

GAHC010020342024



2026:GAU-AS:296

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

Case No. : WP(C)/727/2024

NATHU RAM BARAI
S/O- MATI RAM BARAI, R/O- VILL- FULKUMARI, P.S. PANBARI, P.O.
SILIKHAGURI, DIST- CHIRANG, BTAD, ASSAM, PIN- 783390

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT. DISPUR
GUWAHATI-6

3:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-36

4:THE JOINT DIRECTOR OF HEALTH SERVICE
GOALPARA
DIST.- GOALPARA (ASSAM PIN- 783101)

5:THE SUB-DIVISIONAL MEDICAL AND HEALTH OFFICER
MATIA BLOCK PHC
MATIA P.O. MATIA

DIST.- GOALPARA
ASSAM
PIN- 783125

6:THE MEDICAL OFFICER
LAKHIPUR BLOCK PHC
LAKHIPUR
P.O.- LAKHIPUR
DIST.- GOALPARA
ASSAM
PIN- 78312

Advocate for the Petitioner : MR. K R PATGIRI, MS. D. DEVI,MS CHITRALEKHA DAS

Advocate for the Respondent : SC, HEALTH, SC, FINANCE DEPTT.

BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

08/01/2026

Heard Mr. K R Patgiri, learned counsel for the petitioner and Mr. D P Borah, learned Standing counsel, Health & Family Welfare Department appearing for the respondent.

2. The petitioner in the present proceedings has presented a challenge to an order dated 28.09.2023 by which the departmental proceedings instituted against him was closed by taking a lenient view in the matter and not imposing any penalty upon him. However, the Director of Health Services, Assam had held that the petitioner would not be entitled to any remuneration for the period of his unauthorized absence by applying the principle of "No Work No Pay". The Director of Health Services, Assam had also held that the period of unauthorized absence w.e.f. February, 2018 till 28.09.2023 shall not be treated as qualifying service.

3. Mr. K R Patgiri, learned counsel for the petitioner, on instructions, has submitted that

the petitioner would not press the challenge to the order dated 28.09.2023 and only prays that the period of his unauthorized absence be regularized by grant of extra ordinary leave and/or any other permissible leave in his leave account. He submits that the salary of the petitioner for the said period be notionally fixed and his salary on resumption by him of his service be so fixed by taking into account the annual increments due to him. He further submits that the period of his unauthorized absence be also treated as qualifying service for the purpose of determination of his pension and pensionary benefits.

4. The said prayer made by Mr. K R Patgiri, learned counsel for the petitioner has fairly not been objected to by Mr. D P Borah, learned Standing counsel, Health & Family Welfare Department appearing for the respondents.

5. In view of the said consensus arrived at in the matter by and between the parties to the proceedings, this Court is of the considered view that while the order dated 28.09.2023 is not interfered with, the directions as contained therein that the petitioner would not be entitled to treat the said period of unauthorized absence even for the purpose of computing his pension and pensionary benefits stand interfered with. The period of unauthorized absence of the petitioner as involved in the order dated 28.09.2023 shall now be regularized by the respondents by reckoning the available leave in the leave account of the petitioner and/or by grant of extra ordinary leave. The petitioner's salary for the period of his such unauthorized absence would be fixed notionally and also by grant of required annual increments due during the said period. The pay of the petitioner be fixed on the date he had resumed his services after issuance of the order dated 28.09.2023 by reckoning the increments that he would now be entitled to draw.

6. The arrears of pay working out in this connection be computed and released to the petitioner only with effect from the date of filing of the present writ petition, i.e., w.e.f. 01.02.2024 and not before.

7. The period of unauthorized absence now having been regularized by grant of notional pay to the petitioner, the said period would now be reckonable for determining the seniority, pension and pensionary benefits of the petitioner.

8. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant