

GAHC010023152011



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

Case No. : WP(C)/2768/2011

PRANAB KR. DAS
S/O LT. DAMBARUDHAR DAS, R/O MALIBAGAN, UZAN BAZAR,
KHARGHULI ROAD, P.O. KHARGHULI, P.S. LATASHIL, GHY-4, DIST
KAMRUP, ASSAM

VERSUS

THE MANAGING DIRECTOR, ASSAM CO-OPERATIVE APEX BANK
LIMITED
PANBAZAR, GHY-1

Advocate for the Petitioner : MR.S CHAKRABORTY

Advocate for the Respondent : MR.M NATH

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

20.06.2023

Heard Ms. B. Choudhury, the learned counsel for the petitioner and
Mr. J. K. Goswami, the learned counsel appearing on behalf of the

respondent Nos.1 & 2.

2. The instant writ petition has been filed challenging the order dated 23.08.2010 passed by the Managing Director of the respondent No.1 bank, whereby in exercise of the powers conferred under Rule 46 (a) (ii) of the Assam Co-operative Apex Bank Limited Staff Rules, 1980 (for short, 'the Rules of 1980') had imposed the penalty to stop one annual increment without cumulative effect and had also observed that the period of absence from 08.04.2007 to 04.10.2007 may be treated as extraordinary leave without salary.

3. The case of the petitioner as strenuously argued by the learned counsel for the petitioner is that the petitioner was not given the enquiry report which has gone in favour of the petitioner and the respondent No.2, without proper application of mind, had passed the impugned order dated 23.08.2010.

4. On the other hand, Mr. J. K. Goswami, the learned counsel appearing on behalf of the respondent Nos.1 & 2 submits that when the impugned order is not based upon the enquiry report, the question of handing over the copy of the enquiry report to the petitioner does not arise. Mr. J. K. Goswami, the learned counsel further submits that the question of issuance of notice prior to imposition of penalty would be contrary to Article 311 (2) of the Constitution in as much as after 42nd amendment of the Constitution, there is no further requirement of issuance of any notice prior to imposition of penalty.

5. Upon hearing the learned counsel for the parties and taking into account the submission made by Ms. B. Choudhury, the learned counsel

for the petitioner to the effect that the certificate issued by the doctor under whom the petitioner was under treatment should have taken into consideration or for that matter, the Medical Board's report should have been called for by the respondent authorities, this Court is of the opinion that for taking into account the said submission, the veracity of the medical report of the physician as well as the report of the Medical Board would be required to be gone into. This Court further takes note of the submission made by the learned counsel for the petitioner that had the enquiry report been given to the petitioner, the petitioner could have further substantiated his case and filed an appeal under Rule 18 of the Rules of 1980.

6. Taking into account the above, this Court is of the opinion that the interest of justice would be met, if the instant writ petition is disposed of thereby directing the respondent No.2 to furnish an enquiry report to the petitioner.

7. This Court is also of the opinion that the veracity of the medical certificate submitted by the physician under whom the petitioner was under treatment or the report of the Medical Board cannot be gone into in a proceeding under Article 226 of the Constitution. This Court is further of the opinion that as the punishment imposed is a minor punishment and the petitioner is still in service with the respondent No.1 bank, if an opportunity is given to the petitioner to prefer an appeal in terms with Rule 48 of the Rules of 1980, interest of justice would be met.

8. In view of the above facts and circumstances, this Court therefore, disposes of the instant writ petition thereby directing the respondent No.2 to furnish the enquiry report to the petitioner within 15 days from the date

a certified copy of the instant order is served upon the respondent No.2 and the petitioner thereupon is further given 30 days' time for preferring an appeal in terms with Rule 48 of the Rules of 1980 against the order dated 23.08.2010.

9. The record so produced by. K. Goswami, the learned counsel appearing on behalf of the respondent Nos.1 & 2 is returned.

JUDGE

Comparing Assistant