

GAHC010122012023



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

Case No. : WA/211/2023

BARBIE HAZARIKA
WIFE OF SRI LAKHINANDAN GOGOI, RESIDENT OF TOWER 2A, FLAT 4C,
UTTARAYAN VILLE, GANESH TURNING, KAHILIPARA, GUWAHATI- 781019.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM, PERSONNEL (A) DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL(A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL(A) DEPARTMENT
DISPUR
GUWAHATI- 781006

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 28.06.2023

(A.M. Bujor Barua, J)

Heard Mr. J. Patowary, learned counsel for the appellant and Ms. M. Bhattacharjee, learned Addl. Senior Government Advocate for the respondents No. 1, 2 and 3, being the authorities in the Personnel (A) Department of the Government of Assam.

2. An order dated 04.04.2023 of the Secretary to the Government of Assam in the Personnel (A) Department was assailed in WP(C) No. 2379/2023. By the judgment and order dated 08.05.2023, the writ petition stood dismissed. Being aggrieved, this writ appeal is instituted.

3. By the order dated 04.04.2023, in respect of a disciplinary proceeding initiated against the appellant, the Inquiring Officer namely, Smt. Binita Pegu, IAS, State Enquiry Officer, Assam who was appointed as the Inquiring Officer to hold an enquiry in the disciplinary proceeding against the appellant was removed as the Inquiring Officer and in her place, Shri Jadav Saikia, IAS, Secretary to the Government of Assam, Personnel Department was appointed as the Inquiring Officer. In paragraph 3 of the order dated 04.04.2023, it was provided that the disciplinary authority was of the opinion that the disciplinary proceeding had not progressed much and had exceeded the timelines for completion of the disciplinary proceeding and accordingly, it was deemed necessary to appoint another Inquiring Officer by replacing the earlier Inquiring Officer.

4. The learned Single Judge in the judgment and order dated 08.05.2023 in

WP(C) No. 2379/2023, in paragraph 17 thereof, expressed the opinion that the submission of the petitioner by relying upon the proposition laid down by the Hon'ble Supreme Court in *K.R. Deb Vs. the Collector of Central Excise, Shillong, reported in (1971) 2 SCC 102*, was misconceived and further the learned Single Judge was of the view that the disciplinary authority would be within its own authority to replace the Inquiring Officer and in such event, the delinquent employee will have no legal right to assail the change of the Inquiring Officer.

5. Although we are not in complete agreement of the said conclusion that the disciplinary authority would be within its authority to replace the Inquiring Officer and the delinquent employee will have no right to challenge the change in Inquiring Officer inasmuch as, the said opinion is circumstantial rather than absolute and it cannot be ruled out that the delinquent official under no circumstance can challenge the change of the Inquiring Officer. However, in the instant appeal, we required the learned counsel for the appellant to make their submission as to under which provision of law or in what manner the appellant would be prejudiced if the change of Inquiring Officer is allowed to remain.

6. No acceptable answer is forthcoming and in fact it is the submission of Ms. M. Bhattacharjee, learned Addl. Senior Government Advocate for all the respondents that the proposition of the law as to whether an Inquiring Officer can be changed or it cannot be changed, had not been conclusively decided. However, on the other hand as no prejudice could be cited by the appellant upon the change of the Inquiring Officer and further as there is no allegation of mala fide, biasness or any other allegation against the change in the Inquiring Officer or as a result of the change of the Inquiring Officer any prejudice had been caused to the appellant, no reason can be attributed to warrant any interference with the change of the Inquiring Officer.

7. Mr. J. Patowary, learned counsel for the appellant points out that in the order dated 04.04.2023 itself, it had been provided that the Inquiring Officer shall submit the report within six weeks without fail but on the other hand, the new Inquiring Officer Shri Jadav Saikia, IAS, Secretary to the Government of Assam, Personnel Department had issued a communication dated 17.06.2023 to the Secretary to the Government of Assam, Act East Policy Affairs Department, Dispur, Guwahati, informing that the next date fixed for the inquiry in the departmental proceeding was fixed on 23.06.2023, which itself is in aberration of the provision of the order dated 04.04.2023 that the new Inquiring Officer shall submit the report within a period of six weeks without fail.

8. In view of the above, the newly appointed Inquiring Officer is directed to strictly comply with the requirement of the order dated 04.04.2023 to complete and submit the inquiry report within a period of six weeks. As the said requirement had already been failed by the new Inquiring Officer and his conduct appears to be contrary to para 3 of the order dated 04.04.2023 and that the earlier Inquiring Officer was changed because the said officer could not maintain the timeline, it appears that the new Inquiring Officer is also at a same fault of not adhering to any timeline. The new Inquiring Officer is put to strict notice of the said aspect.

9. It is stated that the appellant being a lady officer is presently on the family way and therefore, has an urgent requirement that the proceedings drawn be completed at the earliest.

10. Considering the matter in its entirety, the respondents in the Personnel (A) Department of the Government of Assam through the Principal Secretary is directed to take personal interest in the completion of the disciplinary proceeding against the appellant at the earliest and also ensure that the

Inquiring Officer do the necessary work as required by the order dated 04.04.2023, by which he was appointed.

11. It is to be understood that if the appellant is under suspension under the law, she is entitled to payment of subsistence allowance as admissible. The respondents are also directed to ensure that the timely payment of subsistence allowance is made to the appellant.

12. Accordingly, writ appeal stands disposed of as indicated above.

13. A copy of the communication dated 17.06.2023 of the new Inquiring Officer is kept on record.

J U D G E

J U D G E

Comparing Assistant