

GAHC010120132012



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

Case No. : WP(C)/164/2012

AJIT CHETIA
S/O LT. DINANATH CHETIA, VLL. BHEHPARA, PO. DHEMAJI, P.S. DHEMAJI,
DIST. DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE PRINCIPAL SECY, PANCHAYAT and RURAL DEVELOPMENT
DEPTT, DISPUR, GUWAHATI-6, ASSAM.

2:THE SECY. TO THE GOVT. OF ASSAM

PUBLIC HEALTH ENGINEERING DEPTT
DISPUR
GHY-6

3:THE COMMISSIONER

PANCHAYAT AND RURAL DEV
PANJABARI
JURIPUR
GUWAHATI-37
ASSAM

4:THE DY. COMMISSIONER

DHEMAJI
DIST. DHEMAJI
ASSAM

5:THE CHIEF EXECUTIVE OFFICER

DHEMAJI ZILA PARISHAD
DHEMAJI
ASSAM

6:THE PROJECT DIRECTOR

DRDA
DHEMAJI
DIST. DHEMAJI
ASSA

Advocate for the Petitioner : MR.D DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 16.05.2023

Heard Mr. A. Gohain, the learned counsel appearing on behalf of the petitioner and Mr. K. Konwar, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 3, 5 and 6. I have also heard Mr. D. Gogoi, the learned Standing counsel appearing on behalf of the respondent No.2 and Mr. A. Chakraborty, the learned Standing counsel appearing on behalf of the respondent No.4.

2. The instant writ petition has been filed challenging the order dated 29.11.2011 as well as the order dated 20.12.2011. It is relevant to take note of that in the order dated 29.11.2011, the Principal Secretary to the Government of Assam, Panchayat and Rural Development Department had mentioned that an amount of Rs.54,000/- was misappropriated by the petitioner through payment made against false MR to the contractor. A direction was issued to recover the said amount from the petitioner. Subsequent to the order dated

29.11.2011, the Chief Executive Officer of the Dhemaji Zilla Parishad had further directed the petitioner to refund the amount of Rs.54,000/- within 7 (seven) days from the date of receipt of the letter without fail.

3. The learned counsel for the petitioner submitted that in terms with Assam Services (Discipline and Appeal) Rules, 1964 (for short "the Rules of 1964") the major and minor penalties have been specifically mentioned in Rule 7. The learned counsel for the petitioner drawing the attention of this Court to Rule 7(iii) of the Rules of 1964 submits that the penalty for recovery of any amount has to be done on the basis of an enquiry held in terms with Rule 9 of the Rules of 1964. However, without any enquiry as envisaged under Rule 9, the impugned orders have been issued by the respondent No.1 as well as the respondent No.5 and as such the said orders are liable to be interfered with.

4. It appears on record that there is an affidavit filed by the respondent No.5 on 02.08.2012. From a perusal of the affidavit, it does not transpire that there was any enquiry held in terms with Rule 9 to inflict the punishment under Rule 7(iii) of Rules of 1964 upon the petitioner. Taking into account that it is the mandate of the provisions of the Rules of 1964, more particularly Rule 9 that no penalty specified under Rule 7 shall be passed except after an enquiry held as far as practicable in the manner laid in Rule 9, the impugned orders dated 29.11.2011 issued by the respondent No.1 as well as the order dated 20.12.2011 issued by the respondent no.5 are set aside and quashed.

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

6. Before parting with the records, this Court deems it appropriate to observe

that the setting aside of the orders impugned in the instant proceedings by this Court shall not preclude the Department to take such action as deemed proper in terms with the Rules of 1964.

JUDGE

Comparing Assistant