

GAHC010005962011



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

Case No. : WP(C)/2729/2011

WAHEDUR RAHMAN
S/O LT. JAMIRUDDIN AHMED, SANTIPUR HILLSIDE, GUWAHATI-9, DIST.
KAMRUP.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY ITS COMMISSIONER and SPECIAL SECY. TO THE GOVT. OF ASSAM,
PUBLIC WORKS ROADS DEPTT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER and SPECIAL SECRETARY TO THE GOVT. OF
ASSAM

PUBLIC WORKS ROADS DEPTT
DISPUR
GHY-6

3:THE EXECUTIVE ENGINEER

PUBLIC WORKS DEPTT
MANGALDOI STATE ROAD DIVISION
MANGALDOI

4:THE UNION OF INDIA

REP. BY ITS SECY. TO THE GOVT. OF INDIA
MINISTRY OF RAILWAYS RAIL BHAWAN
NEW DELHI

5:THE DY. CHIEF PERSONNEL OFFICER CON
NORTH EASTERN FRONTIER RAILWAY
MALIGAON

GUWAHAT

Advocate for the Petitioner : MS.M BARMAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

17.07.2023

The instant writ petition has been filed challenging the Office Order dated 30.03.2011 passed by the Executive Engineer, PWD, Mangaldai State Road Division whereby the petitioner herein was imposed penalties. The penalties so imposed were:-

- (i) The power to make recording in the Measurement Book was ceased for 5 years with immediate effect;
- (ii) For withholding of two increments with cumulative effect; and
- (iii) Recovery of Rs.7,05,982/- from the monthly salary of the petitioner @ Rs.6740/- per month till the entire amount of pecuniary loss is recovered. It was also mentioned that the recovery of amount will be made in 104 installment @ Rs.6740/- and the remaining Rs.5022/- will be made in one another installment.

2. The petitioner has assailed the said Office Order by filing the instant writ petition in the year 2011.

3. The learned counsel for the petitioner submits that in the meantime, the petitioner has already retired, and as such, the challenge to the penalties in respect to taking away the power to make recording in the Measurement Book and the withholding of two increments with cumulative effect have lost relevance. The learned counsel for the petitioner, however, submits that the recovery of the amount of Rs.7,05,982/- has been stayed by this Court vide the order dated 30.05.2011. The learned counsel for the petitioner has drawn the attention to the communications dated 14.02.2007 and 15.06.2007 whereby the amount which was wrongly disbursed on the basis of the wrong recording in the Measurement Book had already been recovered from the contractor in question, and as such, the question of further making a recovery from the petitioner does not arise.

4. Mr. B. Gogoi, the learned counsel appearing on behalf of the PWD submits that he has no objection to the same, if the Railways have no objection in respect to the penalty in so far as the making of recovery of Rs.7,05,982/- is quashed.

5. Mr. B. Sarma, the learned counsel appearing on behalf of the Railways further submits that the amount which was paid in excess to the contractor on account of wrong recording in the Measurement Book has already been recovered as would be apparent from Annexure-2 and Annexure-3 to the writ petition.

6. I have heard the learned counsels for the parties and also perused the materials on record. It appears from the record, more particularly, from Annexure-2 and Annexure-3 that the amount which was paid in excess to the contractor on account of wrong recording in the

Measurement Book had already been recovered from the contractor in question. Under such circumstances, the question of further recovering the said amount from the petitioner, in the opinion of this Court, would not be in the interest of justice and would result in unjust enrichment. Accordingly, this Court, therefore, interferes with the Office Order dated 30.03.2011 in so far as the penalty imposed as regards recovery of the amount of Rs.7,05,982/- from the petitioner. It is made clear that this Court has not interfered with the other penalties imposed vide Office Order dated 30.03.2011. This Court further is of the opinion that if any recovery has already been made prior to the order dated 30.05.2011 passed by this Court, the said amount is required to be refunded to the petitioner.

7. Accordingly, this Court, therefore, disposes of the instant writ petition by interfering the Office Order dated 30.03.2011 to the extent as indicated herein above and further directs the respondent authorities, more particularly the PWD to refund the amount, if any, so recovered from the petitioner in terms with Clause 3 of the Office Order dated 30.03.2011. The same shall be done within a period of 2 (two) months from the date a certified copy of the instant order is submitted before the respondent No.3.

JUDGE

Comparing Assistant