

GAHC010047572022



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

Case No. : WP(C)/1785/2022

SURAJIT BARMAN
S/O- LATE CHANDRA KANTA BARMAN, R/O- VILLAGE DAMDAMA, P.O-
LACHIMA (RAMPUR), DIST- NALBARI, ASSAM, PIN-781312

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE COMMISSIONER
TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR
GUWAHATI- 37
ASSAM.

3:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY
NALBARI
ASSAM

4:BLOCK DEVELOPMENT OFFICER
BARKHETRI DEVELOPMENT BLOCK
NALBARI
ASSAM

5:DIGANTA BARMAN

MEMBER OF LEGISLATIVE ASSEMBLY
BARKHETRI LEGISLATIVE ASSEMBLY CONSTITUENCY
NALBARI.

6:SMTI. DITIMONI PEGU
ADDITIONAL COMMISSIONER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT ASSAM
DISPUR
GUWAHATI-781006.

7:HITESH DEKA
ASSISTANT EXECUTIVE ENGINEER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT
ASSAM
DISPUR
GUWAHATI-781006.

8:DHRUBAJYOTI SARMAH
ASSISTANT EXECUTIVE ENGINEER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT
ASSAM
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, P AND R.D.

Linked Case : WP(C)/482/2022

ATIQUR RAHMAN
S/O-ABDUR RAHMAN
R/O- HOUSE NO.9
SUNCITY LANE
SATGAON
AMBARI
GUWAHATI-781171
DIST- KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP BY THE COMMISSIONER TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:THE PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
NALBARI
ASSAM

3:THE BLOCK DEVELOPMENT OFFICER
BARKHETRI DEVELOPMENT BLOCK
NALBARI
ASSAM

4:DIGANTA BARMAN
MLA
BARKHETRI LEGISLATIVE ASSEMBLY CONSTITUENCY
NALBARI

5:DITIMONI PEGU
ACS
ADDITIONAL COMMISSIONER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT DEPARTMENT
ASSAM
DISPUR
GUWAHATI- 781006.

6:HITESH DEKA
ASSISTANT EXECUTIVE ENGINEER OFFICE OF THE COMMISSIONERATE OF
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM DISPUR
GUWAHATI- 781006.

7:DHRUBAJYOTI SARMAH
ASSISTANT EXECUTIVE ENGINEER OFFICE OF THE COMMISSIONERATE OF
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM DISPUR
GUWAHATI- 781006.

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/597/2022

ABDUL KARIM
S/O- LATE ROUCHAN ALI
R/O- VILL.- LACHIMA
P.O. LACHIMA
P.S. MUKALMUA
DIST.- NALBARI
ASSAM
PIN- 781312.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-781006.

2:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY
NALBARI
ASSAM

3:BLOCK DEVELOPMENT OFFICER
BARKHETRI DEVELOPMENT BLOCK
NALBARI
ASSAM

4:DIGANTA BARMAN
MEMBER OF LEGISLATIVE ASSEMBLY
BARKHETRI LEGISLATIVE ASSEMBLY CONSTITUENCY
NALBARI.

5:SMTI. DITIMONI PEGU
ADDITIONAL COMMISSIONER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT ASSAM
DISPUR
GUWAHATI-781006.

6:HITESH DEKA
ASSISTANT EXECUTIVE ENGINEER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT
ASSAM
DISPUR
GUWAHATI-781006.

7:DHRUBAJYOTI SARMAH
ASSISTANT EXECUTIVE ENGINEER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT

ASSAM
DISPUR
GUWAHATI-781006.

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/2143/2022

MATIUR RAHMAN
S/O- AFTAR ALI
R/O- VILL.- SALEPARA
P.O. MUGDI
DIST.- NALBARI
ASSAM
PIN- 781126.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-781006.

2:THE COMMISSIONER TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABRI
GUWAHATI-781037.

3:THE PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
NALBARI
ASSAM

4:BLOCK DEVELOPMENT OFFICER
BARKHETRI DEVELOPMENT BLOCK
NALBARI
ASSAM

5:DIGANTA BARMAN
MEMBER OF LEGISLATIVE ASSEMBLY
BARKHETRI LEGISLATIVE ASSEMBLY CONSTITUENCY
NALBARI.

6:SMTI. DITIMONI PEGU
ADDITIONAL COMMISSIONER

OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT DEPARTMENT

ASSAM

DISPUR

GUWAHATI-781006.

7:HITESH DEKA

ASSISTANT EXECUTIVE ENGINEER

OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT

ASSAM

DISPUR

GUWAHATI-781006.

8:DHURBAJYOTI SARMAH

ASSISTANT EXECUTIVE ENGINEER

OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT

ASSAM

DISPUR

GUWAHATI-781006.

Advocate for : MR. K N CHOUDHURY

Advocate for : SC

P AND R.D. appearing for THE STATE OF ASSAM AND 7 ORS.

Linked Case : WP(C)/1543/2022

AMANUR RAHMAN

C/O- LATE ABDUR RAHMAN

R/O- BARNI

P.S- HAJO

DIST- KSMRUP

ASSAM

PIN- 781102

VERSUS

THE STATE OF ASSAM AND 7 ORS

REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT

DISPUR

GUWAHATI-781006

2:THE COMMISSIONER

TO THE GOVT. OF ASSAM

PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT ASSAM

PANJABARI
JURIPAR
GUWAHATI-37
3:THE PROJECT DIRECTOR
DRDA
NALBARI
ASSAM
4:THE BLOCK DEVELOPMENT OFFICER

BARKHETRI DEVELOPMENT BLOCK
NALBARI ASSAM
5:DIGANTA BARMAN
MEMBER OF LEGISLATIVE ASSEMBLY
BARKHETRI LEGISLATIVE ASSEMBLY CONSTITUENCY
NALBARI.
6:SMTI. DITIMONI PEGU
ADDITIONAL COMMISSIONER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT ASSAM
DISPUR
GUWAHATI-781006.
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ASSISTANT EXECUTIVE ENGINEER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT
ASSAM
DISPUR
GUWAHATI-781006.
8:DHURUBAJYOTI SARMAH
ASSISTANT EXECUTIVE ENGINEER
OFFICE OF THE COMMISSIONERATE OF PANCHAYAT AND RURAL
DEVELOPMENT
ASSAM
DISPUR
GUWAHATI-781006.

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 01/06/2023

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. R. M. Deka, learned counsel as well as Mr. T. A. Choudhury and Mr. M.J. Quadir, learned counsel appearing for the writ petitioners in this batch of writ petitions. Also heard Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department, Assam, appearing for the respondents.

The petitioners in this batch of writ petitions were engaged under the Panchayat and Rural Development Department, Assam, on contractual basis as Accredited Engineers/Computer Assistant/Gram Rozgar Sahayak. However, their services were terminated by the orders under challenge in the respective writ petition by giving them one month salary in lieu of notice on the ground that the preliminary enquiry conducted against the petitioners had disclosed irregularities committed by them in course of their service. The orders of termination have been challenged primarily on the ground that those have been issued in violation of the Principles of Natural Justice.

For the purpose of disposal of these writ petitions, the facts involved in WP(C) 1785/2022 are discussed herein below :-

The petitioner in WP(C) 1785/2022 was appointed as a Computer Assistant vide appointment order dated 02/11/2018. The engagement of the petitioner was purely on contractual basis and pursuant to a selection process conducted by the department. However, his services were terminated by the impugned order dated 30/10/2021. The order of termination mentions that an enquiry in connection with alleged misappropriation of fund under the MGNREGA and PMAY-G in the Borkhetri Development Block under Nalbari district was conducted, whereafter, a report was submitted. Taking note of the findings in the enquiry report, the department of Panchayat and Rural Development Department, Government of Assam had issued instruction to terminate the contractual service of the petitioner. Consequently, the impugned order of termination was issued.

Mr. Choudhury submits that the order of termination from service is stigmatic and is founded on an allegation of misconduct. Therefore, the services of the petitioner could not have been terminated without giving him an opportunity of being heard in the matter.

Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department, Assam, has fairly submitted that the order of termination is based on allegations of misconduct emanating from the findings in the enquiry report but since the petitioner was on contractual service, hence, he was not served with any show-cause notice before terminating his services. Mr. Dutta has further submitted that no order of reinstatement of service be issued by this Court. Alternatively, even if such an order is issued, Mr. Dutta submits that the department be granted liberty to proceed in the matter after serving notice upon the petitioner and in the meantime, the petitioner be allowed to be

placed under suspension.

Mr. Choudhury, learned senior counsel for the petitioner submits that as long as the authorities proceed in accordance with law and by following the Principles of Natural Justice, he would not have any objection in the matter. Similar is the submission of counsel for the petitioners in the other writ petitions.

It is no doubt correct that in case of a contractual engagement, the terms and conditions of the contract would govern by the service conditions of the employee. In the present case, the contract agreement signed by the petitioner does have a clause permitting termination of the contract at any point of time if the services rendered by the contractual staff was not found to be satisfactory. However, what is to be noted herein that bare perusal of the impugned order of termination demonstrates on the face of the record that the same was issued on the basis of findings of the enquiry proceeding conducted behind the back of the petitioner wherein, it had been projected that the petitioner was guilty of misconduct. Therefore, the order of termination of service of the petitioner dated 30/10/2021 is not only based on allegation of misconduct but the same is also stigmatic on the face of the records. In other words, the impugned order of termination dated 30/10/2021 was founded on allegation of misconduct. However, the petitioner was not given any opportunity of being heard in the matter. Therefore, it is a clear case where the respondents have acted in violation of the Principles of Natural Justice.

The order of termination from service issued to the petitioner has the trappings of an order of dismissal/removal from service. Therefore, such an order could not have been issued without giving the employee an opportunity of being heard, even if the same pertains to a temporary and / or contractual employee. This is for the simple reason that such an action, besides causing serious prejudice to the interest of the employee, would also have a bearing on the prospect of his future employments.

Situated thus, this Court is of the unhesitant opinion that the order of termination dated 30/10/2021 is unsustainable in the eyes of law. Therefore, the same is set aside. The respondents are directed to reinstate the petitioner back in service within 10(ten) days from the date of receipt of a certified copy of this order. After reinstatement of the petitioner, it would be open for the respondents to proceed against him, in accordance with law, by serving proper notice indicating specific charges brought against the petitioner.

In doing so, it would also be open to the department to place the petitioner under suspension pending drawal/conclusion of the departmental proceeding, if so advised. However, in such an event,

the petitioner will be paid subsistence allowance. The authorities shall also strictly comply with the requirement of the Rules as well as Principles of Natural Justice while conducting the enquiry.

On conclusion of the enquiry, it would be open to the department to pass appropriate order, as may be deemed necessary, in the facts and circumstances of the case.

Writ petition stands allowed to the extent indicated above.

In the light of the observations made herein above, **WP(C) 482/2022, WP(C) 597/2022, WP(C) 1543/2022, WP(C) 2143/2022, WP(C) 2977/2023 NS WP(C) 3089/2023** are also allowed by setting aside the respective orders of termination from service with similar direction and by granting similar liberty to the departmental authorities.

JUDGE

Sukhamay

Comparing Assistant