

GAHC010028112017



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

Case No. : WP(C)/3767/2017

PABITRA BARUAH
S/O LATE GOLUK BARUAH, R/O VILL-TEOK, JOGDUAR SONARI, PO-
JOGDUAR, SONARI, 785112, DIST. JORHAT, ASSM

VERSUS

ASSAM STATE ELECTRICITY BOARD and 3 ORS.
REP. BY ITS CHAIRMAN, BIJULI BHAWAN, PALTAN BAZAR, GUWAHATI-
781001, ASSAM

2:ASSAM POWER DISTRIBUTION COMPANY LTD
REP. BY ITS MANAGING DIRECTOR
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI-781001
ASSAM

3:THE GENERAL MANAGER
ASSAM POWER DISTRIBUTION COMPANY LTD. UPPER ASSAM ZONE
NA-ALI
JORHAT
ASSAM
PIN-785001

4:SUB-DIVISIONAL ENGINEER
TEOK ELECTRICAL SUB-DIVISION
ASSAM POWER DISTRIBUTION COMPANY LIMITED
TEOK
JORHAT
ASSA

Advocate for the Petitioner : MR.A DASGUPTA

Advocate for the Respondent : SC, A S E B

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 19/04/2023

Heard Mr. A. Dasgupta, learned senior counsel assisted by Ms. M. Gogoi, learned counsel for the writ petitioner. Also heard Mr. S.P. Sharma, learned Standing Counsel, APDCL, appearing for the respondents.

The writ petitioner Sri Pabitra Baruah was performing the job of Meter Reader-cum-Bill Clerk under the APDCL as an out-sourced employee. As per the policy decision of the ASEB, subsequently renamed as APDCL, the task of meter reading of consumers and preparation of electricity bill used to be performed by out-sourced employees, such as the petitioner, so as to reduce the operational cost. However, according to the writ petitioner, there was a policy decision on the part of the APDCL to regularize the services of such out-sourced Bill Clerks by inducting them in the pay roll of the APDCL. Despite such policy decision, when no concrete action was taken in the matter by the authorities, the petitioner, while speaking in a meeting of the Assam Power Workers Unit held at Teok Division campus of the APDCL, had made certain utterances questioning the *bona fide* of the authorities in their failure to regularize the services of the out-sourced Bill Clerks. Such utterances of the petitioner had invited the ire of the APDCL authorities as well as the Secretary of the Assam Power Workers' Union, Teok Unit. It appears that the objections were primarily on account of usage of expressions, such as, 'corrupt' 'inefficient' etc. in his speech by the writ petitioner, targeting the management.

On 21/02/2016, the Sub-Divisional Engineer, Teok Electrical Division, i.e. the respondent no. 4, had written a letter to the petitioner raising a protest due to the use of unwarranted expressions by him and also informing the petitioner that the works allotted to him have been re-allotted and, therefore, he was not required to prepare any bill nor collect any meter reading. Subsequently, on 07/05/2016, the respondent no. 4 had issued another letter to him, *inter-alia*, asking him to hand over the keys of two numbers of table cabinets occupied by the petitioner. Thereafter, on 04/05/2016, the Chief General Manager (D) of the UAR, APDCL, Bijulee Bhawan, had issued instruction to the respondent no. 3 i.e. the General Manager, Jorhat Zone, APDCL, asking him to monitor the performance of the out-sourced person, viz. Pabitra Baruah and terminate him for any kind of lapse

found in the work allotted to him. The fact, however, remains that the process of termination of the petitioner began even before the letter dated 04/05/2016 was issued, more particularly, after he was intimidated by the letter dated 21/02/2016 that the work has been re-allotted to some other person.

On 06/07/2016, the petitioner submitted his reply to the respondent no. 4 tendering apology for use of unwarranted expressions and stated in clear terms that it was a mistake on his part. As it was a meeting of the casual employees, he could not avoid making such a speech. In the letter dated 06/07/2016, the petitioner has also assured that he would not commit such a mistake in future. Notwithstanding the same, the petitioner has been kept out of work since 21/02/2016, as a result of which, he has been deprived of the only source of earning his livelihood. Subsequently, the petitioner had also submitted his representation before the Departmental Minister tendering apology but to no avail. Hence, this writ petition.

Mr. Dasgupta, learned senior counsel for the writ petitioner submits that the petitioner is not disputing the fact that certain utterances made by him in the meeting, were uncalled for, for which, he has also tendered apology and has assured the authorities that such mistake will not be repeated in future. Notwithstanding the same, the respondents have taken the extremely harsh stand in the matter by terminating his service as a result of which, not only the petitioner but his family members also have been made to suffer immensely.

Mr. S.P Sharma, learned Standing Counsel, APDCL, on the other hand, submits that the petitioner cannot claim regularization as a matter of right. Moreover, in view of his conduct, the authorities took the aforesaid decision so as to maintain the proper work atmosphere in the department. Mr. Sharma has also submitted that all the out-sourced meter readers have already been regularized through a selection process and, therefore, the petitioner cannot be reinstated at this point of time.

I have considered the submissions advanced by learned counsel for both the sides.

After a careful scrutiny of the materials available on record, I find that there is no prayer in the writ petition seeking regularization of services of the writ petitioner. Therefore, the aforesaid issue would not arise for decision in the present proceeding. The only question that, however, needs to be considered in the present case is as to whether, the action on the part of the respondents, in terminating the out-sourced services of the petitioner as a Bill Clerk-cum-Meter Reader was illegal, arbitrary, harsh and disproportionate.

As noted above, there is no dispute in this case about the fact that the petitioner did make certain statements in his speech which were derogatory for the management. Therefore, it is quite

natural that his statements would invite the ire of the management of APDCL. However, it is also equally correct that the petitioner, having realized his mistake, had tendered unconditional apology by giving an undertaking not to repeat the same mistake in future. There is nothing on record to show as to in what manner, the apology tendered by the petitioner has been dealt with by the authorities, if at all.

It is also to be noted herein that the petitioner was earning his livelihood and supporting his family by working as a Meter Reader-cum-Bill Clerk under the APDCL and after the termination of his job in the year 2016, the petitioner has apparently lost his source of earning livelihood.

On a threadbare analysis of the facts and circumstances of the case, this Court is of the opinion that the decision to terminate the services of the petitioner by ignoring his apology, was extremely harsh and disproportionate to the alleged misconduct, and therefore, unsustainable in law. This Court cannot loose sight of the fact that, at times, when the demand of the employees remain unresolved, out of frustration, fiery speeches are made which may be totally unacceptable to the management but one must also bear in mind that such out-burst of the employees is usually is the result of pent up frustration rather than display of any malice towards the Management.

In the backdrop of the observations made herein above, I dispose of the writ petition by setting aside the impugned orders dated 21/02/2016, 09/05/2016 and all other consequential orders, by means of which, the petitioner's job was terminated. The matter is remanded back to the respondent nos. 2 and 3 to take a fresh decision on the question of restoring the service of the petitioner by adopting a more human approach, particularly keeping in mind the apology tendered by him, the undertaking given by the petitioner not to repeat such mistake again as well as the sufferings of his family members.

The aforesaid exercise be carried out and completed within four weeks from the date of receipt of a certified copy of this order, by passing a reasoned order in respect thereof pertaining to the service of the petitioner, either as a out-sourced employee or a regular employee.

The writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant