

GAHC010065232023



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

Case No. : WA/144/2023

THE MANAGEMENT OF APOLLO HOSPITAL GUWAHATI
UNIT INTERNATIONAL HOSPITAL,
A UNIT OF ASSAM HOSPITALS LTD. LOTUS TOWER,
G.S. ROAD, CHRISTIAN BASTI, GUWAHATI-781005,
REP. BY ITS UNIT HEAD MR. ABHIJIT SINGH

VERSUS

KAKUMONI BHUYAN AND ANR. E
HOUSE NO. 8, NEAR GOPAL KRISHNA NAMGHAR,
RUKMINIGAON, P.O. KHANAPARA, GUWAHATI-781022

2:THE PRESIDING OFFICER
LABOUR COURT
ASSAM GUWAHATI
M.G. ROAD
DEPUTY COMMISSIONERS OFFICE COMPLEX
2ND FLOOR GUWAHATI-78100

For the appellant : Mr. K.N. Choudhury, Senior Advocate
Mr. S. Rabha, Advocate

For the respondents : Mr. S. Chakraborty, Advocate

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

15-05-2023

S. Mehta, C.J.

By way of the instant intra-Court writ appeal, the appellant seeks to question the legality and validity of the order dated 16.02.2023 passed by the learned Single Judge in WP(C) 3406/2020 whereby, the challenge laid by the appellant/writ petitioner to the award dated 11.03.2020 passed by the Labour Court, Assam, Guwahati in Reference Case No.1/2019 was turned down. By the said award, the learned Labour Court set aside the order of termination from service of the respondent No.1 herein dated 23.06.2018 issued by the appellant management and a direction was given to the appellant to reinstate the employee with the arrears of all benefits, including the back wages.

2. Mr. K.N. Choudhury, learned Senior Counsel representing the appellant, urged that the Labour Court acted with gross deference to the settled principles of administrative law whilst answering the reference in favour of the respondent/work-lady. The appellant got conducted a domestic enquiry for grave charges attributed to the respondent/work-lady but as the enquiry report was suffering from some procedural irregularities/technical defects, the same was not relied. The management examined two witnesses in support of the charge of grave misconduct attributed to the respondent/work-lady. He contended that both witnesses of management gave reliable evidence to establish the charges and the Labour Court was totally unjustified in brushing aside their evidence. It was also urged that the learned Labour Court was under an obligation to record independent findings of facts on each issue before arriving at a conclusion that the order of termination was bad. Mr. Choudhury further

submitted that even if there were some procedural irregularities in the process leading to the issuance of order of termination, the management deserves liberty to proceed afresh against the respondent/work-lady after serving a fresh charge memo because the allegations set out in the charge memo pertain to grave acts of misconduct/insubordination. He thus, implored the Court to accept the appeal; reverse the impugned orders; and grant liberty to the appellant to conduct a fresh domestic enquiry against the respondent/work-lady.

3. *Per contra*, Mr. S. Chakraborty, learned counsel representing the respondent/work-lady vehemently controverted the submissions advanced by the learned senior counsel representing the appellant urging that the conclusions drawn by the learned Labour Court on Issue No.2 are intrinsically interconnected with the findings of facts recorded *qua* Issue No.1 and hence, there is no shortcoming in the impugned order. He urged that it was not even disputed by the appellant management that there was a failure on its part to serve a proper memo of charge on the respondent/work-lady and that the report of domestic enquiry was unreliable. Despite that opportunity was given to the management to lead fresh evidence before the Labour Court, but it failed to avail this opportunity by adducing legally admissible evidence so as to bring home the charges. He thus, contended that there is no reason to interfere with the well-reasoned award of the Labour Court which has been affirmed by the learned Single Judge while exercising high prerogative writ jurisdiction.

4. We have considered the submissions advanced at Bar and gone through the material placed on record. We have also perused the orders under challenge. The foundation of allegations attributed by the appellant management to the respondent/work-lady was that she had circulated certain offensive SMS/MMS to the higher-ups in the management thereby bringing disrepute to the hospital. Intimidating/threatening voice messages, pictures and text messages were sent to the

HR Head in the months of December, 2017 and April, 2018. Admittedly, the appellant management did not rely upon its domestic enquiry report in the proceedings instituted on reference to the Labour Court presumably because it was defective. Nonetheless the management was given opportunity to lead fresh evidence before the Labour Court. Two witnesses were examined so as to establish the charges attributed to the respondent work-lady. However, the mandatory requirement of proving the alleged intimidating messages/electronic communications by the accompanying certificate mandated under Section 65 B of the Indian Evidence Act, 1872 was not followed and hence, the Labour Court concluded that the management did not provide reliable admissible proof in support of the messages which formed the foundation of the charges.

5. We have been taken through the statements of the two witnesses examined before the Labour Court. The affidavit of Sri Sabyasachi Roy, HR Head, who was the principal target of the messages, did not narrate the contents of the so called threatening messages in his affidavit. Since neither any elaboration was made regarding the contents/text of the messages in the affidavit of the concerned witnesses nor were the messages proved by bringing on record the mandatory certificate as required under Section 65 B of the Indian Evidence Act, 1872, apparently, there was no legal proof on record of the reference proceedings so as to affirm the charges.

6. As a consequence, we are of the firm view that the learned Labour Court was absolutely justified in answering the reference in favour of the respondent/work-lady. The findings so recorded by the Labour Court have been affirmed by the learned Single Judge after an apropos appreciation of material available on record. As the findings of facts recorded by the learned Labour Court have been further affirmed by the learned Single Judge, this Court would be loath to interfere with such concurrent findings of facts while exercising intra-Court appeal jurisdiction. Hence, the writ appeal

fails and is dismissed being devoid of merit.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant