

GAHC010047042021



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

Case No. : WP(C)/1819/2021

JOYDEEP NATH MAZARBHUIYA
S/O. LT. JMANENDRA NATH NAZARBHUIYA, VILL. BORNAGAD, P.O.
KALIBARI BAZAR, P.S. ALGAPUR, DIST. HAILAKANDI, PIN-788150, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM PANCHAYAT
AND RURAL DEVELOPMENT DEPTT., PANJABARI, GUWAHATI-37.

2:THE DY. COMMISSIONER

HAILAKANDI.

3:THE CHIEF EXECUTIVE OFFICER

HAILAKANDI ZILLA PARISHAD.

4:THE BLOCK DEVELOPMENT OFFICER

HAILAKANDI DEVELOPMENT BLOCK.

5:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY
OFFICE OF THE DY. COMMISSIONER
HAILAKANDI.

6:THE DISTRICT PROGRAMME COORDINATOR

MGNREGA
HAILAKANDI

Advocate for the Petitioner : MR. A Y CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 10-02-2023

Heard Mr. T.A. Choudhury, learned counsel for the writ petitioner. Also heard Mr. NK. Debnath, learned standing counsel, P&RD Department, Assam appearing for the respondent Nos. 1, 3, 4 and 5 and Mr. C.S. Hazarika, learned Govt. Advocate, Assam appearing for the respondent Nos. 2 and 6.

The order of termination from service dated 07-02-2018 issued by the Deputy Commissioner, Hailakandi, i.e. the respondent No. 2 is under challenge in this writ petition. It is the case of the writ petitioner that no show cause notice was issued to him before issuing the impugned order of termination of service.

The petitioner herein was earlier appointed as Accredited Engineer (AE) on contractual basis, in the Hailakandi Development Block, by the order dated 03-12-2010. Although the appointment of the petitioner was on contractual and temporary in nature, yet, his services were extended from time to time. Eventually, by the order dated 07-02-2018, the service of the petitioner was terminated.

A perusal of the impugned order dated 07-02-2018 goes to show that the service of the petitioner was terminated by alleging some misconduct against him.

Notwithstanding the same, neither any show-cause notice was served upon the petitioner nor was he given any opportunity of being heard in the matter. The respondents counsel has tried to justify such a recourse by submitting that being an contractual employee, he did not have any vested right in the matter and since one month's salary was given to the petitioner in lieu of notice, there is no illegality in the process adopted by the department.

Mr. T.A. Choudhury, learned counsel for the petitioner has invited the attention of this Court to the order dated 05-04-2019 passed by this Court in W.P.(C) No. 4275/2018 as well as the order dated 29-01-2021 passed in W.P.(C) No. 1964/2020 to contend that similar orders of termination, in respect of similarly situated contractual employees under the department, have been set aside by this Court and petitioners' were directed to be reinstated in service. The authorities have also complied with such order of this Court. Since, the case of the petitioner is also similar, hence, it is a covered case under the aforesaid judgment and orders passed by this Court and therefore, a similar order is required to be passed in this case as well.

From a careful reading of the orders dated 05-04-2019 as well as 29-01-2021, I find force in the submission of Mr. Choudhury. It is correct that service of a contractual employee can be dispensed with, if the same is found to be unsatisfactory. However, an order of termination of service must not only be in accordance with the terms of the contract but must also comply with the principles of natural justice. Since, misconduct has been imputed against the petitioner, hence, he was entitled to an opportunity of being heard in the matter, more so since the order, on the face of it, is stigmatic. But, no such opportunity was granted to him. The order of termination dated 07-02-2018, having been

issued in flagrant violation of the principles of natural justice, is held to be unsustainable in law. The same is accordingly set aside.

The respondents are directed to reinstate the petitioner within 07 days from the date of receipt of a certified copy of this order. Upon his reinstatement, it will be open for the departmental authorities to proceed against him afresh, if so advised, by following due process of law.

Insofar as the claim of back wages etc. is concerned, this Court is not inclined to make any observation in that regard, save and except, providing that it will be open for the petitioner to seek redress under the law, if so advised.

Writ petition stands disposed of accordingly.

JUDGE

GS

Comparing Assistant