

GAHC010023472023



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

Case No. : WP(C)/682/2023

MOONSOON BARKAKOTI
R/O- CHEKONIDHORA GAON, KHELMATI CLUB ROAD, P.O. AND P.S.
JORHAT, ASSAM, PIN- 785001

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM,
PERSONNEL (A) DEPTT., DISPUR, GHY-06

2:THE SECRETARY TO THE GOVT.OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GHY-6

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GHY-6

4:THE DY. SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GHY-

Advocate for the petitioner : Mr. K. N. Choudhury,
Senior Advocate.
Mr. J. Patowary, Advocate

Advocate for the Respondents : Mr. H. Sarma, Govt. Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 17.02.2023

Date of Judgment : 17.02.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. K. N. Choudhury, the learned senior counsel assisted by Mr. J. Patowary, the learned counsel for the petitioner and Mr. H. Sarma, the learned counsel appearing on behalf of the State respondents.

2. The instant writ petition is taken up for disposal at the motion stage.
3. The instant writ petition has been filed challenging the continuation of the suspension order dated 12.03.2021 issued by the Department of Personnel (A), Government of Assam in the attending facts as narrated infra.
4. The brief fact of the instant case is that the petitioner, pursuant to a selection process, was selected for the post of Assam Land and Revenue Service (Junior Grade). Pursuant to the said selection, the Government of Assam in the Department of Personnel (A) vide a notification bearing No.AAP.3/2019-18 dated 09.01.2019 appointed the petitioner to the post of Assam Land and Revenue Service (Junior Grade). Subsequent thereto, the service of the petitioner was placed at the disposal of the Revenue and Disaster Management Department for posting as Circle Officer (Attached) vide notification No.RLR.2/2019/27 dated 24.01.2019. Pursuant thereto, on being successful in various training programmes, the petitioner was posted as Circle Officer (Attached), Margherita in the district of Tinsukia.
5. It has been alleged in the writ petition that a self-styled group in the name

and style of Anti Corruption Liberation Union lodged a complaint with the authorities about the genuineness of the petitioner's OBC caste certificate since her father belongs to general category. The matter was placed before the State Level Scrutiny Committee under WPT & BC Department to examine the genuineness of the petitioner's OBC caste certificate dated 13.11.2006 in terms with the guidelines of the Supreme Court in the case of ***Kumari Madhuri Patil vs. Commissioner Tribal Development***, reported in (1994) 6 SCC 241. The petitioner appeared before the State Level Scrutiny Committee in connection with the hearing regarding the veracity of her OBC certificate dated 13.11.2006. However, it has been alleged that in gross violation of the guidelines laid down by the Supreme Court in the case of ***Kumari Madhuri Patil*** (supra), the State Level Scrutiny Committee recommended the cancellation of the petitioner's OBC certificate vide an order dated 26.02.2021. Pursuant thereto, in view of the said recommendation, the Deputy Commissioner, Jorhat vide its order dated 01.03.2021 cancelled the OBC certificate of the petitioner dated 13.11.2006. Subsequent thereto, the Secretary to the Government of Assam in the Personnel (A) issued the suspension order NO.AAP.237/2018/77 dated 12.03.2021 (herein after referred as 'the impugned order') whereby the petitioner was placed under suspension in view of the aforesaid recommendation of the State Level Scrutiny Committee.

6. It further appears from the records that the said order dated 26.02.2021, passed by the State Level Scrutiny Committee as well as the consequential action were put to challenge before this Court in WP(C) No.2286/2021. This Court vide an order dated 24.11.2022, set aside the order dated 26.02.2021.

7. Mr. H. Sarma, the learned counsel appearing on behalf of the State respondents submitted that the Anti Corruption Liberation Union has preferred a

writ appeal before the Division Bench against the order dated 24.11.2022 passed in WP(C) No.2286/2021 which has been registered and numbered as WA No.42/2023. He, however, submitted that there is no interim order passed thereby staying the operation of the order dated 24.11.2022.

8. Pursuant thereto, it also appears that the State Government had duly accepted the order dated 24.11.2022 passed in WP(C) No.2286/2021 in as much as vide the order dated 28.12.2022, the Deputy Commissioner, Jorhat in terms with the direction passed in the order dated 24.11.2022 in WP(C) No.2286/2021 revoked the cancellation of the OBC certificate (12395) dated 13.11.2006. It was further mentioned in the said order of 28.12.2022 by the Deputy Commissioner, Jorhat that the said OBC certificate issued to the petitioner may be treated as valid. However, it appears that in spite of the order dated 26.02.2021 passed by the State Level Scrutiny Committee being set aside and the cancellation of the OBC certificate being revoked by the Deputy Commissioner, Jorhat, the petitioner still continues to remain under suspension on the basis of the impugned order dated 12.03.2021. The petitioner thereupon has submitted representations before the respondent authorities on various dates including on 30.11.2022 for revoking the suspension order as well as seeking various consequential reliefs. However, the respondent authorities have not taken any steps in that regard for which the petitioner is before this Court by filing the instant writ petition.

9. Mr. K. N. Choudhury, the learned senior counsel for the petitioner submitted that the continuation of the suspension order dated 12.03.2021 is bad in law for two reasons. First, the very edifice upon which the suspension order was passed is no longer in existence in view of the setting aside of the order dated 26.02.2021 by this Court vide order dated 24.11.2022 in WP(C)

No.2286/2021. Further to that, the Deputy Commissioner has also revoked the earlier cancellation of the OBC certificate and has clarified that the said OBC certificate to be treated as valid. Secondly, Mr. K. N. Choudhury, the learned senior counsel submitted that in view of the law laid down by the Supreme Court in the case of ***Ajay Kumar Choudhury vs. The Union of India***, reported in ***(2015) 7 SCC 291***, and more particularly, what has been observed in paragraph Nos.20 & 21 of the said judgment, the further continuation of the suspension order without reviewing the suspension order by a reasoned order is on the fact of it in violation of the law laid down in the judgment rendered in ***Ajay Kumar Choudhury*** (supra).

10. On the other hand, Mr. H. Sarma, the learned counsel appearing on behalf of the State respondents submitted that it is true that the Government has duly accepted the order dated 24.11.2022 passed by this Court in WP(C) No.2286/2021 in as much as the Deputy Commissioner, Jorhat, pursuant to the said order, has also revoked the prior cancellation of the OBC certificate of the petitioner vide an order dated 28.12.2022. He, however, submitted that any order passed herein should be made subject to the outcome of the writ appeal which is pending against the judgment and order dated 24.11.2022 passed in WP(C) No.2286/2021. As regards whether the respondent authorities have reviewed the suspension of the petitioner pursuant to the Memorandum of charge/ chargesheet being served upon the petitioner, he has no instructions in that regard.

11. Upon hearing the learned counsels for the parties, let this Court first take into consideration the first contention of Mr. K. N. Choudhury, the learned senior counsel for the petitioner as to whether impugned suspension order should continue pursuant to the setting aside of the order dated 26.02.2021 by this

Court on 24.11.2022 in WP(C) No.2286/2021 and the cancellation of the earlier order of revocation of the OBC certificate of the petitioner which clearly shows that the respondent authorities have duly accepted the order passed by this Court on 24.11.2022 in WP(C) No.2286/2021.

12. To appreciate the said contention, it is relevant to take note of the judgment of this Court dated 24.11.2022 wherein setting aside the speaking order dated 26.02.2021 passed by the State Level Scrutiny Committee which was the edifice of the entire action including the action for suspension of the petitioner is concerned.

13 It appears from the said judgment passed by this Court on 24.11.2022 that the Additional Advocate General, Assam had produced the records which contained the enquiry report submitted by the Superintendent of Police, CID, Assam, Guwahati with regard to the OBC certificate of the petitioner. The said enquiry report which is dated 03.10.2019 made by the Inspector of Police, CID was reproduced in the said judgment dated 24.11.2022. This Court, upon perusal of the said enquiry report dated 03.10.2019, found that the allegation brought against the petitioner was based on no truth, and accordingly, the closure of the enquiry was recommended. This Court upon consideration of the enquiry report dated 03.10.2019 had set aside speaking order dated 26.02.2021 issued by the State Level Scrutiny Committee.

14. At this stage, a perusal of the impugned suspension order dated 12.03.2021, it would show that it was on the basis of two reasons, i.e. the State Level Scrutiny Committee's order dated 26.02.2021 and the cancellation of the OBC certificate of the petitioner dated 01.03.2021 by the Deputy Commissioner, Jorhat which were basis for placing the petitioner under suspension. It further appears from the records that on 28.12.2022, the very order dated 01.03.2021

by which the petitioner's OBC certificate was cancelled was revoked with a clarification to the effect that the OBC certificate issued to the petitioner bearing No.12395 dated 13.11.2006 be treated as valid. Consequently, the materials on the basis on which the respondent authorities based the impugned suspension order dated 12.03.2021 no longer exists.

15. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***S. R. Venkataraman vs. Union of India & Others***, reported in ***(1979) 2 SCC 491*** wherein the Supreme Court dealt the aspect of malice in law and further observed that an administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power. Paragraph Nos.5 & 9 of the said judgment is reproduced herein under:-

“5. We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V. D. Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Government in making the order of premature retirement dated March 26, 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law is, however, quite different. Viscount Haldane described it as follows in Shearer v. Shield:

A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently.

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probable cause.

9. The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of government servants only in the "public interest", to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power."

16. Taking into consideration that the respondent authorities more particularly the Appointing Authority still continues to place the petitioner under suspension in spite of the entire edifice of the impugned suspension order having disappeared, this Court is of the opinion that the same constitutes an abuse of the powers for which the further continuance of the suspension of the petitioner is interfered with and a direction is therefore issued upon the Appointing Authority, i.e. the Secretary to the Government of Assam, Personnel (A) Department to forthwith reinstate the petitioner. The Government, however, shall be at liberty to post the petitioner as per its exigency of service.

17. The second contention of Mr. K. N. Choudhury, the learned senior counsel for the petitioner is not required to be gone into taking into account that on the first ground itself, the petitioner's further continuance of suspension order dated 12.03.2021 has been interfered with.

18. It is further observed that the instant decision should not be construed in any manner as dealing with the merits in respect to the Departmental Proceedings which has been initiated against the petitioner and the respondent

authorities would be at liberty to carry out the Departmental Proceedings in accordance with the provision of Assam Services (Discipline and Appeal) Rules, 1964.

19. Before concluding, this Court also finds it relevant to take note of that in the representation dated 30.11.2022, the petitioner had requested the concerned respondent authorities to not only revoke the suspension order dated 12.03.2021 but also that her period of suspension can be treated as the period in service as the suspension was based upon an erroneous speaking order and not for any fault of the petitioner.

20. Considering the above, the respondents, more particularly, the Secretary to the Government of Assam, Personnel (A) Department is directed to consider the representation in so far as treating the suspension period as the period in service in the backdrop of the above findings whereby this Court had categorically held that the very edifice of the suspension order stood eroded with the order passed by this Court dated 24.11.2022 in WP(C) No.2286/2021 and the subsequent order dated 28.12.2022 by the Deputy Commissioner, Jorhat whereby the earlier cancellation of the OBC certificate was revoked.

21. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant