished by the delinquent employee. It is submitted that in any case, there was a clear denial of the charges by the petitioner in his reply dated 28.10.2014 and the said denial has been overlooked. The learned Senior Counsel submits that even assuming that there was no reply, the Disciplinary Authority cannot come to a conclusion of establishment of the guilt without holding an inquiry which would further require the said authority to forward the report of the findings in the inquiry so as to enable the delinquent to offer his views on such findings.

**7.** By drawing the attention of this Court to the impugned order dated 10.08.2015 passed by the Director, Secondary Education, learned Senior Counsel has been critical of the considerations and has submitted that the conclusion has been arrived on presumptions without following the prescription of the Rules. He submits that the order of penalty is unduly harsh as there was no misconduct as such on the part of the petitioner. The learned Senior Counsel has pointed out that in the second writ petition i.e. WP(C)/5864/2015, there is an interim order in operation whereby recovery of any amount from the petitioner has been stayed.

**8.** *Per contra*, Shri Khataniar, learned Standing Counsel, Education



Department has submitted that the requirement of inquiry would come only in case of denial of the charges. He submits that the petitioner never replied to the show cause notice dated 20.10.2014 and the reply dated 28.10.2014 which has been claimed to have been filed by the petitioner was never received. The learned Standing Counsel has drawn the attention of this Court to the appeal filed by the petitioner under Rule 14 of the Rules and has submitted that in the said appeal, the petitioner has accepted the charges and therefore, there may not be a further requirement of establishing the said charges in view of the admission.

**9.** The learned Standing Counsel, on the merits of the charge, has submitted that the petitioner could not have acted as the full time Principal of the upgraded Higher Secondary School in absence of a formal order by the competent authority and that itself is a misconduct. It is submitted that there is a difference in the post of the Headmaster of a High School and the Principal of a Higher Secondary School, both in terms of responsibility as well as the financial aspect and the action of the petitioner in assuming himself to be the Principal of the upgraded Higher Secondary School without any formal orders clearly appears to be an action not contemplated by law. Shri Khataniar has also tried to clarify that the forwarding letter of the Inspector of Schools, Nalbari dated 19.01.2012 would not vest any right to the petitioner to make the present claim.

**10.** Shri Choudhury, learned Senior Counsel for the petitioner in his rejoinder has submitted that there was never any admission by the petitioner to the allegations leveled. Apart from the communication said to be relied upon by the



Department by construing the same to be an admission, being an appeal under Rule 14 of the Rules pertaining to the aspect of suspension, there is no admission of any allegation as such and the petitioner had only explained the factual aspects. The learned Senior Counsel has placed reliance upon the following case laws towards his submissions that when the procedures prescribed in the Rules are violated, any order of penalty is not sustained in law:

**i) *Sujata Nath Vs. State of Assam & Ors.*, WP(C)/6905/2010, disposed of on 29.10.2019; and**

**ii) *Mohar Ch. Barman Vs. State of Assam & Ors.*, 2020 (2) GLT 537.**

**11.** The rival contentions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

**12.** The facts which are revealed from the pleadings and materials on record would show that the High School was established in 1982 and the petitioner was the founder Headmaster. The School was upgraded/provincialised in the year 1991 with the petitioner as the Headmaster and the same was upgraded to a Higher Secondary School. At that stage, the petitioner started to act as the Principal of the upgraded Higher Secondary School. Though such act, *per se* cannot be said to be strictly in accordance with law, for all practical purposes, the action taken by the petitioner may be out of necessity. What is also striking is that after such upgradation, there is communication dated 25.03.1996 whereby the Headmaster of the School was allowed to act as the In-charge



