

GAHC010079572023



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

Case No. : WP(C)/2204/2023

PRASANNA JYOTI BORTHAKUR
S/O LATE BIPIN CH. BORTHAKUR, R/O AMGURI TOWN, WARD NO. 10, P.O.
AND P.S.-AMGURI, DIST-SIVASAGAR, ASSAM, PIN-785680

VERSUS

STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
URBAN DEVELOPMENT, DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF MUNICIPAL ADMINISTRATION
DISPUR
GUWAHATI-781006

3:AMGURI MUNICIPAL BOARD
REPRESENTED BY THE CHAIRMAN
P.O. AND P.S.-AMGURI
DIST-SIVASAGAR
ASSAM
PIN-785680

4:THE EXECUTIVE OFFICER
AMGURI MUNICIPAL BOARD
P.O. AND P.S.-AMGURI
DIST-SIVASAGAR
ASSAM
PIN-78568

Advocate for the Petitioner : MR H RAHMAN

Advocate for the Respondent : MRS. S. BARUAH

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 02-06-2023

Heard Mr. H. Rahman, the learned counsel appearing on behalf of the Petitioner and Mrs. S. Baruah, the learned counsel appearing on behalf of the Respondent Nos. 1, 2 and 4.

2. This Court vide an order dated 28.04.2023 had issued notice making it returnable today i.e. on 02.06.2023. This Court further directed that the service upon the Respondent No.3 be affected by way of Registered Post with A/D as well as through usual process. This Court further granted the liberty to the Petitioner to effect service upon the Respondent No.3 by way of dasti routed through the Registry of this Court and file an affidavit of service on or before the next date.

3. It appears from the Office Notes that the notice by Registered Post was issued on 04.05.2023. It further appears from the Track Consignments that the said notice was duly delivered upon the Respondent No.3 on 15.05.2023 and in that regard, there is an order of Lawazima Court that the service upon the Respondent No.3 was duly affected by way of Registered Post on 15.05.2023. Apart from the above, it is also apparent that the Petitioner also took steps by way of dasti and served notice on 08.05.2023 which is evident from the endorsement so made in Annexure-14 of the Affidavit of Service. The same is further proved by the affidavit so filed by the Petitioner on 16.05.2023 that the service was duly affected upon the Respondent No.3. However the Respondent

No.3 has chosen not to appear before this Court today.

4. In the backdrop of the above, this Court takes up the instant writ petition for disposal. It appears from the records that the Petitioner herein was issued a Show Cause notice on 14.02.2017 by the Chairman of the Respondent No.3. Pursuant thereto, on 15.02.2017, the Petitioner submitted the reply to the said Show Cause notice. It further appears from Annexure-6 to the writ petition that the Respondent No.3 for the reasons assigned therein suspended the Petitioner from the services w.e.f. 20.02.2017. Thereupon, it is the case of the Petitioner that there was no departmental/disciplinary proceedings initiated and vide an order dated 24.03.2020 on the basis of the decision taken by the Board of Respondent No.3, the Petitioner was discharged from the post of the Accountant with immediate effect for embezzlement of the Board's funds and destruction of Board's property. The Petitioner thereupon on 30.07.2020 filed an Appeal before the Principal Secretary, Urban Development Department. The Joint Secretary to the Government of Assam, Urban Development Department issued a communication on 26.02.2021 to the Executive Officer of the Respondent No.3 thereby requesting for reinstatement of the Petitioner as per Section 50 of the Assam Municipal Act, 1956. Subsequent thereto, vide another communication issued on 26.10.2021 to the Executive Officer of the Respondent No.3 issued by the Director of Municipal Administration, the Executive Officer of the Respondent No.3 was requested to take necessary action as per the Government order mentioned dated 26.02.2021 regarding the matter of reinstatement of the Petitioner along with another to their original post for the interest of Amguri Municipal Board. It is relevant to take note of that in the said order there is reference to a communication issued by the Executive Officer of Amguri Municipal Board dated 27.01.2021 that the reinstatement of the two employees

were necessary for the interest of functioning of the Board and the same will also ensure recovery of the lost assets of the Board as per the Assam Municipal Act, 1956.

5. This Court upon perusal of the materials on record and upon hearing the learned counsels for the parties, finds it relevant to take note of that on one hand the Chairman of the Respondent No.3 had vide the communication dated 14.02.2017 asked the Petitioner to Show Cause as to why departmental disciplinary action should not be initiated against the Petitioner and why the Petitioner should not be suspended from the job for the reasons mentioned in the said Show Cause notice. Nothing can also be inferred from the said Show Cause that the Petitioner would put to such punishment. The Petitioner replied to the same on 15.02.2017. Vide the order dated 20.02.2017, the Respondent No.3 only took the decision to suspend the Petitioner w.e.f. 20.02.2017 with a further decision that the Respondent No.3 shall provide the Petitioner the salary and allowances as per the Government Rules during the suspension period. There is no materials on record which would show that there was any disciplinary proceedings thereupon initiated against the Petitioner. This aspect of the Petitioner has also not been controverted by the Respondent No.3 by appearing before this Court in spite of service of notice.

6. Be that as it may, vide the order dated 24.03.2020, the Petitioner herein was discharged from the post of Accountant with immediate effect for embezzlement of the Boards own fund and destruction of Boards property.

7. At this stage, this Court finds it relevant to take note of that it is no longer res-integra that when an action is taken which has civil consequences, the principles of natural justice at least has to be followed. The Show Cause Notice

issued on 14.02.2017 nowhere speaks about what penalties are to be imposed. It merely has been issued as to why departmental proceedings should not be initiated against the Petitioner and why the Petitioner should not be suspended. Therefore the said Show Cause notice under no circumstances can be taken into account as a Show Cause notice issued for the purpose of passing the order dated 24.03.2020.

8. It further appears that pursuant to the order dated 26.02.2021 issued by the Joint Secretary to the Government of Assam, Urban Development Department, the Director of Municipal Administration have also requested the Executive Officer, Amguri Municipal Board to take necessary action for reinstatement of the Petitioner along with another to their original post for the interest of Amguri Municipal Board. It is relevant to take note of that the said order dated 26.10.2021 was issued taking note of the communication issued by the Executive Officer of the Respondent No.3 dated 27.01.2021 wherein also it was stated that reinstatement of the two employees including the Petitioner is one of them are necessary for the interest of proper functioning of the Board and the same would also ensure recovery of the lost assets of the Board as per the Assam Municipal Act, 1956. In spite of the above, the Petitioner was not reinstated.

9. This Court taking note of that the actions of the Respondent No.3 violates the principles of natural justice which in effect renders the action of the Respondent No.3 Board to be arbitrary and unreasonable and accordingly in violation of Article 14 of the Constitution therefore sets aside the Office Order dated 24.03.2020 whereby the Petitioner herein was discharged from the post of the Accountant with immediate effect for the reasons assigned therein.

10. Accordingly, this Court therefore directs the Respondent No.3 to reinstate the Petitioner upon a certified copy of the instant order being served upon the Executive Officer of the Respondent No.3.

11. Before concluding, this Court further takes note of the submission of Mr. H. Rahman, the learned counsel for the Petitioner that the Petitioner is entitled to various dues. This Court is of the opinion that as the entitlement of the Petitioner to the dues is subject to certain verification as well as certain recoveries to be made as could be seen from the orders of the Director of Municipal Administration dated 26.10.2021, this Court therefore directs the Respondent No.3 to take a decision in the matter within a period of 2 (two) months from the reinstatement of the Petitioner as directed hereinabove.

12. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant