

GAHC010120872023



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

Case No. : WP(C)/3259/2023

ABUL KALAM BARBHUIYA
S/O- LATE MOYUB ALI BARBHUIYA, VILL.- ALGAPUR PART-II, P.O.
KALIBARI BAZAR, P.S. ALGAPUR, DIST. HAILAKANDI, ASSAM, PIN-
788150.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
GUWAHATI-37.

3:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY
KARIMGANJ SETTLEMENT ROAD
DIST. KARIMGANJ
ASSAM
PIN- 788712.

4:THE BLOCK DEVELOPMENT OFFICER
DULLAVCHERRA DEVELOPMENT BLOCK
P.O. DULLAVCHERRA
DIST. KARIMGANJ
ASSAM
PIN- 788736.

5:SIDDIQUE AHMED
HONBLE MEMBER OF LEGISLATIVE ASSEMBLY (MLA)
SOUTH KARIMGANJ
VILL.- DHALOPAR
P.O.ASHALKANDI
P.S. PATHERKANDI
DIST. KARIMGANJ
ASSAM
PIN-788723.

6:KRIPANATH MALLAH
HONBLE MEMBER OF PARLIAMENT (MP) LOK SABHA
VILL. AND P.O. BAIDYANAGAR
P.S. RAMKRISHNA NAGAR
DIST. KARIMGANJ
PIN- 788734

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 07/06/2023

Heard Mr. S. B. Laskar, learned counsel for the writ petitioner. Also heard Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department, Assam, appearing for the respondents.

The writ petitioner was engaged as an Accredited Engineer (Diploma Holder) by the Project Director, District Rural Development Agency (DRDA), Karimganj, vide order dated 18/11/2010 on contractual basis and since then, he was serving in the aforesaid post. By the order dated 05/11/2022, the contractual service of the petitioner has been terminated on the ground of alleged irregularities committed by him without giving the petitioner an opportunity of being heard in the matter.

Mr. Laskar submits that similar matters have been disposed of by this Court by judgement and order dated 01/06/2023 by interfering with the similar orders of termination from service and remanding the matter for proceeding afresh after giving the petitioner an opportunity of being heard in the matter. Since the impugned order dated 05/11/2022 is stigmatic and is based on allegation of misconduct, a similar order be passed in this case as well.

The learned departmental counsel has also admitted in his usual fairness that the petitioner's case would be covered by the order dated 01/06/2023 passed by this Court in WP(C) 1785/2022 and the connected writ petitions and, therefore, he would have no objection if a similar order is passed in the present case as well.

This is to be noted herein that aggrieved by similar orders of termination issued by the Department without giving an opportunity to the contractual employees to show cause, a number of writ petitions were preferred before this Court, which were disposed of by this Court by order dated 01/06/2023 by making the following observations and directions :-

“The order of termination from service issued to the petitioner has the trappings of an order of dismissal/removal from service. Therefore, such an order could not have been issued without giving the employee an opportunity of being heard, even if the same pertains to a temporary and / or contractual employee. This is for the simple reason that such an action, besides causing serious prejudice to the interest of the employee, would also have a bearing on the prospect of his future employments.

Situated thus, this Court is of the unhesitant opinion that the order of termination dated 30/10/2021 is unsustainable in the eyes of law. Therefore, the same is set aside. The respondents are directed to reinstate the petitioner back in service within 10(ten) days from the date of receipt of a certified copy of this order. After reinstatement of the petitioner, it would be open for the respondents to proceed against him, in accordance with law, by serving proper notice indicating specific charges brought against the petitioner.

In doing so, it would also be open to the department to place the petitioner under suspension pending drawal/conclusion of the departmental proceeding, if so advised. However, in such an event, the petitioner will be paid subsistence allowance. The authorities shall also

strictly comply with the requirement of the Rules as well as Principles of Natural Justice while conducting the enquiry."

Since there is no dispute about the fact that the case of the writ petitioner is also similar and hence, covered by the aforesaid judgement and order dated 01/06/2023, this writ petition is also disposed of by setting aside the order of termination dated 05/11/2022 by giving similar liberty to the department to proceed afresh against the petitioner by serving proper notice upon him. In the meantime, upon reinstatement of the petitioner back in service, it will be open for them to place the petitioner under suspension pending drawal/conclusion of the departmental proceeding.

With the above observations, this writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant