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

Case No. : WP(C)/5963/2024

SWARNALI PATHAK
DAUGHTER OF LT. BIJAYA BORA PATHAK,
RESIDENT OF VILLAGE- HAIBORGAON,
LAWKHOWA ROAD,
P.O. HAIBORGAON,
DISTRICT- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
DEPARTMENT OF SCHOOL EDUCATION,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON
ASSAM
PIN- 782001.

4:CHANDAN BHATTACHARYA
TUTOR
DAKHAN JAR BAGAN LP SCHOOL

P.O. -BARPANI
P.S.- KACHUA

PIN- 782450

NAGAON
ASSAM

Advocate for the Petitioner : MR D MAHANTA, MR T GOGOI

Advocate for the Respondent : SC, ELEM. EDU,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 23.02.2026

Heard Mr. D Mahanta, learned counsel for the petitioner. Also heard Mr. B Talukdar, learned standing counsel, Department of Elementary Education, Assam, appearing for respondent no. 1, 2 & 3.

2. The petitioner, by way of instituting the present Writ Petition, has prayed for an interference with an order dated 05.06.2024, issued by the Director, Elementary Education, Assam by which the petitioner was imposed with a penalty of stoppage of 1 (One) increment without cumulative effect. Further, the petitioner who was acting as the In-charge Head Mistress of Dakhin Jarbagan L.P School, under BEEO, Kothiatoli, was divested of the said charge and the private respondent no. 4 was allowed to act as the In-charge, Head Master of the School, in place of the petitioner.

3. As projected in the Writ Petition, the petitioner had joined Dakhin Jarbagan L.P School, under BEEO, Kothiatoli, on 01.11.2012 as an Assistant Teacher. Thereafter, the petitioner was serving as a Head Teacher of the said school and on 17.05.2023, an unfortunate incident occasioned, wherein, a large number of students of the school fell seriously sick after consuming meals under the Mid Day Meal Scheme, in the school.

The said incident having come to the notice of the District

Administration, the Deputy Commissioner, Nagaon, was pleased to direct for holding of an enquiry into the matter. Accordingly, an enquiry was held and the jurisdictional Circle Officer submitted his report, wherein, basing on the materials coming on record, the petitioner and the cook along with 2(two) helpers were held to be responsible for the incident that resulted in the students consuming meal on the fateful day in the school to fall sick. In the said report, it was also stipulated that there was large enrolment of students in the school and the Education Department was required to urgently construct more rooms for the school and engage 1(one) more teacher, keeping in view the high enrolment of students in the school.

Basing on the said report, the Addl. Deputy Commissioner (Edn) cum D.M.C (S.S.A) and A.D.N.O, (PM Poshan), Nagaon, proceeded to issue a show-cause to the petitioner requiring her to show cause as to why disciplinary action should not be so recommended against her, for her negligence of duty, basing on the incident that had occasioned in her school on 17.05.2023. In pursuance to the said show-cause notice issued to the petitioner, it is contended that the petitioner was placed under suspension vide issuance of order dated 31.05.2023.

It is in the above background that the Director, Elementary Education, Assam, had passed an order dated 05.06.2024, wherein, while revoking the petitioner's suspension and reinstating her in her services, a penalty of stoppage of 1(one) increment without cumulative effect came to be imposed upon the petitioner. Further, the petitioner was replaced by the respondent no. 4 as the In-charge, Head Master of the school.

Being aggrieved, the petitioner has instituted the present proceedings.

4. Mr. D Mahanta, learned counsel for the petitioner, by reiterating the facts noticed, hereinabove, has submitted that a perusal of the order dated 05.06.2024, would go to reveal that the petitioner was imposed a penalty under the provisions of Rule 7 of the Assam Services (Discipline and Appeal) Rules, 1964. However, he submits that a departmental proceeding,

as mandated to be so conducted before imposition of a penalty under Rule 7 of the said Rules of 1964, however, was not instituted against the petitioner. He submits that the show-cause dated 19.05.2023, was so issued by the Addl. Deputy Commissioner (Edn) cum D.M.C (S.S.A) and A.D.N.O, (PM Poshan), Nagaon, requiring the petitioner to explain as to why disciplinary action against her is to be not initiated. It is further submitted that the said show-cause notice dated 19.05.2023, cannot be construed to be one so issued under the provisions of Sub-Rule (2) of Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964, initiating a departmental proceedings against the petitioner. Accordingly, he submits that the petitioner could not have been imposed with a penalty under Rule 7 of the Rules of 1964 without first holding a proceeding in terms of Rule 9 of the Rules of 1964. In the above premises, Mr. D Mahanta, learned counsel for the petitioner submits that the order dated 05.06.2024 would mandate interference from this Court.

5. Mr. B Talukdar, learned standing counsel, Department of Elementary Education, Assam, appearing for respondent nos. 1, 2 & 3, on instructions, has submitted that the proceedings held in the matter against the petitioner was so held in pursuance to the show-cause notice dated 19.05.2023, issued by the Addl. Deputy Commissioner (Edn) cum D.M.C (S.S.A) and A.D.N.O, (PM Poshan), Nagaon, to the petitioner. He further submits that after the petitioner had submitted a reply, thereto, an Enquiry Committee was constituted on 18.01.2024 and the petitioner was directed to appear before the said committee. He also submits that the Enquiry Committee proceeded with the matter and the petitioner also participated in such enquiry. On conclusion of the enquiry, the said committee submitted its report and accordingly, the Director, Elementary Education, Assam, basing on the said report, proceeded to issue the order dated 05.06.2024, assailed in the present writ petition. Mr. B Talukdar, learned standing counsel, Department of Elementary Education, Assam submits

that given the nature of allegations leveled against the petitioner and it being revealed that it was on account of her negligence that many students of the school fell ill after consuming meals under the Mid Day Meal Scheme in the said school, the penalty imposed upon the petitioner being commensurate to the allegations leveled against her, the same would not mandate any interference. He further submits that the petitioner having been found to be not in a position to manage the affairs of the school, as its Head Teacher, the substitution of the petitioner by the next senior most teacher of this school, would also not call for any interference by this Court.

6. I have heard the learned counsel for the parties and have perused the materials available on record.

7. The allegations leveled against the petitioner is, admittedly, serious. It is during the time the petitioner was holding the Charge of the Post of Head Teacher of the school in question, that an unfortunate incident occasioned, wherein, students studying in the said school who had consumed meals under the Mid Day Meal Scheme, was found to be, thereafter, seriously ill. The said students had suffered from food poisoning and the reports of the samples of the food so tested had revealed that it was contaminated with detergents. The petitioner can be held to be negligent for the occasioning of the said incident in the school. Having noticed the said position, this Court finds that the Director, Elementary Education, Assam, vide order dated 05.06.2024, had imposed upon the petitioner, a penalty of stoppage of 1(one) increment without cumulative effect. The said penalty has been so imposed, in terms of the provisions of Rule 7 of the said Rules of 1964. A penalty under Rule 7 of the Rules of 1964 would be permissible to be so imposed only upon holding of a departmental proceeding in terms of Rule 9 of the said Rules of 1964. A departmental proceeding can be said to have been instituted against the delinquent under the provisions of the Rules of 1964 only when a show-

cause notice is issued to the delinquent, under the provisions of Rule 9 (2) of the Rules of 1964.

8. In the present case, no show-cause notice under the provisions of Rule 9(2) was issued to the petitioner, herein. The entire proceeding was initiated against the petitioner basing on the issuance of a show-cause notice dated 19.05.2023 issued by the Addl. Deputy Commissioner (Edn) cum D.M.C (S.S.A) and A.D.N.O, (PM Poshan), Nagaon. A perusal of the said notice dated 19.05.2023 would reveal that the same was nothing but an explanation call from the petitioner as to why, disciplinary action should not be recommended against her for the negligence by her, of her duties. The said show-cause notice cannot be held to have the effect of instituting a departmental proceeding against the petitioner.

9. This Court, having found that the procedure prescribed under Rule 9 of the Rules of 1964 to have not been followed in the matter, the order dated 05.06.2024 cannot be sustained and would be mandated to be interfered with by this Court.

10. Accordingly, in view of the above, the order dated 05.06.2024, to the extent it imposes a penalty of stoppage of 1(one) increment without cumulative effect, upon the petitioner, stands set-aside. However, the order of revocation of order of suspension of the petitioner as effected vide the said order dated 05.06.2024, is not interfered with. The disciplinary authorities are granted liberty to proceed against the petitioner, if so mandated, by instituting the regular departmental proceedings against her in compliance of the provisions of the Rules of 1964. Till the time such proceedings are initiated and concluded, the directions passed by the Director, Elementary Education, Assam, vide order dated 05.06.2024, to not allow the petitioner to hold the charge of the post of Head Master shall remain in currency. The said direction, however, will be subject to the outcome of the proceedings now directed to be instituted against the petitioner, in the matter. The Director, Elementary Education, Assam,

however, shall ensure that the post of Head Master of the School is held by a person competent to hold the post.

11. With the above observations and directions, the present Writ Petition is disposed of.

JUDGE

Comparing Assistant