

GAHC010150082023



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

Case No. : WP(C)/3956/2023

ABDUL KADER
S/O LT. OMAR ALI, VILL- TARANGAJHAR, P.O.-JAMADARHAT, P.S.-
FAKIRGANJ, DIST- DHUBRI, ASSAM, PIN-783330

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GHY-06

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIRPAR
GHY-37

3:THE DEPUTY COMMISSIONER
GOALPARA
P.O. AND DIST-GOALPARA
ASSAM
PIN-783101

4:THE CHIEF EXECUTIVE OFFICER
GOALPARA
P.O. AND DIST-GOALPARA
ASSAM
PIN-783101

5:THE BLOCK DEVELOPMENT OFFICER
JALESWAR DEV. BLOCK
JALESWAR
DIST- GOALPARA

ASSAM
PIN-783132

6:THE TREASURY OFFICER
GOALPARA TREASURY
P.O. AND DIST- GOALPARA
ASSAM
PIN-78310

Advocate for the Petitioner : MD A HUSSAIN

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

28/07/2023

Heard Mr. U K Nair, learned Senior counsel assisted by Mr. A Hussain, learned counsel for the petitioner and Mr. S Dutta, learned Standing counsel, P&RD Department for the respondent Nos. 1, 2, 4 & 5. Also heard Mr. D Bora, learned Government Advocate, Assam for the respondent No. 3 and Mr. P Nayak, learned Standing counsel, Finance Department for the respondent No. 6.

2. Being aggrieved with the office order No. CPRD/49/2023/101-102 dated 22.06.2023 issued by the Commissioner, Panchayat & Rural Development, Assam suspending the petitioner from service pending drawal of departmental proceedings and in the interest of public service, who was earlier Gaon Panchayat Secretary of Sundarpara Gaon Panchayat under Jamadarhat Development Block of District-Dhubri presently posted at Tarrangpur Gaon Panchayat under Joleswar Development Block, District-Goalpara, the petitioner has preferred this writ petition.

3. During the deliberation of the matter, Mr. Dutta, learned Standing counsel, P&RD Department has also placed a copy of the show-cause notice under No. CPRD/49/2023/103-105 dated 22.06.2023 issued by the Commissioner, P&RD Department to the petitioner with to the relevant charges asking him to show cause as to why appropriate action should not be initiated against him under the provisions of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 read with Article 311 of the Constitution of India and as to why the penalties prescribed in Rule 7 of the said 1964 Rules should not be inflicted upon him with regard to the charges specified in the said show cause notice dated 22.06.2023.

4. On instructions, Mr. Nair, learned Senior counsel for the petitioner submitted that as on date such show cause notice has not been served on the petitioner and also placed before the Court that both the impugned order of suspension as well as the show cause notice are of 22.06.2023.

5. Mr. Nair, learned Senior counsel placed before the Court that by the impugned office order dated 22.06.2023, the petitioner has been suspended from service for the alleged irregularities committed by him violating the Government Notification No.DRD-5(RH)12/2017/31 dated 31.07.2021 and for not following the clauses 4 & 6 of 13 Point Automatic Exclusion Criteria while selecting PMAY-G beneficiaries in Sundarpara Gaon Panchayat under Jamdarhat Development Block.

6. Mr. Nair, learned Senior counsel for the petitioner submitted that the Chief Executive Officer, Zilla Parishad, Dhubri by order dated 29.12.2020 transferred the petitioner from Fakiraganj Gaon Panchayat under South Salmara Development Block and posted him at Salakata Gaon Panchayat under South Salmara Development Block pursuant to which he on 01.01.2021 joined as the Secretary of Salakata Gaon Panchayat under South Salmara Development Block. Later, by another order dated 19.08.2021 issued by the Commissioner, P&RD Department, the petitioner was transferred from Salakata Gaon Panchayat of South Salmara Development Block to Tarrangpur Gaon Panchayat under Jaleswar Development Block of District-Goalpara, wherein he is presently serving.

7. Placing the same, Mr. Nair, learned Senior counsel on behalf of the petitioner also submitted that the petitioner is no way connected with any such irregularities with regard to non-compliance of the specification made in the Government Notification dated 31.07.2021 and in not following the provisions of clauses 4 & 6 of 13 Point Automatic Exclusion Criteria while selecting PMAY-G beneficiaries in Sundarpara Gaon Panchayat under Jamdarhat Development Block.

8. On the other hand, Mr. Dutta, learned Standing counsel, P&RD Department on instructions submitted that during an enquiry made on the basis of the report of the local MLA of 39 Jaleswar Legislative Assembly constituency, it was found that the petitioner while serving as the Gaon Panchayat Secretary of Sundarpara Gaon Panchayat under Jamadarhat Development Block of District-Dhubri committed illegalities violating the Government Notification dated 31.07.2021 and in not following the provisions of clauses 4 & 6 of 13 Point Automatic Exclusion Criteria and accordingly, by the impugned office order dated 22.06.2023, the Commissioner, P&RD Department suspended the petitioner from service under Rule 6(1)(a) of the Assam Services (Discipline and Appeal) Rules, 1964 with immediate effect observing that the petitioner shall be entitled for subsistence allowances during suspension period in accordance with F.R.53(ii).

9. The Assam Services (Discipline and Appeal) Rules, 1964 that came into force w.e.f. 05.11.1964 was framed under Article 309 of the Constitution of India having statutory force.

10. Rule 6 of Part III of the said 1964 Rules relates to 'suspension', which reads as follows:-

“6. Suspension – (1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf may place a Government servant under suspension-

(a) Where a disciplinary proceeding against him is contemplated or is pending; or

(b) Where in the opinion of the authority aforesaid he has engaged himself in activities prejudicial to the interest or the security of the State; or

(c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial :

Provided that where the order of suspension is made by an authority lower than the Appointing Authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.”

11. Rule 13 to Rule 25 of the said 1964 Rules relates to 'Appeals'.

12. Rule 13 of the said 1964 Rules provides for Orders made by an authority that is appealable and states that –

“Every Government servant shall be entitled to appeal, as hereinafter provided against an order passed by authority –

(a) placing him under suspension under Rule 6;

(b) imposing upon him any of the penalties specified in Rule 7,”

13. Law is well settled that when the statute provides for a particular procedure, a thing to be done in a particular way, then it has to be followed as prescribed and is required to be done in that manner and in no other manner and following any other course that cannot be permitted to act in contravention of the same. Where a statute requires to do certain things in a certain way, the thing must be done in that way and not contrary to it at all and other methods all mode of performance are impliedly and necessarily forbidden.

14. Since the said 1964 Rules is a statutory Rule and Rules 13 and 14 of the said 1964 Rules provide for an appeal against an order of suspension made under Rule 6 of said 1964 Rules, having statutory force, this Court is not inclined to interfere with the impugned Office Order No. CPRD/49/2023/101-102 dated 22.06.2023 issued by the Commissioner, Panchayat & Rural Development, Assam suspending the petitioner from service under Rule 6(1)(a) of the Assam Services (Discipline and Appeal) Rules, 1964. Moreover, there is an efficacious statutory remedy available to the petitioner pertaining to his approach against his said suspension order preferring a statutory appeal before the appropriate forum, i.e., the appellate authority as prescribed by the said 1964 Rules.

15. For the reasons above, the Court is not inclined to interfere with the impugned Office Order No. CPRD/49/2023/101-102 dated 22.06.2023 issued by the Commissioner, Panchayat & Rural Development, Assam suspending the petitioner from service pending drawal of departmental proceedings in the interest of public service in exercise of the power under Article 226 of the Constitution of India as efficacious statutory remedy is available to him against the said order of his suspension. Accordingly, this writ petition stands rejected being not admissible.

16. However, the petitioner may approach the appropriate forum as provided under Rules 13 and 14 of the Assam Services (Discipline and Appeal) Rules, 1964 for his remedy.

17. Needless to say in the event of filing any such appeal by the petitioner as provided under Rules 13 and 14 of the said 1964 Rules with regard to his suspension from service, the concerned appellate authority after hearing the petitioner and other concerned authorities shall dispose of the same within a period of 30 days from the date of receipt of such appeal of the petitioner.

JUDGE

Comparing Assistant