

GAHC010141522023



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

Case No. : WP(C)/3753/2023

MANATOSH PAUL
S/O MONORANJAN PAUL, VILL-DULLAVCHERRA BORBAZAR, P.S.-
RATABARI, DIST-KARIMGANJ

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO PANCHAYAT
AND RURAL DEPARTMENT, GOVERNMENT OF ASSAM, DISPUR,
GUWAHATI-781006

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
GUWAHATI-37

3:THE DEPUTY COMMISSIONER
KARIMGANJ
DIST-KARIMGANJ
ASSAM
PIN-788701

4:THE CHIEF EXECUTIVE OFFICER
KARIMGANJ ZILLA PARISHAD
P.S. AND DIST-KARIMGANJ
ASSAM

5:THE BLOCK DEVELOPMENT OFFICER
DULLAVCHERRA
DIST-KARIMGANJ
ASSAM
PIN-788736

6:DISTRICT RURAL DEVELOPMENT AGENCY
KARIMGANJ
DIST-KARIMGANJ
ASSAM REPRESENTED BY THE PROJECT DIRECTOR

7:PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
KARIMGANJ
DIST-KARIMGANJ
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

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

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 27-06-2023

Heard Mr. M.A. Choudhury, learned counsel for the writ petitioner. Also heard Mr. P. Handique, learned standing counsel, P&RD Department, Assam appearing on behalf of respondent Nos. 1, 2, 4, 5, 6 and 7 as well as Ms. M.D. Bora, learned Govt. Advocate, Assam appearing on behalf of respondent No. 3.

This writ petition has been filed assailing the order dated 14-03-2023 issued by the Commissioner of P&RD Department, Assam terminating the contractual service of the petitioner on the ground that his continuance in service was embarrassing for the employer. The impugned order was apparently issued by invoking Clause-9 of the contract agreement which permits such a recourse if the employee is *inter-alia* found to be involved in any act that may become embarrassing to the employer. It is to be noted

herein that the writ petitioner was engaged on contractual basis by order dated 30-04-2010 to function as Gram Rojgar Sahayak. He had joined service accordingly and was continuing till such time, the impugned order dated 14-03-2023 was issued. It appears that an FIR was lodged by one Imtaz Uddin with the Officer-in-Charge of Ratabari Police Station alleging that the persons named therein were responsible for depriving his brother, who is a differently abled person, from allotment of house under PMAY scheme so as to favour another villager in lieu of money. Based on the aforesaid FIR, Ratabari P.S. Case No. 279/2022 was registered and the petitioner was also arrested on 05-03-2023 although he was not named in the FIR. He remained in judicial custody till 18-03-2023 whereafter, the petitioner was released on bail. It is in the aforesaid backdrop that the impugned order was issued without serving show-cause notice upon the petitioner.

Mr. Choudhury, learned counsel for the petitioner submits that the case of his client is squarely covered under the judgment and order dated 01-06-2022 passed by this Court in W.P.(C) No. 2977/2023 whereby (***Ali Ahmed Barbhuiya Vs. State of Assam & Ors.***) order of termination from service of a similarly situated employee, whose contractual services were terminated without serving any prior notice, was set aside by this Court.

Responding to the above, Mr. Handique submits that in the case of Ali Ahmed Barbhuiya (Supra) this Court had observed that the order of termination was stigmatic. It was on such ground that the order of termination was interfered with and the matter was remanded back for a fresh decision after serving prior notice upon the employee. However, according to Mr. Handique the present is not a case where the order of

termination is stigmatic.

In order to evaluate the submissions made at the bar, this Court had carefully examined Clause-9 of the contract agreement as well as the order of termination dated 14-03-2023. As noted above, the order of termination clearly mentions that continuance of the petitioner in the backdrop of his arrest and detention in connection with Ratabari P.S. Case No. 279/2022 was found to be embarrassing for the employer. It must be borne in mind that mere arrest of a person in connection with a police case does not declare him to be a criminal or guilty of committing any offence. Until and unless a charge-sheet is submitted, it cannot be said that there is a criminal proceeding pending against that person. Moreover, it is the salutary principle of law that every person should be presumed to be innocent unless found to be guilty by the Court of law.

In the Case of ***Ali Ahmed Barbhuiya (Supra)*** this Court had dealt with a similar matter wherein, the order of termination of service was issued without serving any prior notice. It was found that the order of termination, which mentions about misconduct on the part of the petitioner based on a domestic enquiry conducted behind his back, was stigmatic on the face of the record. On such basis, this Court had set aside the order of termination and disposed of the writ petition with following observations:-

“It is no doubt correct that in case of a contractual engagement, the terms and conditions of the contract would govern by the service conditions of the employee. In the present case, the contract agreement signed by the petitioner does have a clause permitting termination of the contract at any point of time if the services rendered by the contractual staff was not found to be satisfactory. However, what is to be noted herein that bare perusal of the impugned order of termination demonstrates on the face of the record that the same was issued on the basis of findings of the enquiry proceeding conducted behind the back of the

petitioner wherein, it had been projected that the petitioner was guilty of misconduct. Therefore, the order of termination of service of the petitioner dated 30/10/2021 is not only based on allegation of misconduct but the same is also stigmatic on the face of the records. In other words, the impugned order of termination dated 30/10/2021 was founded on allegation of misconduct. However, the petitioner was not given any opportunity of being heard in the matter. Therefore, it is a clear case where the respondents have acted in violation of the Principles of Natural Justice.

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.

On conclusion of the enquiry, it would be open to the department to pass appropriate order, as may be deemed necessary, in the facts and circumstances of the case.

Writ petition stands allowed to the extent indicated above."

In the instant case also, the mere use of expression "embarrassing for the employer" used in the backdrop of the narration made in the order referring to the

registration of a police case and his arrest made in connection with the same clearly points at a sinister image of the petitioner, thereby casting a stigma upon him. Therefore, the petitioner was entitled to an opportunity of being heard in the matter before the order of termination was issued.

Having regard to the facts and circumstance of the case, it is found that the decision of the Commissioner of P&RD Department, Assam to terminate the service of the petitioner was hasty and is in clear violation of the principles of natural justice. Therefore, this Court has no hesitation in coming to the conclusion that the case of the petitioner will also be covered by the decision rendered in the case of ***Ali Ahmed Barbhuiya (Supra)***.

For the reasons stated above, the order of termination dated 14-03-2023 is hereby set aside.

However, the respondents are granted liberty to follow the same procedure as has been provided in the order dated 01-06-2023 rendered in the case of ***Ali Ahmed Barbhuiya (Supra)*** even in the case of the writ petitioner, if they propose to initiate a fresh proceeding against him.

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

JUDGE

GS

Comparing Assistant