

GAHC010145872024



2026:GAU-AS:8674

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

Case No. : WA/419/2024

DIBRUGARH UNIVERSITY AND ANR.
REP BY THE ITS VICE CHANCELLOR

2: THE REGISTRAR
DIBRUGARH UNIVERSITY
PO RAJABHETA
PS AND DIST DIBRUGARH ASSAM 78600

-VERSUS-

LACHIT BORTHAKUR
SON OF LATE KUMUD CH. BORTHAKUR,
RESIDENT OF KUMARANICHINGA,
P.O.- RAJABHETA, P.S.- DIBRUGARH,
DISTRICT- DIBRUGARH, ASSAM.

For the appellants : Mr. K. Gogoi, Advocate

For the respondent : Dr. R. Sarmah, Advocate

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

16-06-2026

(Ashutosh Kumar, C.J.)

We have heard Mr. K. Gogoi, learned Advocate for the appellants/Dibrugarh University & Another and Dr. R. Sarmah, learned Advocate for the sole respondent.

2. A peculiar situation has arisen in this appeal, whereby, because of delayed disposal of the litigation initiated by the respondent, now the employer is required to pay the subsistence allowance along with its revisions to the respondent for twelve long years.

The respondent herein, while serving as a Lower Division Assistant (LDA) in the Finance and Accounts Branch of Dibrugarh University, faced a departmental inquiry for misconduct. He was removed from service on 31.12.2004. After multiple rounds of litigation, the penalty was modified to compulsory retirement, which was also made effective from the same date, i.e. from 31.12.2004.

3. Being aggrieved by the said punishment, the respondent filed WP(C) No.2406/2005 challenging the punishment.

4. The learned Single Judge in that instance found that the disciplinary authority had taken a decision of punishing the respondent on the basis of the inquiry report, which decision had been taken prior to giving an opportunity to the respondent to represent against the inquiry findings.

The learned Single Judge also noticed that the respondent was given an opportunity to represent against the proposed punishment, which was held to be unnecessary in view of the 42nd Amendment to the Constitution of India. Because of the respondent not having been given the opportunity to show his cause with respect to the findings of the Inquiring Authority, the punishment was set aside and the matter was remanded to the Disciplinary Authority for taking a fresh decision on the matter after giving reasonable opportunity to the respondent to represent against the findings of the Enquiry Officer. Thereafter, the Disciplinary Authority vide order dated 02.11.2016 imposed the penalty of compulsory retirement on the respondent from the service of the Dibrugarh University w.e.f. 31.12.2004.

5. Aggrieved by the afore-noted decision of the Disciplinary Authority, the respondent preferred WP(C) No.1130/2017, which was disposed off on 28.07.2022, with the direction to the Dibrugarh University to pay all amounts due to the respondent within a specific period of time.

While passing the said order, the learned counsel for the respondent/University had submitted that the University be allowed to verify as to what amount is due to the respondent, whereafter such amount shall be paid to him.

6. When the back-wages were not being paid to the respondent, he preferred another writ petition vide WP(C) No.1018/2023 seeking back-wages from 01.01.2005 to 02.11.2016, i.e. for the intervening period when the impugned order of penalty dated 31.12.2004 was quashed by a Bench of this Court and the order dated 02.11.2016 was passed by the

Disciplinary Authority of the Dibrugarh University.

7. The learned Single Judge, in this instance, found that the order passed by the Disciplinary Authority on 02.11.2016 would not have its effect retrospectively and that it was prospective in nature. It was thus held by the learned Single Judge that the penalty of compulsory retirement would be operative from 02.11.2016.

8. The respondent was given an opportunity under the orders of the Court to make a representation before the competent authority/Dibrugarh University for payment of back-wages and the competent authority in turn was directed to consider and dispose off such representation of the respondent in accordance with law within a specified time line.

9. Pursuant to the afore-noted directions passed by this Court in WP(C) No.1018/2023, referred to above, the Dibrugarh University considered the representation of the respondent and found that he had not rendered service in the University from 31.12.2004 as he was not on the rolls of the University. The judgment dated 09.02.2015 passed in WP(C) No.2406/2005, referred to above, never directed for any reinstatement of the respondent in service and that the matter had been remanded to the Disciplinary Authority for taking a fresh decision after receiving the reply of the respondent against the inquiry findings.

The University, therefore, was of the view that the relationship between the respondent and the University was terminated from 31.12.2004 and after the disposal of WP(C)No.2406/2005, the relationship existed only for the purposes of holding a fresh inquiry from the stage of

furnishing the report and for no other purposes. As such, the prayer for grant of back-wages for the intervening period was rejected vide order dated 02.05.2023.

10. The respondent challenged such a decision in WP(C) No.3344/2023 in which the impugned judgment dated 07.06.2024 was passed.

11. The learned Single Judge, on this occasion, concluded that the respondent would have to be considered to be under deemed suspension with effect from 31.12.2004 till 02.11.2006 and thus, he would be entitled to subsistence allowance with legally permissible revisions in the said amount.

12. This decision was arrived at on the basis that the order of punishment dated 31.12.2004 was set aside in the year 2015, which would have amounted to reinstatement of the service of the respondent for the purposes of eliciting his response to the inquiry report which opportunity hitherto had not been made available to him and which was the sole ground for setting aside the order of punishment. This could have been done only if the respondent was deemed to be under the rolls of the University.

13. True it is that back-wage is not automatic on reinstatement, especially in the present case, where the reinstatement was because of the setting aside of the order of removal from service on a technical ground with a direction to the University/employer to take a fresh decision on the representation of the respondent.

14. This were possible only if the respondent was in the service of the University.

15. In WP(C) No.1018/2023, the counsel for the University had agreed to verify the amount due to the respondent during the interregnum period when his services were finally terminated by imposing the punishment of compulsory retirement on him. It was only thereafter that a decision was taken by the University not to pay any subsistence allowance also to the respondent, which was not found to be justified by the impugned judgment passed by the learned Single Judge.

16. For the sake of completeness, we are extracting 4 paragraphs from the impugned judgment which contain the reasons for treating the respondent in the service of the University in the interregnum for him to be entitled to subsistence allowance during the period of deemed suspension along with its revision.

“18. The petitioner having been dismissed from his service vide order, dated 31.12.2004, and the said order having been set-aside by this Court but the petitioner not having been exonerated from the allegations levelled against him and for the purpose of a fresh decision that was required to be arrived at not being with regard to the quantum of the penalty imposed upon the petitioner but being so required from the stage of furnishing to the petitioner a copy of the inquiry report; it is to be noted that the petitioner must necessarily be deemed to be in his service w.e.f. 31.12.2004 on setting aside of the said order of penalty as imposed upon the petitioner.

19. The penalty of dismissal of the petitioner from service having been set aside by this Court and the petitioner not having been exonerated from the allegations levelled against him, it has to be held that the petitioner w.e.f. 31.12.2004, is under deemed suspension.

20. Having concluded that the petitioner w.e.f. 31.12.2004, would be under deemed suspension; the petitioner now would be entitled to the subsistence allowance for the period w.e.f. 31.12.2004 to 02.11.2016 and the same would also mean that the petitioner would be entitled to revision of subsistence allowance as mandated by law.

21. Accordingly, in view of the conclusions reached hereinabove; the

University authorities having imposed upon the petitioner the penalty of compulsory retirement from his service, on a re-examination of the matter in the light of the discussions as contained in the order, dated 09.02.2015, passed by this Court in WP(c)4206/2005; the period of suspension would be deemed to be maintained as such and the petitioner would now be entitled only to receive the subsistence allowance which would be computed by the University authorities by also accounting for the revisions that would be so applicable and the arrears, as working-out, would now be released to the petitioner, herein.”

17. The reasons assigned in the impugned judgment are self-explanatory. Twelve years delay in finally concluding the matter has caused heavy drain on the purse of the University which cannot be undone at this stage.

18. We also need to state here that we do not find the impugned judgment to be perverse or bad in law.

19. For the afore-noted reasons, we refrain ourselves from interfering with the impugned judgment.

Resultantly, this appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant