

GAHC010006472011



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

Case No. : WP(C)/3139/2011

PROF. DR. BHUPENDRA NATH ROYCHOUDHURY
PROFESSOR, DEPTT. OF HINDI, GAUHATI UNIVERSITY, R/O GAUHATI
UNIVERSITY CAMPUS, GHY-14

VERSUS

THE GAUHATI UNIVERSITY and ORS.
REP. BY THE REGISTRAR, GAUHATI UNIVERSITY, GHY-14

2:THE EXECUTIVE COUNCIL

REP.BY THE VICE CHANCELLOR
GAUHATI UNIVERSITY
GHY-14

3:THE REGISTRAR

GAUHATI UNIVERSITY
GHY-1

Advocate for the Petitioner : Mr. M. Sarma

Advocate for the Respondents : Mr. P.J. Phukan, SC, GU.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

Date : 18-07-2023

The present writ petition has been filed by the Petitioner challenging the order dated 09.04.2011/12.04.2011 whereby the Registrar, Gauhati University had imposed penalties upon the Petitioner as enumerated therein.

2. The facts of the instant case as would be apparent from a perusal of the pleadings before this Court are that on 21.08.2006, a chargesheet was issued against the Petitioner charging the Petitioner with gross misconduct and moral turpitude and being unworthy to remain as a teacher of the Gauhati University. The Petitioner was asked to submit a reply to the said chargesheet within 10(ten) days from the receipt of the chargesheet and the Petitioner was also granted an opportunity to inspect any document if he desired within 7(seven) days from the date of receipt of the letter with prior intimation to the Registrar, Gauhati University and it was also made clear that the Petitioner thereupon had to file his written reply within seven days from the date of inspection. To the said chargesheet, the statement of allegation was enclosed. The Petitioner submitted a detailed reply on 11.09.2006.

3. It further reveals from the record that on 31.3.2007, an advertisement was published in the english news daily "The Assam Tribune" whereby it was informed that an enquiry would be conducted in the Gauhati University Guest House at 11 AM, on 19th, 20th, 21st, 23rd and 24th of April'2007. This advertisement was issued by the Registrar, Gauhati University. Pursuant to the said advertisement, an enquiry proceeding was initiated and Dr. Y.K. Phukan

was the Enquiry Officer. It reveals from the records that initially the Petitioner did not participate in the said enquiry proceedings and it is the case of the Petitioner that he had no knowledge that the said advertisement was in respect to the disciplinary proceeding initiated against the Petitioner.

4. In the meantime, in absence of the Petitioner the Enquiry Proceeding proceeded. However, the learned Enquiry Officer, prior to closing the enquiry proceeding and submission of report thought it appropriate to issue a communication to the Petitioner for which on 2.5.2007 the learned Enquiry Officer had issued a communication to the Petitioner to appear before him on 5.5.2007 at the Gauhati University Guest House. The Petitioner upon receipt of the said communication appeared before the Enquiry Officer and submitted a petition on 5.5.2007 stating interalia that he was completely at dark as regards the initiation of the enquiry proceeding and he requested for various documents and also requested that he may be allowed the assistance of a Defence Assistant. The Enquiry Officer initially refused for which the Petitioner filed a writ petition before this Court which was registered and numbered as W.P.(C) No. 2224/2007.

5. This Court vide an order dated 16.05.2007 disposed of the said writ petition with the following directions which are reproduced herein under :-

“The petitioner shall participate in the enquiry proceeding and the Enquiry Officer as well as the Disciplinary Authority shall afford all reasonable opportunity of being heard by way of providing opportunity to engage defence counsel, furnishing required documents, if demanded by the petitioner and the right of cross examination of the witnesses. To be precise the concerned authority shall provide the petitioner with all reasonable opportunity to defend his case as per the procedure envisage under the relevant rules.”

6. Pursuant to the said order passed by this Court, the Petitioner was furnished the relevant documents and he was also provided the assistance of a Defence Assistant. All the witnesses except one Smti. Krishna Rani Hazarika was cross-examined by the Defence Assistant for the Petitioner. It is relevant herein to mention that Smti. Krishna Rani Hazarika did not say anything in her deposition against the Petitioner. Pursuant thereto, the Enquiry Report was submitted whereby it was held that Charge No. 3 was partly proved, charge Nos. 5, 6, 7, 8 and 9 were proved against the Petitioner.

7. It further appears from the records that the Petitioner was afforded an opportunity to submit a representation against the findings of the enquiry report dated 14.02.2008 and the Petitioner duly submitted the representation on 03.03.2010 in that regard. Pursuant thereto, on 12.03.2011 a decision was taken in the Executive Council vide Resolution No.R/EC-02/2011/26(J) whereby the following penalties were imposed upon the Petitioner under Section 10 of the Gauhati University Teachers Conduct Rules 1984. The said penalties are enumerated herein under :-

- 1) To withhold three increments, one on 01.07.2007, second on 01.07.2008 and third on 01.07.2009 with cumulative effect.*
- 2) To withhold his re-employment after superannuation at the age of 60 years.*
- 3) Not to give any administrative responsibility particularly in respect of Headship of Department and any examination duty till he continue to remain as a teacher in the University.*

With the above penalties imposed upon him, the period of suspension from 20.07.06 to 29.11.09 will be treated as on duty.

8. This decision of the Executive Council was duly communicated on the

basis of an Office Order dated 09.04.2011 issued by the Registrar, Gauhati University which have been assailed in the instant proceeding.

9. From a perusal of the penalties so imposed, it would transpire that :-

- (i) *Three increments, one on 01.07.2007, second on 01.07.2008 and third on 01.07.2009 with cumulative effect would be withheld.*
- (ii) *The Petitioner's re-employment after superannuation at the age of 60 was withheld.*
and
- (iii) *The Petitioner would not be given any administrative responsibility particularly in respect of his Headship of the Department and any examination duty till he continue to remain as a teacher in the University.*

10. It was however mentioned in the said Office Order that the period of suspension from 20.07.2006 to 29.11.2009 shall be treated as on duty. At this stage, this Court finds it relevant to take note of the fact that w.e.f. 30.11.2009 the Petitioner was re-instated to his service and the Petitioner retired on 31st of October, 2011.

11. The Petitioner being aggrieved by the imposition of the penalties vide the Office Order dated 9.4.2011 which is on the basis of E.C. Resolution dated 12.03.2011 had filed the instant writ petition on 7th of June, 2011.

12. It appears on record that on 20.06.2011 notice was issued making it returnable on 22.07.2011. Although notice was issued on the interim prayer but there was no interim relief granted, save and except, an observation being made in the order dated 30.09.2011, wherein it was mentioned that the pendency of the writ petition shall not be a bar for the Respondent University to

consider the case of the petitioner for extension of service beyond the age of superannuation as per law.

13. It reveals from the records that the Respondent Nos. 1, 2 & 3 have jointly submitted an affidavit-in-opposition stating interalia that there was no infirmity in the enquiry proceeding and the penalty so imposed was proportionate to the charges proved against the Petitioner.

14. To the said affidavit-in-opposition, a reply was filed by the Petitioner.

15. In the backdrop of the above pleadings, let this Court take into consideration the respective submission of the learned counsel for the parties.

16. Mr. M. Sarma, the learned counsel appearing on behalf of the Petitioner at the outset submitted that taking into account the pendency of the writ petition since 2011 and that the Petitioner at present would be 72 years, the challenge to the penalties at Serial Nos. 2 and 3 of the Office Order dated 09.04.2011 has already become infructuous. The learned counsel however submitted that as regards the challenge to the penalty at Serial No.1, the writ petition still survives. He strenuously argued that the enquiry proceeding so initiated as well as the manner in which the enquiry proceedings was conducted were in violation to the principles of natural justice. The learned counsel submitted that the very initiation of the enquiry proceeding on the basis of a report being submitted by a three member committee wherein the Petitioner was not given an opportunity to be heard was contrary to the principles of natural justice and accordingly violated the mandate of Article 14 of the Constitution. He further submitted that the Petitioner though granted an opportunity in the enquiry proceeding was belated and this had prejudiced the Petitioner.

17. On the other hand, Mr. P.J. Phukan, the learned counsel appearing on

behalf of the Gauhati University submitted that the instant writ petition is not maintainable as the Appellate remedy is available to the Petitioner under Rule 13 and 15 of the Assam Services (Discipline and Appeal) Rules, 1964 (for short 'the Rules of 1964'). The learned counsel further submitted that for initiation of a Departmental Proceeding there is no requirement in terms with Rule 9 that an opportunity is required to be given before initiation of a Departmental Proceedings. The learned counsel further submitted that the chargesheet as well as the statement of allegation were duly submitted and the Petitioner was given all opportunities in that regard. Further to that, the learned counsel submitted that pursuant to the order dated 16.05.2007 passed in W.P.(C) No. 2224/2007, the Petitioner was granted all opportunities to defend his case before the Enquiry Officer and as such the question of violation of the principles of natural justice does not arise. The learned counsel for the Respondent University further submitted that a perusal of the enquiry report would further show that the Enquiry Officer had duly taken into consideration each and every aspect of the matter and as such there is no question of interference with the Enquiry Report. The learned counsel further submitted that the penalties so imposed are also proportionate to the charges proved against the Petitioner inasmuch as in view of the charges so proved, the Petitioner was actually not fit to be retained in the service of the Gauhati University.

18. This Court has perused the materials on record and taken note of the submissions made by the learned counsels for the parties.

19. The first submission so made by the learned counsel for the Petitioner is in respect to the initiation of the Departmental Proceeding on the basis of the chargesheet dated 21.08.2006. As noted above, it is the contention of the Petitioner that the Departmental Proceeding was initiated on the basis of an

Enquiry Report being submitted by three persons and the Petitioner was not granted an opportunity of hearing prior to initiation of the Departmental Proceeding for which it is the submission of the Petitioner that the entire Departmental Proceeding is vitiated for non-compliance with the principles of natural justice and administrative fair play. This submission made by the learned counsel for the Petitioner at the first blush looks attractive but is totally misconceived inasmuch as the Departmental Proceeding has been initiated under the Rules of 1964. A perusal of the said Rules more particularly Rule 9 do not envisage that prior to initiation of the Departmental Proceeding, there is any requirement of giving an opportunity of hearing to the delinquent employee. Under such circumstances, the initiation of the Departmental Proceeding on the basis of the chargesheet dated 21.08.2006 in the opinion of this Court cannot be said to be vitiated on the ground of violation of the principles of natural justice.

20. The second leg of submission is that the Petitioner was prejudiced for not being able to participate at the initial stages of the Departmental Proceeding. It was the submission made by the learned counsel for the Petitioner during the course of hearing that it was only on the basis of the order dated 16.05.2007 that the Petitioner was permitted to participate in the said Departmental Proceeding.

21. A perusal of the materials on record clearly discloses that on 21.08.2006 a chargesheet was issued to the Petitioner wherein the statement of allegation was enclosed. In the said chargesheet, it was categorically made clear that the Petitioner would be at liberty to inspect the documents upon making a request within the period of 7 days from the receipt of the said chargesheet and thereupon to submit the statement of defence within 7 days after inspection of

the documents. There is no material on record to show that the Petitioner had any complain to the said aspect and this aspect of the matter would be apparent from the detailed reply submitted on 11.09.2006.

22. It further reveals from the record that on 31.03.2007 an advertisement was published in The Assam Tribune wherein it was duly informed that the Enquiry Proceeding would be held at the Gauhati University Guest House at 11 AM, on 19th, 20th, 21st, 23rd and 24th of April'2007. There were two delinquent employees including the Petitioner of which, one participated, while the Petitioner remained absent. In absence of the Petitioner, though witnesses were examined but the Enquiry Officer prior to closing the Enquiry Proceeding, thought it prudent and appropriate to issue a communication to the Petitioner and accordingly a communication was issued on 02.05.2007 thereby granting the Petitioner yet another opportunity to appear before the Enquiry Proceeding on 05.05.2007. The Petitioner thereupon appeared on 05.05.2007 and submitted a petition stating interalia that he was in dark as regards the initiation of the enquiry proceedings and he requested for various documents as well as the assistance of a Defence Assistant. Though the Enquiry Officer did not permit but pursuant to the order dated 16.05.2007 passed by this Court in W.P.(C) No. 2224/2007, the Petitioner was furnished all documents, allowed to inspect the depositions, cross-examined each and every witness who had said anything against the Petitioner as well as was allowed to submit arguments during the Enquiry Proceeding. Under such circumstances, this Court does not find that there has been any prejudice so caused to the Petitioner during the Enquiry Proceeding. It is also relevant to mention that the learned counsel appearing on behalf of the Petitioner further failed to show as to what prejudice has been caused to the Petitioner. Under such circumstances, this Court is of the opinion

that the second ground of objection so taken by the learned counsel for the Petitioner is totally misconceived.

23. At this stage, this Court further finds it relevant to observe that this Court had meticulously perused the Enquiry Report and had also enquired with the learned counsel for the Petitioner as to whether there is any perversity in the findings of the Enquiry Officer. The learned counsel for the Petitioner failed to show any perversity in the findings so arrived at. This Court is further of the opinion that sans any perversity the Enquiry Report cannot be interfered with.

24. It is further relevant to take note of that from a perusal of the Enquiry Report, the Charge No. 3 was partly proved whereas Charge Nos. 5, 6, 7, 8 and 9 were duly proved against the Petitioner. In the backdrop of the above, let this Court therefore take into account as to whether the penalties so imposed upon the Petitioner were proportionate to the charges so proved. This Court is of the opinion that the charges which have been proved constitutes a grave misconduct and as such, the penalties so imposed are proportionate to the charges so proved.

25. Accordingly, the impugned office order dated 09.04.2011 do not call for any interference from this Court. Consequently, this Court therefore finding no merits in the instant writ petition dismisses the writ petition. However, in the facts of the instant case, no cost is imposed.

JUDGE

Comparing Assistant