

GAHC010148422022



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

Case No. : WP(C)/4913/2022

DEBOJIT DAS
S/O LATE DIPTI DAS, R/O HARISOVA PARA, WARD NO. 7, DHUBRI TOWN,
P.O. AND DIST-DHUBRI, ASSAM, PIN-783301

VERSUS

THE STATE OF ASSAM AND 2 ORS.
THROUGH THE SECRETARY TO THE GOVT OF ASSAM, CO-OPERATIVE
DEPARTMENT, ASSAM SACHIBALAYA, DISPUR, GUWAHATI-781005

2:THE DISTRICT DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

3:THE OFFICE OF THE DHUBRI WHOLESALE CO-OPERATIVE CONSUMERS
STORES LTD.
P.O.-DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR D KALITA

Advocate for the Respondent : SC, CO OP

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

17.03.2023

Heard Ms. G. Swami, the learned counsel for the petitioner and Ms. M. D. Borah, the learned counsel appearing on behalf of the respondent Nos.1 & 2.

The learned counsel for the petitioner, at the outset, has submitted that she is not pressing on the challenge to the order dated 30.04.2012 on the basis of which the petitioner was put under suspension by the respondent No.3. She further submits that the respondent No.3 may be struck off from the array of the parties. She submits that liberty may be given to challenge the said order in appropriate proceedings, if so advised.

In that view of the matter, the respondent No.3 is struck off from the parties. Liberty as prayed for is given.

The Registry shall make necessary correction to the cause title of the writ petition.

The case of the petitioner herein is that the petitioner is a Government servant and the Assam Services (Discipline & Appeal) Rules, 1964 (for short, 'the Rules of 1964') duly applies to the petitioner. The learned counsel for the petitioner, drawing the attention of this Court to the communication dated 06.02.2019, submits that the respondent authorities have directed recovery of the amount mentioned in the said order dated 06.02.2019 without there being a Departmental Proceedings

initiated against him.

Upon hearing the learned counsel for the petitioner as well as Ms. M. D. Borah, the learned counsel appearing on behalf of the respondent State, it appears that the order dated 06.02.2019 by which there was a direction to make certain recovery from the petitioner, it was based upon an enquiry report submitted by the Junior Inspector/Auditor of the Co-operative Societies, Dhubri and not in respect to a proceedings under the Rules of 1964.

Rule 7 (iii) of the Rules of 1964 envisages the penalty of recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the Government of Assam or the Central Government or any other State Government, or any local or other authority to whom services of the Government servant had been lent. In terms with Rule 9 (11) of the Rules of 1964 the penalty specified in Clauses (i) to (iii) of Rule 7 is a minor penalty. It further transpires from Rule 9 (1) of the Rules of 1964 that there can be no order imposing on a Government servant any of the penalties specified in Rule 7 except after an inquiry held in the manner stipulated in Rule 9 of the Rules of 1964.

From a perusal of the order dated 06.02.2019, it transpires that it is on the basis of an enquiry report submitted by one Hareram Roy, the Junior Inspector/Auditor of the Co-operative Societies, Dhubri that the imposition of the penalty under Rule 7 (iii) has been imposed upon the petitioner which is contrary to the provisions of the Rules of 1964.

Under such circumstances, this Court, in the interest of justice, sets aside the communication dated 06.02.2019 issued by the District Deputy

Registrar of the Co-operative Societies, Dhubri.

It is however, made clear that setting aside of the communication dated 06.02.2019 shall not preclude the authorities, i.e. the respondent Nos.1 & 2 to initiate appropriate proceedings under the Rules of 1964 and take such action as deems fit in accordance with law.

In view of the above, the instant writ petition stands disposed of thereby setting aside the communication dated 06.02.2019 as aforesaid.

JUDGE

Comparing Assistant