

GAHC010033342023



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

Case No. : WP(C)/1105/2023

KALPANA DEKA
W/O- LT. TARANI DEKA, WARD GIRL G.M.C.H., R/O- P.O. AND P.S.
GORCHUK, DIST.- KAMRUP (M), ASSAM, GUWAHATI, PIN- 781035, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HEALTH AND
FAMILY WELFARE DEPTT., DISPUR, GHY-06

2:THE DIRECTOR OF HEALTH SERVICES
GOVT. OF ASSAM
HENGRABARI

3:PRINCIPAL CUM CHIEF SUPERINTENDENT
G.M.C.H.
GHY-32

4:DY. SUPERINTENDENT
SUPER SPECIALITY HOSPITAL-I G.M.C.H.
GUWAHATI-3

Advocate for the Petitioner : MR. P K GOSWAMI

Advocate for the Respondent : SC, HEALTH

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

19.06.2023

1. The case of the petitioner herein is that the petitioner was appointed as Grade-IV on contract basis on 06.07.2006 by the Superintendent of Guwahati Medical College Hospital. The petitioner is aggrieved by an order of termination dated 31.07.2021 whereby the service of the petitioner was terminated with immediate effect.
2. The background facts of such termination as is discernible from the pleading of the petitioner and also from the affidavit-in-opposition filed by the respondent No. 3, can be summarized as follows:
 - I. On 07.06.2021, a committee was constituted consisting of three members to enquire into a matter related to mishandling of patient's belongings by two employees including the petitioner.
 - II. The Enquiry Committee submitted its report on 10.06.2021.
 - III. The other person who was charged along with petitioner with similar allegation, was discharged on the ground that the said person appeared before the Committee with a written statement and denied her involvement in any kind of mishandling of patient's belongings during her duty period. It was also finding of the Enquiry Committee that no evidences were found regarding "their" involvement.
 - IV. So far relating to the petitioner, the Committee came to a conclusion that the petitioner did not file written statement nor did she appear before the Committee, though Committee tried to contact her several times.

- V. Accordingly, it was recommended that necessary action may be taken against the petitioner as she did not respond to the Committee. It was yet another stand that on the date of alleged incident she was at night duty at 8 p.m. and one person died in the evening and that at the time of alleged mishandling of patient's belongings she was not in duty.
 - VI. Subsequent to this, on 19.06.2021, a show cause was issued asking the petitioner to submit written explanation within three days from the date of issue of the letter why action shall not be taken.
 - VII. The petitioner, however, submitted her reply on 30.06.2021 and contended that she was not aware about such matter.
 - VIII. Thereafter, on 31.07.2021, the service of the petitioner was terminated.
3. The learned counsel for the petitioner submits that she was not put on notice regarding the complaint lodged against her nor any notice was issued asking her to present herself before the Enquiry Officer was served upon her. It is her case that the Enquiry Committee based its conclusion only on the ground that the petitioner has not appeared before the Enquiry Committee. Therefore, such order is vitiated by non-adherence of principle of natural justice.
4. Per contra, the learned standing counsel submits that while the petitioner was asked to show cause, she did not appear and file any reply to such communication. Even, she did not appear before the Enquiry Committee after persuasion of the Enquiry Committee. Therefore, neither the Enquiry Committee nor the Department can be faulted with for the order of

termination inasmuch as the petitioner by not filing reply had admitted her guilt.

5. Considered the submissions advanced by the learned counsel for the parties. From the material available on record, it is clear that no show cause was issued to the petitioner either by the employer or by the Enquiry Committee. Enquiry Committee was constituted on 07.06.2021 and the decision was taken by the Enquiry Committee on 10.06.2021 i.e. within a period of three days. The finding of the Enquiry Committee reveals that the petitioner did not appear before the Committee and also did not file any written statement. However, the enquiry report and the records are silent when such notice was issued or how the petitioner was called to file written statement. Further the recommendation of the committee to take action against the petitioner was on the sole ground that she did not respond to the committee.
6. In the case of the other person, the Committee relied on her denial and also took note of the fact that no evidences were found regarding "**their**" involvement. The word in the context of the present case '**their**' shall necessarily mean the petitioner and the other person inasmuch as allegation relates to the same incident. So it is apparent that that there was no evidence against the petitioner too and even it is assumed that it was a fact finding committee, the committee has recommended not for termination but to take necessary action.
7. Thereafter, first notice on 19.06.2021 was issued to the petitioner asking the petitioner to give her written explanation within three days. She replied to the notice on 30.06.2021 taking a stand that she had not misbehaved any Covid patient as discussed hereinabove. However, after a

month, the termination order has been issued without dealing with the reply filed by the petitioner.

8. In view of the aforesaid, this court is of the considered opinion that the person has been terminated from service perfunctorily without adhering to any principles of natural justice. In that view of the matter, the impugned order dated 31.07.2021 is set aside and quashed. The petitioner be reinstated in service.
9. While parting with the record, it is made clear that the appointment was admittedly a contractual appointment and therefore, the present termination order shall not create any right upon the petitioner to claim as a regular employee otherwise than permitted under law. This court has also interfered with the decision for the reason that even, if in a case of contractual employee, when allegations made are stigmatic, the principles of natural justice is required to be followed. The termination was not termination simpliciter but a termination punitive.
10. In the aforesaid term, this writ petition stands allowed.

JUDGE

Comparing Assistant