

GAHC010209162025



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

Case No. : WP(C)/5479/2025

JAGANNATH PATAR
S/O- LATE AMAL CHANDRA PATAR, R/O- HOUSE NO. 3 II/3F, NEELAM
APARTMENT, LACHIT LANE, LACHIT NAGAR, GUWAHATI, KAMRUP
METRO-781007.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HEALTH AND FAMILY WELFARE (B) DEPARTMENT, DISPUR,
GUWAHATI-781006.

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

3:THE SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPARTMENT
DISPUR
GUWAHATI-781006.

4:THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
GAUHATI MEDICAL COLLEGE AND HOSPITAL
GUWAHATI-781032

Advocate for the Petitioner : MR. A K BARUAH, MR. N MAHAJAN,MR. R A PRAMANIK,MR.
H NATH

Advocate for the Respondent : SC, HEALTH,

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

17.09.2025

Heard Mr. AK Baruah, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel, Health Department.

2] This writ petition has been filed by the petitioner aggrieved by the impugned order dated 02.09.2025 issued by the Appellate Authority, whereby the punishment earlier imposed by the Disciplinary Authority stood enhanced. The petitioner was proceeded with departmentally pursuant to the issuance of show-cause notice and after completion of the proceedings the Disciplinary Authority imposed withholding of 3 (three) increments with cumulative effect under Rule 7 (ii) of the Assam Services (Discipline and Appeal) Rules, 1964. The petitioner preferred an appeal on 01.08.2023, which, however, came to be rejected by the impugned order dated 02.09.2025 and besides the appeal being rejected, the Appellate Authority enhanced the punishment "*reduction to the next lower post*" as per Rule 7 (iv) of the Assam Services (Discipline and Appeal) Rules, 1964.

3] Pursuant to the order dated 02.09.2025 issued by the respondent no.2, the delinquent employee, namely, the writ petitioner was released from the post of Professor, Department of Obstetrics & Gynecology, Dhubri Medical College & Hospital, Dhubri and was posted as Associate Professor, Department of Obstetrics & Gynecology, Dhubri Medical College & Hospital, Dhubri.

4] Learned counsel for the petitioner, referring to the Assam Services (Discipline and Appeal) Rules, 1964, submits that under Rule 23(2)(iv), where

the Appellate Authority proposes to enhance the punishment, the Rule mandates that a reasonable opportunity must be granted to the delinquent employee before such enhancement. He submits that no such opportunity was provided in the present case, and the punishment was unilaterally enhanced. Hence, the petitioner has approached this Court seeking appropriate orders. Learned counsel for the petitioner submits that both the Appointing Authority and the Appellate Authority are one and the same person and the petitioner had earlier approached this Court by filing WP(C) No.4330/2025 assailing the imposition of punishment by the Disciplinary Authority while also preferring an appeal before the Appellate Authority. During the pendency of the writ petition, the Appellate Authority came to issue the impugned order dated 02.09.2025 and it appears that the Disciplinary Authority and the Appellate Authority are one and the same person. Therefore, the Disciplinary Authority acting as the Appellate Authority ought not to have issued the impugned order dated 02.09.2025 during the pendency of the earlier writ petition being WP(C) No.4330/2025 by which the Appellate Authority has enhanced the penalty imposed upon the petitioner.

5] Mr. B Gogoi, learned Additional Advocate General representing the State disputes the contentions of the petitioner. He submits that Rule 23 of the Assam Services (Discipline and Appeal) Rules, 1964 has to be read together and if the entire provisions are read then Rule 23(2) (iv) is an exception to the Rule 23(2) (i), (ii) and (iii). He submits that where an enquiry under Rule 9 has already been conducted and the Disciplinary Authority has already imposed punishment, there is no need for issuance of prior notice by the Appellate Authority as sought to be contemplated by the learned counsel for the petitioner. Learned Additional Advocate General, Assam, further referring to the rules submits that

as per the schedule enclosed at serial number 23, in respect of all Gazetted Officers under the Health and Family Welfare Department, the Appointing Authority and the Appellate Authority are shown to be the Governor of the State. Under such circumstances, in the facts of the case, the punishment was imposed by the Disciplinary Authority, who was also the Appointing Authority, and the appeal which was preferred by the petitioner against the order of punishment imposed by the Disciplinary Authority was disposed of by the Appellate Authority by order dated 02.09.2025, who is also the Governor of Assam. Therefore, he submits that the rules are not put to challenge and therefore, in terms of the doctrine of necessity, as is prescribed under the Rules, there is no infirmity in the orders passed by the Appellate Authority.

6] Having heard counsel for the parties, it is seen that the schedule appended to the Rule prescribes the Appointing Authority and the Appellate Authority as the Governor of the State insofar as all Gazetted Officers under the Health and Family Welfare Department are concerned. Under such circumstances, prima facie, this Court is of the view that unless the provision is specifically put to challenge, the claim of the petitioner that the Appellate order impugned in the present writ petition could not have been passed by the same authority does not merit acceptance. In so far as the second submission is concerned, referring to Rule 23, it is seen that Rule 23 (2) (iv), it appears to be an exception to the provisions of Rule 23 (i)(ii) and (iii). However, upon a conjoint reading of Rule 7 with Rules 9A and 10 of the Assam Services (Discipline and Appeal) Rules, 1964, it is evident that at every stage of the disciplinary proceedings, the delinquent officer is required to be afforded an opportunity to make a representation prior to the imposition of any punishment. Even in case of the Disciplinary Authority disagreeing with the findings and

conclusions of the Enquiry Officer, a disagreement note is required to be issued under Rule 9A before the Disciplinary Authority can proceed to impose punishment contrary to the conclusions of the enquiry officer.

7] Considering all the submissions, this Court is of the view that the interpretation of Rule 23 (2) (iv) of the Assam Services (Discipline and Appeal) Rules, 1964 will be necessary to be undertaken by this Court. Therefore, at this stage this Court is inclined to issue notice.

8] Let notice be issued, returnable by 4 (four) weeks.

Since Mr. B. Gogoi, learned Additional Advocate General, Assam appears and accepts notice on behalf of all the respondents, Notices are waived. However, extra copies be furnished to him within a period of 2 (two) working days from today.

9] Also heard on the interim prayer.

10] This Court is of the view that natural justice is one of the core principles and an integral part of the Constitution of India and all laws and Rules and Statutes made by the State must be subservient to the basic principles enshrined in the Constitution of India. *Prima facie*, this Court is of the view that the principle of natural justice must be infused in all statutory rules framed by the State, even if it is not specifically expressed. This Court, therefore, *prima facie*, is of the view that prior to passing of the impugned order, notice ought to have been issued on the delinquent officer. Under such circumstances, this Court is of the view that till the next date fixed, *status quo* be maintained by the parties with to the impugned order dated 02.09.2025.

11] Although notice has been issued in this matter making it returnable after 4 (four) weeks, however, at the request of the learned Additional Advocate

General, Assam for the Health Department, the matter be listed again on 22.09.2025.

JUDGE

Comparing Assistant