

GAHC010050482023



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

Case No. : WP(C)/1374/2023

GUNAJAY CHOUDHURY
HEAD ASSISTANT (UNDER SUSPENSION), BARPETA ROAD MUNICIPAL
BOARD,
DISTRICT- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
URBAN DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF MUNICIPAL ADMINISTRATION DEPARTMENT
RUKMINIGAON
KHANAPARA

GUWAHATI-22.

3:DEPUTY COMMISSIONER
BARPETA
DISTRICT- BARPETA

PIN- 781301.

4:BARPETA ROAD MUNICIPAL BOARD
REPRESENTED BY ITS CHAIRPERSON

BARPETA ROAD MUNICIPAL BOARD

DISTRICT- BARPETA
ASSAM

PIN- 781315.

5:EXECUTIVE OFFICER-CUM-ENQUIRY OFFICER
BARPETA ROAD MUNICIPAL BOARD
DISTRICT- BARPETA
ASSAM

PIN- 781315

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

28.08.2023

Heard Mr. U.K. Nair, learned Senior Counsel assisted by Mr. S.K. Das, learned counsel for the petitioner. Also heard Mr. D. Mazumder, learned Senior Counsel and Addl. Advocate General, Assam assisted by Ms. M. Bhattacharjee, learned Addl. Senior Government Advocate for the State.

2. This writ petition has been filed by the petitioner who is aggrieved by the de-novo enquiry proceedings conducted by the Barpeta Town Municipal Board pursuant to the order dated 15.02.2023 passed in W.P.(C) No. 808/2023 and the order dated 27.02.2023, whereby the petitioner was dismissed from service as an employee of the Barpeta Road Municipal Board with effect from 27.02.2023 on the basis of the enquiry which was conducted and the enquiry report having been adopted by the Barpeta Road Municipal Board vide its resolution No. 6, dated 24.02.2023.

3. The petitioner was working as Head Assistant in the Barpeta Road Municipal Board, Barpeta at the relevant point in time. An incident took place in

the chambers of the then Chairman of the Barpeta Road Municipal Board, wherein the petitioner was alleged to have misbehaved with the Chairman and the Vice Chairman in presence with the Executive Officer of the Municipal Board. Pursuant thereto, an enquiry was instituted against the petitioner and the enquiry report confirmed the charges against the petitioner and recommended appropriate punishment. Pursuant to the enquiry conducted by the Board, a resolution was adopted on 26.08.2016, whereby the petitioner was dismissed from service. Against the said enquiry report, petitioner preferred an appeal before the Government which was rejected.

4. Being aggrieved, he approached this Court by filing W.P.(C) No. 1710/2017. This Court by Judgment and Order dated 20.12.2021 came to a finding that the Chairman, Vice Chairman, Executive Officer, who had a personal interest in the enquiry ought not to have been involved in the proceedings initiated against the petitioner and as such there was a violation of the principles of natural justice. The Co-ordinate Bench by the said Judgment and Order directed as follows:

“22. That being the position, this court directs as follows:-

(i) The punishment imposed upon the petitioner vide order dated 20.08.2016 is hereby set aside and quashed.

(ii) The respondent Board shall start the proceeding de-novo against the petitioner by issuing a fresh show cause notice on the basis of allegation of misbehavior/threatening alleged by the then chairman, Vice Chairman and Executive officer of the Barpeta Road Municipal Board.

(iii) The entire proceeding shall be completed within a period of six months from the date of receipt of the certified copy this order.

(iv) The petitioner shall participate in the proceeding and the petitioner

shall not create any inappropriate situation during the departmental enquiry.

(v) The petitioner is hereby reinstated in service for the purpose of the de-novo proceeding; however, he shall continue to remain under such suspension during pendency of the departmental proceeding.

(vi) The petitioner shall be entitled for the subsistence allowance during such period of suspension.

(vii) In the aforesaid terms, this writ petition is disposed of however, no order as to cost."

5. Pursuant thereto, the petitioner approached the authorities and submitted his representation requesting release of subsistence allowance.

6. In terms of the directions of this Court vide order dated 20.12.2021, passed in W.P(C) No. 1710/2017, a Show-cause notice dated 13.05.2022 was issued to the petitioner. Petitioner replied to the allegations made in the show-cause Notice by his reply dated 15.05.2022. Meanwhile, the Board approached this Court by filing an interlocutory application seeking extension of time for concluding the enquiry proceedings which was directed to be concluded by this Court within six months from the date of the order passed by the Co-ordinate Bench. By order dated 30.11.2022 passed in I.A(Civil) No. 1801/2022, this Court allowed the extension of time prayed for by the Municipal Board and directed the Board to complete and comply with the directions of this Court passed earlier vide order dated 20.12.2021 in WP(C) No. 1710/2017. The enquiry was directed to be concluded by 16.12.2022. Since the enquiry was not completed in terms of the directions issued by the court, the petitioner had also approached this court seeking exercise of contempt jurisdiction by filing Cont. Case(C) No. 784/2022. Thereafter, the enquiry report was submitted by the Executive Officer, Barpeta Road Municipal Board before the Chairman, Barpeta Road Municipal

Board and a copy thereof was furnished to the petitioner.

7. In terms of the enquiry report which is available in the pleadings before this Court, the enquiry officer held that the charges against the petitioner have been held to be proved. The enquiry report was furnished to the petitioner by an enclosure to a show-cause notice dated 01.02.2023 whereby the petitioner was asked to show-cause as to why the petitioner should not be dismissed from service. In response thereto, the petitioner has filed a show-cause reply dated 07.02.2023. Thereafter, the petitioner has also approached this Court by filing WP(C) No 808/2023 challenging the said enquiry report. This Court by judgment dated 15.02.2023 disposed of the writ petition without interfering with the enquiry report or the enquiry proceedings inasmuch as this Court came to a finding that the appropriate authority was yet to take a decision on the basis of the enquiry report furnished. It may be mentioned here that the petitioner had also filed an application before the competent authority seeking review of the entire proceedings and to reinstate the petitioner in service. Thereafter, by order dated 27.02.2023, the petitioner was dismissed from service effect from 27.02.2023. This order was passed pursuant to the resolution No.6 (Six) adopted by the Barpeta Road Municipal Board in its meeting held on 24.02.2023, Being aggrieved, the present writ petition has been filed.

8. Mr. U.K. Nair, learned Senior Counsel leading the arguments for the petitioner submits that the respondent authorities have deliberately flouted the directions passed by the Court in the earlier round of litigation. Referring to the enquiry report, Mr. Nair submits that a bare perusal of the enquiry report reveals that no opportunity was granted to the petitioner to cross-examine the witnesses. The learned senior counsel for the petitioner submits that from the enquiry report, it is evident that one of the witnesses, namely the then Chief

Executive Officer, who was not present during the enquiry proceedings, his statements were recorded by the enquiry officer at his present place of posting instead of summoning the said witness to the place where the Enquiry was conducted. Other witnesses have stated that they reiterated their statements made during the enquiry conducted earlier. Nowhere in the enquiry report, is it evident that an opportunity of cross-examination of the witnesses on the basis of which the enquiry officer conducted the enquiry, was afforded to the petitioner. Under such circumstances, it is submitted that the enquiry so conducted was in blatant violation of the basic principles of natural justice and this cannot be considered to be any enquiry in the eye of law. Mr. Nair also submits that in the scheme of the Municipal Act, there is no specific provision for an appeal to be preferred against orders passed by the Board. Under such circumstances, he submits that the enquiry proceedings and consequential order of dismissing be set aside and the petitioner be directed to be reinstated in service.

9. Mr. D. Mazumdar, learned Senior Counsel and Addl. Advocate General, Assam appearing for the Board submits that there is a provision for an appeal which the petitioner did not resort to before approaching this court. Referring to section 50 (2) of the Assam Municipal Act, 1956, he submits that there is a statutory provision for an appeal against orders passed by the Officers of the board. The petitioner ought to have approached the appellate authority which is the Government and having not done so the writ petition should be dismissed permitting the petitioner to approach the appellate authority. He further submits that in the earlier round of litigation, there was no challenge made to the procedure adopted or to the Articles of charges against the petitioner. Under such circumstances, only on the ground of violation of natural justice, the writ

petition was allowed and the enquiry was directed to be held de-novo and the petitioner was directed to be placed under suspension during the pendency of the departmental proceedings. He submits that there is no infirmity in the enquiry conducted nor in the order of dismissal arrived at by the Board. Under such circumstances, he submits that there is no merit in the writ petition and the writ petition should be dismissed as being devoid of any merit.

10. Having heard the learned counsels from the parties and upon due and careful perusal of the pleadings on record, this Court finds that the enquiry report itself prima facie reflects that the enquiry conducted did not give adequate opportunity to the petitioner to cross-examine the witnesses. The witnesses had relied upon their earlier statements made before the enquiry conducted earlier. In respect of the former Chief Executive who was also the witness to the incident against which the enquiry has been conducted. The enquiry report recorded the following findings:

“On the other hand Manoj Kumar Sikaria could not present for his previous appointment in other Govt. duty. Therefore, the undersigned went to his Office at Barpeta Zila Parisad and he also stated to retain his previous statement. (Enclosed- 10 Gha- 2 Nos. of Pages)”

11. Such findings arrived at by the enquiry officer reveals very clearly that there was no opportunity afforded to the petitioner to cross-examine the witnesses or question the documents relied upon by the respondent Board.

12. Under such circumstances, the enquiry concluded by the enquiry officer cannot be accepted to be an enquiry in the eye of law. It is submitted by the learned counsel for the respondent that although there is no fixed set of Rules for conducting the enquiry, the Board generally adopts the procedure prescribed under the Assam (Discipline and Appeal) Rules 1964. If that be so, there is a

detailed prescription under the said Rules as to the procedure required to be adopted for any enquiry conducted. In so far as the statutory provision of an appeal is concerned, it is well settled that alternative remedy is not an absolute bar for invoking powers under judicial review by a writ Court. That apart, the power of appeal as prescribed under section 50(2) of the Municipal Boards Act is in respect of orders being passed by the Chairman or the Vice Chairman against which appeals lie before the appropriate department. The Rules are silent in respect of orders being passed or adopted by the Board itself.

13. Under such circumstances, this Court is of the considered view that the prayers made for interfering with the enquiry being conducted and the consequential orders passed will have to be allowed.

14. Accordingly, the enquiry conducted by the Municipal Board and furnished to the petitioner by way of the show-cause notice dated 01.02.2023 is interfered with. The consequential order dated 27.02.2023 dismissing the petitioner from service pursuant to the enquiry conducted is also interfered with.

15. The matter is remanded back to the Municipal Board to conduct a de-novo enquiry in respect of the allegations made against the petitioner. The petitioner will be deemed to be in service but under suspension with effect from the date of the order of dismissal, which is 27.02.2023. All dues including subsistence Allowance payable to the petitioner should be released by the authorities.

16. The De-novo enquiry directed to be conducted by the authorities should be completed within a period of 90 (Ninety) days from the date of receipt of a certified copy of this order.

17. The petitioner will be allowed opportunities as per the provisions of law to participate in the enquiry proceedings now directed to be conducted de-novo.

Any such order that is passed, needless to say, copies thereof will be furnished on the petitioner.

18. The writ petition stands allowed in terms of the above.

19. Records have been perused be returned.

JUDGE

Comparing Assistant