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

**Case No. : WP(C)/5771/2021**

HUSSAIN AHMED MAZUMDER  
S/O- LT. MAJROOF ALI MAZUMDER, VILL- NITYANANDPUR PART-I, P.S.  
LALA, DIST.- HAILAKANDI, (ASSAM)

VERSUS

THE STATE OF ASSAM AND 5 ORS  
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, ELEMENTARY  
EDUCATION DEPTT., DISPUR, GHY-6

2:THE COMM. AND SECY.  
GOVT. OF ASSAM  
FINANCE DEPTT.  
DISPUR  
GHY-6

3:THE DIRECTOR  
ELEMENTARY EDUCATION  
ASSAM  
KAHILIPARA  
GHY-19

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER  
HAILAKANDI  
PIN- 788151

5:THE DY. INSPECTOR OF SCHOOLS  
HAILAKANDI  
PIN- 788151

6:THE BLOCK ELEMENTARY EDUCATION OFFICER  
LALA EDUCATION BLOCK

LALA  
DIST.- HAILAKANDI  
PIN- 78816

For the Petitioner : Mr. A.H.M.R. Choudhury. ....Advocate.

For the Respondents : Mr. N.J. Khataniar, SC, Elementary  
Education .....Advocate.

**Before**

**Hon'ble Mr. Justice ROBIN PHUKAN**

Date of Hearing : 02.04.2025 & 23.04.2025

Date of Judgment : **14.05.2025**

**JUDGMENT AND ORDER**

Heard Mr. A.H.M.R. Choudhury, learned counsel for the petitioner and also heard Mr. N.J. Khataniar, learned standing counsel for the respondents in Elementary Education Department.

**2.** The grievance, being sought to be addressed in this petition, filed under Article 226 of the Constitution of India, by the petitioner, namely, Hussain Ahmed Mazumder, is that while he was serving as Assistant Teacher of 69 North Nityanandapur L.P. School in the district of Hailakandi, he along with some others were convicted in Session Case No.38/2005, by the learned Sessions Judge, Hailakandi, under Section 302 IPC, vide judgment and order dated

29.11.2007 and sentenced him to suffer rigorous imprisonment for life and also to pay a fine of Rs.2,000/- in default imprisonment for another period of 6 months. The petitioner, being aggrieved by the aforesaid judgment and order of conviction, had preferred an appeal before this Court, being Criminal Appeal No.10/2008 and vide judgment and order dated 03.04.2012, the petitioner was acquitted by this Court of the charge under Section 302 IPC. Accordingly, he was released from jail on 05.04.2012.

Then the petitioner had submitted one representation on 25.05.2012, with a prayer to allow him to resume his duties as Assistant Teacher at 69 No. North Nityananadapur L.P. School with all service benefits, including back wages before the respondent authorities. But, his representation failed to evoke any response from the respondent authorities. Being aggrieved, the petitioner had preferred one writ petition, being WP(C) No.6420/2012, before this Court, which was disposed of vide order dated 23.05.2014 with a direction to reinstate him and also to release his salaries. But, for non-compliance of the order dated 23.05.2014, the petitioner was compelled to file one contempt case, being Cont.Cas(C) No.230/2015, and during the pendency of the said contempt petition, the respondent No.3, by passing speaking order dated 23.11.2016, vide Annexure-3, held that the petitioner is not entitled to back wages during the period of his custody i.e. from 29.11.2007 to 05.04.2012 and thereafter, directed the District Elementary Education Officer (DEEO), Hailakandi, to pass a speaking order after completion of departmental proceeding. Thereafter, the DEEO vide order dated 07.03.2017, passed a speaking order allowing the petitioner to join his service, but it was held that the petitioner is not entitled to back wages for the period from 29.11.2007 to 05.04.2012. Thereafter, a proposal for payment of arrear salary from 06.04.2012 up to 29.02.2016 was

prepared by the authorities and forwarded the same to the respondent No.3 and during the progress of the aforementioned exercise, the petitioner filed another writ petition, being WP(C) No.5006/2018 and the same was disposed of vide order dated 21.01.2019 (Annexure-10), whereby the respondent No.3 was directed to pass necessary order for releasing his salary. But, the same was not complied with, for which the petitioner had preferred another contempt petition, being Cont.Cas(C) No.296/2019 and during pendency of the said proceeding, the respondent No.3 vide letter dated 04.01.2020 (Annexure-11) forwarded the proposal to the Govt. of Assam, Elementary Education Department, for according necessary sanction of an amount of Rs.12,02,666/-. But, in the meantime, the Government has declared lockdown on account of Covid-19 pandemic. And thereafter, the respondent No.3 vide order dated 30.07.2021 (Annexure-12) held that the petitioner is not entitled for arrear salary for the period w.e.f. 06.04.2012 till 29.02.2016 as he had not performed his duties during that period. Being aggrieved, the petitioner approached this Court challenging the correctness of the order dated 30.07.2021 and for directing the respondent authorities to release his arrear salary.

**3.** Mr. Choudhury, learned counsel for the petitioner submits that the respondent No.3 while passing the order dated 23.11.2016 (Annexure-3), has categorically held that the petitioner is not entitled to back wages from the date of his arrest till the date of his release from jail and on the basis of the aforementioned finding, proposal for payment of the arrear salary has been prepared for a sum of Rs.12,02,666/-. But, subsequently, the respondent No.3 vide impugned order dated 30.07.2021 (Annexure-12) has held that the petitioner is not entitled to back wages. Mr. Choudhury further submits that immediately after release from jail, after his acquittal in Criminal Appeal

No.10/2008, he had filed one representation on 25.05.2012, with a prayer to allow him to join the duties. But, he was not allowed to join, which led him to filing of writ petition, being WP(C) No.6420/2012 and the same was disposed of vide order dated 23.05.2014, granting the relief and directing the Director, Elementary Education to consider the representation dated 25.05.2012 filed by the petitioner. But, due to non-consideration of the same by the Director, Elementary Education, the petitioner had instituted Cont.Cas(C) No.230/2015 and during pendency of the aforesaid contempt case, the Director of Elementary Education vide speaking order dated 23.11.2016 allowed the petitioner to join his service, but his arrear salary was not paid, for which the petitioner again approached this Court by filing another writ petition, being WP(C) No.5006/2018 and the same was also disposed of by directing the respondent authorities to release the arrear salary of the petitioner vide order dated 21.01.2019, but due to non-compliance of the same, Cont.Cas(C) No.296/2019 was filed and during pendency of the said petition, the letter dated 04.01.2020 (Annexure-11) was passed and proposal for payment of his back wages was prepared for a sum of Rs.12,02,666/-. But, due to declaration of nationwide lockdown on account of Covid-19 pandemic, the payment could not be made and subsequently, the Director of Elementary Education has passed the impugned order dated 30.07.2021, pursuant to order of this Court dated 21.01.2019, wherein it has been held that the petitioner is not entitled for arrear salary for the period from 06.04.2012 till 29.02.2016 as he had not performed his duties during the said period. However, the period of his suspension was counted as period in service without break and the same will be considered for pensionary benefit only.

**4.** Mr. Choudhury, further submits that the impugned order dated 30.07.2021, is illegal and arbitrary inasmuch as, the earlier Director had passed

an order dated 23.11.2016, while allowing him to join in service and categorically held the petitioner is not entitled to back wages from the date of his first arrest up to the date of his release from jail on acquittal by this Court and that immediately after released from the jail, the petitioner has filed one application for allowing him to resume his duties on 25.05.2012, but the same failed to evoke any response and as such, the principle of no work no pay, as appears to be adopted in the impugned order dated 30.07.2021, is not at all applicable and the said order is illegal and arbitrary and therefore, it is contended to set it aside. Mr. Choudhury, learned counsel for the petitioner, has referred to a decision of Hon'ble Supreme Court in the case of **Baldev Singh v. Union of India & Ors.**, reported in **(2005) 8 SCC 747**, in support of his submission.

**5.** On the other hand, Mr. Khataniar, learned standing counsel for the Elementary Education Department, has supported the order dated 30.07.2021, and submits that the petitioner was not on duty for the period from 06.04.2012 till 29.02.2016 and as he had not performed any duty, he is not entitled to pay and as such, Mr. Khataniar submits that there is no merit in this petition and therefore, it is contended to dismiss the same.

**6.** It is to be noted here that the respondent No.3 has filed one affidavit-in-opposition, wherein a stand has been taken that the petitioner joined his duties after acquittal by the High Court only on 08.03.2017 and that the earlier proposal for arrear salary was submitted without proper verification and as per Rule, he is not entitled to any benefit for the aforementioned period.

**7.** In the affidavit-in-reply, the petitioner had stated that he had relinquished his claim for arrear salary for the period of his custody i.e. from 29.11.2007 to 05.04.2012 and accordingly, this Court, vide order dated 21.01.2019 has

directed the respondent No.3 to look into the proposal of arrear salary and release the same within a period of 3 months and that in view of the order dated 21.01.2019, passed in WP(C) No.5006/2018, the respondents have no other option but to release the salary of the petitioner. But, the respondent authorities deliberately misinterpreted the order dated 21.01.2019 and passed the order dated 30.07.2021, holding that the petitioner is not entitled to arrear salary for the period from 06.04.2012 till February, 2016, as he was not performing the duty. And though the respondent authorities had declined to pay the arrear salary for the period from 06.04.2012 to February, 2016, on the ground of not performing his duties during that period, as he was not allowed to assume his duties. He was allowed to join only on 08.03.2017. And as such, the stand taken by the respondent authorities is unsustainable.

**8.** Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the order, dated 23.11.2016, wherein the respondent No.3 had held that the petitioner is not entitled to back wages from the date of his arrest up to the date of his acquittal by the High Court. Further, in the order dated 30.07.2021, the respondent No.3 had taken a different stand and held that the petitioner remained absent from 06.04.2012 up to 29.02.2016 and as he is not performing his duties, he is not entitled to salary for the aforementioned period.

**9.** Thus, it appears that the respondent authorities have applied the principle of 'no work no pay' for the said period. The principle of 'no work no pay' is found in proviso to FR-17(1), which read as under:-

"F.R. 17. (1) Subject to any exceptions specifically made in these rules an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that

post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty unauthorisedly shall not be entitled to any pay and allowances during the period of such absence."

But, when the principle of 'no work no pay' can be applied, is well settled by Hon'ble Supreme Court in catena of decisions.

**10.** In the case of **Commr., Karnataka Housing Board v. C. Muddaiah**, reported in **(2007) 7 SCC 689**, Hon'ble Supreme Court has held as under:-

"34. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a court of law may, *may* must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an *absolute* proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority cannot ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected."

**11.** In the case of **J. N. Srivastava v. Union of India &Anr.**, reported in **(1998) 9 SCC 559**, Hon'ble Supreme Court has held as under:-

"3. The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3-10-1989 which was to come into effect from 31-1-1990. It is true that this proposal was accepted by the authorities on 2-11-1989. But, thereafter before 31-1-1990 was reached, the appellant wrote a letter to withdraw

his voluntary retirement proposal. This letter is dated 11-12-1989. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26-12-1989. The appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31-1-1990, and the appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of *Balram Gupta v. Union of India* [1987 Supp SCC 228]. In view of the aforesaid decision of this Court, it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court, ought to have granted him the relief. We accordingly, allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26-12-1989 and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31-1-1990. The net result of this order is that the appellant will have to be treated to be in service till the date of his superannuation which is said to be somewhere in 1994, when he completed 58 years of age. The respondent-authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994.

This entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amount and other retirement benefits already paid to the appellant in the meantime up to the date of his actual superannuation. It was submitted by learned Senior Counsel for the respondent-authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay", this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work, but the respondents did not allow him to work after 31-1-1990. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the earliest.

**12.** In case of **Union of India vs. K.V. Jankiraman**, reported in (1991) **AIR (SCW) 2276**, Hon'ble Supreme Court has held as under:-

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

**13.** The legal proposition, that can be crystallized from the aforesaid decision is that the principle '**No work, no pay**' is applicable only when an employee is absent due to his own act or omission/fault. But, when the employee is kept away from the work by an act or omission on the part of the employer, the employee cannot be denied salary on the principle of '**No Work No Pay**'. Same principle is reiterated in the case of **Baldev Singh (supra)** also, so referred by

Mr. Choudhury, learned counsel for the petitioner.

**14.** Since in the case in hand, the petitioner immediately after released from the jail had filed one representation on 25.05.2012, but, the same failed to receive any favourable consideration from the respondent authorities and filing of this petition by the petitioner shows that he was willing to join his duties, but no effective order was passed by the respondent authorities, which led him to file one writ petition, being WP(C) No.6420/2012, which was disposed of vide order dated 23.05.2014. But, in spite of direction of this Court in the order dated 23.05.2014, the respondent authorities had not allowed the petitioner to join his duties, which led to filing a contempt petition, being Cont.Cas(C) No.230/2015 and only during pendency of the same, the respondent No.3 had passed the speaking order dated 23.11.2016 and thereafter, the petitioner joined his duties on 08.03.2017.

**15.** Thus, in the given facts and circumstances, this Court is of the considered opinion that the principle of 'no work no pay' as enunciated in FR-17(1), cannot be gainfully applied by the respondent authorities in case of the petitioner, in view of the proposition of law settled by Hon'ble Supreme Court in the decisions referred herein above.

**16.** Thus, examining the impugned order dated 30.07.2021, in the light of the principle discussed herein above, this Court is of the view that the same failed to withstand the legal scrutiny and on such count, the same is liable to be set aside and quashed.

**17.** In the result, this writ petition stands allowed. The respondent No.3 is directed to pay the arrear salary to the petitioner covering the period from 06.04.2012 till 29.02.2016 within a period of 3(three) months from the date of receipt of certified copy of this order.

**18.** Further, on consideration of the given facts and circumstances on the record and also drawing premises from a decision of Hon'ble Supreme Court in the case of **Union of India & Ors v. Dr. J.K Goel**, reported in **1995 SCC Supl. (3) 161**, this Court is inclined to grant interest upon the arrear salaries of the petitioner, with effect from the date of due i.e. 06.04.2012, till the date of payment of the same, @6% per annum, which is an equitable relief the petitioner is entitled to.

**19.** The petitioner shall obtain a certified copy of this order and place the same before the respondent authorities within a period of one week from today.

**20.** In terms of above, this writ petition stands disposed of. The parties have to bear their own costs.

**JUDGE**

**Comparing Assistant**