

GAHC010096232025



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

Case No. : I.A.(Civil)/1462/2025

DR LOHIT KUMAR KALITA
S/O- LATE CHANDRA KANTA KALITA, RESIDENT OF HOUSE NO. 04, B AND
B COURT, SUNDARPUR, BYE LANE NO. 2, P.O. JAPORIGOG, DISPUR,
GUWAHATI, DIST KAMRUP (M), ASSAM, PIN - 781005.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. K N CHOUDHURY, N GAUTAM,MR. J PATOWARY

Advocate for the Respondent : GA, ASSAM, SC, HEALTH

Linked Case : WP(C)/1084/2025

LOHIT KUMAR KALITA
S/O- LATE CHANDRA KANTA KALITA
RESIDENT OF HOUSE NO. 04
B AND B COURT
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Advocate for : MR. K N CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

29.07.2025

Heard Mr. J. Patowary, learned counsel for the applicant/writ petitioner.
Also heard Mr. B. Gogoi, learned Additional Advocate General for the Health
Department.

2. This I.A. has been filed with the following prayers:

(i) stay the operation of the impugned Charge-sheet No. MER.14092/1163 dated
24.04.2025 (Annexure – F herein), and

(ii) direct the opposite parties to release the arrear salary of the applicant/ writ petitioner from the month of February, 2025 to April, 2025 forthwith with interest @ 12% p.a. and,

(iii) direct the opposite parties to regularly pay the salary of the applicant from the month of May, 2025 onwards, and

(iv) take appropriate action against the opposite parties for their act of willful and deliberate violation of the interim order dated 27.02.2025 passed by this Hon'ble Court in W.P.(C) No. 1084/2025.

3. Shorn of unnecessary details the basic facts relevant for the disposal of the I.A. is that the applicant/writ petitioner is employed as a medical professional under the State Cancer Institute as a Assistant Professor, Oncology. The petitioner was appointed on 17.07.2009 by process of selection and appointed as Registrar, Oncology and posted at State Cancer Institute under the Gauhati Medical College & Hospital, Guwahati. The petitioner claims to have rendered his services to the satisfaction of all concerned and, by dint of his service, he attained significant exposure, qualifications, and specialization in the field of Oncology. It is the contention on behalf of the petitioner that subsequently he was promoted to the post of Assistant Professor. While serving as Assistant Professor, a selection process was underway for the promotion of eligible candidates to the next higher post of Associate Professor in various departments, including Oncology. The petitioner was not recommended for the promotion by the departmental promotion committee and being aggrieved he approached this Court by filing WP(C)/2858/2018 challenging his non consideration for promotion. This matter came to be disposed of by Judgment dated 16.05.2024 whereby this Court set aside the Review Selection held on 02.04.2018 and the consequential order passed by the said Selection

Committee. The respondent authorities were directed to immediately hold another Review DPC to consider and promote to the petitioner in the rank of Associate Professor. The Co-ordinate Bench directed that such promotion is to be given effect from 09.09.2014, as per the earlier Judgment and Order dated 19.08.2016 passed in WP(C) No. 1395/2015. All notional benefits including seniority and proper fitment were directed to be given to the petitioner in the rank of Associate Professor with effect from 09.09.2014. Since this order was not complied with the petitioner filed the Contempt Case (C) No.170/2025.

4. It is the contention of the learned counsel for the petitioner that the department besides not complying with the directions contains in the Judgment and Order dated 16.05.2024 passed in WP(C)/2858/2018 had issued the transfer order dated 07.02.2025 whereby the petitioner who was shown to be an Associate Professor Department of Oncology, Gauhati Medical College attached to the State Cancer Institute, Gauhati Medical College was transferred and posted as Assistant Professor, Department of Orthopedics, Jorhat Medical College & Hospital, Jorhat. This Order is assailed by filing WP(C)1084/2025 in which the present I.A. has been preferred.

5. The applicant/writ petitioner's projected the case before the Writ Court is that this impugned transfer order could not have been issued firstly on the ground that the earlier specific directions issued by the Co-ordinate Bench by Judgment and Order dated 27.02.2025 passed in WP(C)/1084/2025 was not implemented and no Review DPC was held promoting the petitioner to the post of Associate Professor as directed and now the petitioner is further sought to be transferred out of his cadre and is posted in a different cadre in Jorhat Medical College & Hospital. It is the case projected by the petitioner that he was appointed as Registrar Oncology in the Gauhati Medical College & Hospital and

directions of the respondent was to pass orders for promotion of the writ petitioner to the post of Associate Professor considering his services rendered in the department of Oncology. However, by the impugned transfer order the petitioner has been sought to be transferred out of the department of Oncology and posted in Department of Orthopedics that too in Jorhat Medical College & Hospital. Under such circumstances, this impugned transfer order came to be assailed.

6. It is the petitioner's claim that, besides failing to comply with the directions contained in the judgment dated 16.05.2024 passed in WP(C) No. 2858/2018, the department issued a transfer order dated 07.02.2025. According to this order, the petitioner—now recognized as Associate Professor in the Department of Oncology at Gauhati Medical College attached to the State Cancer Institute—was transferred and posted as Assistant Professor in the Department of Orthopedics at Jorhat Medical College & Hospital, Jorhat. This transfer order is challenged by filing WP(C) No. 1084/2025. Before the Writ Court, the petitioner contended that the impugned transfer order could not have been issued because the earlier directions issued by the Co-ordinate Bench in the judgment dated 27.02.2025 in WP(C) No. 1084/2025 were not implemented. No Review DPC was held to promote the petitioner to the post of Associate Professor as directed. Further, the petitioner is now being transferred out of his cadre and posted in a different cadre at Jorhat Medical College & Hospital.

7. The petitioner asserts that he was appointed as Registrar, Oncology, at Gauhati Medical College & Hospital, and the respondent was directed to promote him to the post of Associate Professor considering his services rendered in the Oncology department. However, the impugned transfer order seeks to transfer him out of the Department of Oncology and post him in the

Department of Orthopedics, at a different institution.

8. Under such circumstances, the petitioner assails the impugned transfer order. This Court, by order dated 27.02.2025 passed by the Co-ordinate Bench, stayed the impugned transfer order while issuing notice, and the said writ petition being WP(C)/1084/2025 is still pending and the interim order is still subsisting.

9. The present Interlocutory Application (I.A.) has been filed on the ground that despite the stay of the transfer order, the writ petitioner has not been permitted to work at his current place of posting, and no duty has been allotted to him. Furthermore, his salary has not been released since the date of transfer, i.e., 07.02.2025. Under such circumstances, the present I.A. has been filed seeking appropriate relief. It is prayed that the I.A. be allowed and directions be issued for the immediate release of the petitioner's salary.

10. Mr. B. Gogoi, learned Additional Advocate General appearing for the State, strongly disputes the contentions raised by the writ petitioner. He submits that there were certain instances of misconduct on the part of the petitioner, which led to his transfer. The submission of the learned counsel for the petitioner that the petitioner was transferred out of his cadre is factually incorrect. It is submitted that the petitioner is qualified in Orthopedics and was initially recruited as a Registrar. By the initial order of appointment, he was placed in the Department of Oncology, where he has been rendering his services under Gauhati Medical College & Hospital. Therefore, in accordance with the requirements of public service and the decision of the competent authority, the petitioner was transferred and posted to the Department of Orthopedics, a department in which he possesses the requisite qualifications to serve. Accordingly, it is not the case that the petitioner has been transferred to a lower

grade, a lower post, or a post for which he is not qualified. Regarding the non-release of salary, it is submitted that the petitioner himself has not reported for duty at the new place of posting. Consequently, the authorities at the State Cancer Institute had no option but to withhold allotment of duty to the petitioner, and hence, his salary has not been released.

11. The learned counsel for the parties have been heard. The pleadings available on record in the Interlocutory Application have been perused. It is not in dispute that the impugned transfer order dated 07.02.2025, which is assailed in WP(C) No. 1084/2025, has been stayed.

12. Notice has been issued in the writ petition, and this Court has passed an interim order staying the transfer order. No further appeal has been filed by the respondents against the said interim order. As on date, the interim order dated 27.02.2025, staying the transfer order dated 07.02.2025, still subsists. By virtue of the said interim order, the petitioner should continue to serve in his present place of posting prior to the transfer, namely the Department of Oncology attached to the State Cancer Institute under Gauhati Medical College & Hospital.

13. Under such circumstances, the respondents are duty bound to release the petitioner's salary, which is found to be payable, unless the same has been stopped by the respondents pursuant to any Departmental proceedings that was initiated under the provisions of law and as permitted by this Court.

14. The question whether the petitioner did not render his services despite the interim order cannot be decided at this stage, as there is no material on record in the pleadings to suggest that the petitioner did not report for duty or refused to perform any duty allotted to him. On the contrary, in the Interlocutory Application, reference is made to certain orders issued by the Superintendent of

the State Cancer Institute instructing that no duty be allotted to the petitioner. However, these orders were stated to have been subsequently withdrawn by passing appropriate orders. Considering that the petitioner continues to render his services at his place of posting as Associate Professor, Oncology, at the State Cancer Institute under Gauhati Medical College & Hospital, and in view of the fact that the interim order still subsists and the writ petition is presently pending disposal, this Court directs the respondents to release the salary payable to the writ petitioner from the date it was withheld, i.e., 07.02.2025.

15. On the other hand, the petitioner is also directed to report for duty before the State Cancer Institute and perform his duties as may be assigned to him. The authorities shall continue to release his salary during the subsistence of the interim order and/or any subsequent orders passed by this Court. Since no challenge has been made to the Disciplinary Proceedings initiated against the writ petitioner in WP(C) No. 1084/2025, the prayer made in the Interlocutory Application seeking stay of the operation of charge-sheet No. MER.14092/1163 dated 24.04.2025 is hereby rejected. It is open to the writ petitioner to approach this Court by filing appropriate proceedings, if so advised.

16. The I.A. accordingly stands allowed and disposed of in terms of the above.

17. Writ petition be listed for admission hearing on 14.08.2025.

JUDGE

Comparing Assistant