Principal which obviously mean that the petitioner would act as the In-charge Principal. Though there is a distinction between discharging duties as regular Principal and an In-charge Principal, there is another communication dated 19.01.2012 whereby the request of the petitioner to make him regular Principal was forwarded by the Inspector of Schools, Nalbari. Though the learned Standing Counsel would be correct in contending that such forwarding letter may not vest any right on the petitioner, what important is that the authorities were very much aware of the position existing in the School. Nonetheless, the petitioner was placed under suspension on 16.09.2014 in contemplation of a disciplinary proceeding. The petitioner had, indeed preferred an appeal under Rule 14 of the Rules which provides for filing such appeal against orders of suspension. Therefore, the said appeal cannot be construed for any purpose to be any reply to the allegations leveled. That apart, the contention made on behalf of the Department that there is an admission of guilt in the said appeal does not appear to be correct. This Court has closely perused the statements made in the appeal. A candid disclosure of facts cannot be construed to be an admission of guilt and in the said appeal, all the facts have been stated in details.

**13.** As regards the show cause notice dated 20.10.2014, the petitioner has brought on record a reply filed by him on 28.10.2014. Though the Department has denied receipt of any such reply, the petitioner was served with another show cause notice on 02.01.2015 wherein the allegation is substantially similar to that of the first show cause notice dated 20.10.2014. Whether such a course of action is permissible without a proper explanation is itself a debatable issue, the impugned order dated 10.08.2015 would reveal that the Disciplinary





Authority by the said order had imposed a penalty upon the petitioner without even holding an inquiry or by following the other mandatory provisions required in a disciplinary proceeding. The Director, Secondary Education by the impugned order dated 10.08.2015 has come to a conclusion of establishment of the guilt on the basis of an assumption that there was no denial/reply to the charges made against the petitioner. Even if it is assumed that a delinquent has not filed its statement of defence that will not automatically mean that the allegations are admitted and the requirement of establishing of the same can be dispensed with. The requirement of law to grant adequate safeguard to a government employee is a mandatory requirement which would require the disciplinary authority to ensure that all reasonable safeguards are afforded to such a delinquent. Such reasonable safeguards would include, amongst others to have the materials against the delinquent proved in an inquiry by competent witnesses who would also be subjected to cross-examination by the delinquent, assistance by a defence representative, opportunity to inspect documents etc.

**14.** The requirement of furnishing a report of the Inquiry Officer to the delinquent to seek his views is also held to be a mandatory requirement even after 42<sup>nd</sup> amendment of the Constitution of India by the Hon'ble Supreme in the case of ***Union of India Vs. Mohd. Ramzan Khan***, reported in **1991 (1) SCC 588**. It has been explained that though by the aforesaid amendment, the requirement of informing the delinquent of the penalty sought to be imposed has been dispensed with, the requirement to have his views on the findings of the Inquiry Officer would still be there and in case such opportunity is not given, the proceeding would be vitiated.



**15.** In the instant case, the impugned order dated 10.08.2015 does not indicate that even a semblance of an inquiry was held whereby the charges against the petitioner were proved.

**16.** In view of the aforesaid observation wherein this Court has noticed gross violation of the procedure laid down in the Rules, the culmination of the proceedings in the form of the penalty of recovery of the entire amount drawn by the delinquent government servant as Principal is set aside.

**17.** Notwithstanding that the impugned order has been set aside, it appears from the materials on record that there was no formal order of posting of the petitioner as Principal of the upgraded Higher Secondary School. This Court has also been informed that the petitioner has retired on 31.01.2015 and almost a decade has passed. Therefore, to bring an end to the controversy finally and to shorten the aspect of any prospective litigation while the impugned order of penalty dated 10.08.2015 is set aside, it is directed that no further recovery be made from the petitioner and for the period when he had rendered his service as the Principal of the upgraded Higher Secondary School. However, his pension is to be calculated in the scale which he would have been drawn as the Headmaster of the High School at the time of his retirement. The pensionary benefits may accordingly be released to the petitioner expeditiously inasmuch as, as observed above, almost a decade has passed since his retirement. The subsistence allowance which is pending and the arrears of salaries till the period the petitioner served as Principal are also to be released to him.



**18.** The writ petition accordingly stands allowed in the manner indicated above.

**JUDGE**

**Comparing Assistant**