

GAHC010161772023



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

Case No. : WP(C)/4266/2023

MD. IMRAN HUSSAIN BARBHUIYA
COMPUTER ASSISTANT, UNDER DRDA, CACHAR, ASSAM, R/O-
HARITIKAR PART II, P.O- RAJARTILLA,
P.S- KATIGORAH, DIST- CACHAR, ASSAM, PIN-788805

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR , GUWAHATI-06

2:THE COMMISSIONER
TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
GUWAHATI-37
ASSAM

3:THE DEPUTY COMMISSIONER

CACHAR
SILCHAR
PIN-788001
ASSAM

4:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY

OFFICE OF THE DEPUTY COMMISSIONER
CACHAR

PIN-788001
5:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
ASSAM, PIN-788001

6:THE BLOCK DEVELOPMENT OFFICER
KATIGORAH DEVELOPMENT BLOCK
KATIGORAH, DIST- CACHAR
ASSA

Advocate for the Petitioner : MR. A K DUTTA

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 31-07-2023

Heard Mr. B. D. Das, learned Senior counsel assisted by Ms. R. Deka, learned counsel for the petitioner. Also heard learned counsel Mr. P. Handique appearing for Mr. K. Konwar, learned Addl. Advocate General for respondent Nos. 1,2,4,5 and 6 and Ms. S. Barua, learned Govt. Advocate appearing for respondent No. 3.

2. The termination of service of the petitioner vide impugned order dated 13.7.2023 is assailed by the petitioner in this writ petition filed under Article 226 of the Constitution of India.

3. The learned counsel appearing for the P&RD Department had expressed that he was prepared to advance his submission on merit and accordingly, with the consent both sides the matter has been heard on merit in the motion stage.

4. In brief, the case of the petitioner is that pursuant to a selection process, the petitioner was appointed as a Computer Assistant on contractual basis under

the P&R.D. Department. Initially the petitioner was appointed as a Computer Assistant under MGNREGA at Rajartila Gaon Panchayat under Katigorah Block vide order dated 2.4.2012, on contractual basis and the petitioner submitted his joining report on 3.4.2012. It is projected that vide a transfer order dated 22.9.2021, the petitioner was transferred from Tarinipur Gaon Panchayat to Katigorah Gaon Panchayat under the Katigorah Development Block and thereafter the petitioner was transferred to Udharbond Development Block vide order dated 17.1.2022 issued by Chief Executive Officer, Cachar Zila Parishad, Silchar. The petitioner had entered into a contractual engagement agreement dated 2.4.2012 for being appointed as contractual Computer Assistant and the terms of engagement is projected to have been extended from time to time. It is projected that entrusted responsibility of the petitioner was to make data entry of attendance under MGNREGA scheme into MIS and is also required to generate the e-muster Roll by feeding the data from the list of demands & allocation of work in MIS. The learned Senior Counsel for the petitioner has also submitted that the petitioner has no power to utilize the government fund and to prepare any scheme etc.

5. The Division Bench of this court by order dated 20.1.2022 passed in PIL 80/ 2021 had made the following Order:

“The matter is taken up through video conferencing.

Heard Mr. A.M.S. Mazumder, learned counsel for the petitioners. Also heard Mr. M.Nath learned Standing Counsel, P & RD , appearing for respondent nos. 1,2,4 and 6 as well as Ms. M.Bhattacharjee, learned Additional Senior Government Advocate, Assam.

This public Interest Litigation (PIL) has been filed stating that although funds have been released by the Government to various Gaon Panchayats in Assam against various schemes from the financial year 2016 onwards, the same have not been utilized against the schemes which the funds were meant for. In this regard, a reference has been made to Rajatila Gaon Panchayat under Katigorah Development Block in the district of Cachar. By filing this PIL, the petitioners have sought for

appropriate directions to the authorities concerned in this regard.

Learned counsel for the petitioners has also submitted that, in this regard a representation was filed before the Deputy Commissioner, Cachar, but the same has not been disposed of till date.

Since a representation has already been filed before the Deputy Commissioner, Cachar, we dispose of the present PIL by directing the Deputy Commissioner, Cachar, to dispose of the aforementioned pending representation filed by the petitioners within a period of eight weeks from the date of receipt of a certified copy of this order.

We further make it clear that in case the aforementioned representation is not traceable in the office of the Deputy Commissioner, the petitioner would be at liberty to serve a fresh copy of the representation to the Deputy Commissioner, who shall thereafter dispose of the representation by passing a speaking order as expeditiously as possible.

JUDGE

CHIEF JUSTICE "

6. Subsequently the authorities had conducted an enquiry regarding involvement of the concerned employees and vide notice dated 27.7.2022, the following notice was served to the petitioner:

"NOTICE

To

*Sri Imran Hussain Barbhuyan,CA
Udarband Dev. Block.*

Sub: Regarding para wise comments on PIL . Case No. 80/2021 in the hon'ble Gauhati High Court.

Sir / Madam,

In inviting reference to the subject cited above, it is to inform you that a PIL was filed in the Hon'ble Gauhati High Court vide No. 80/2021 by petitioners(1) Khalilur Rahman Barbhuiya 2. Abdul Ahad, 3 Ranjit Das, 4 Hanif Mahammad Barlaskar, 5.Alok Ranjan Dey.

In this regard, you are hereby asked to submit your reply / Para wise comments on the allegations made in the PIL to the undersigned within 05(five) days from the date of receipt of this Notice.

Encl: Copy of PIL Case No. 80/2021

Sd/

*MA Mazumdar,ACS
Additional Deputy Commissioner
Cachar"*

7. The petitioner had submitted his reply dated 1.8.2022, denying that he

had any authority to touch any government fund or to implement any scheme of the Panchayat Department and the issue raised in the PIL was in no way connected to the service rendered by him.

8. The Commissioner, P&RD Department vide a show cause notice dated 6.5.2023, provided an enquiry report to the petitioner and directed the petitioner to submit a written explanation as to why his service should not be terminated, as per terms and conditions of the contractual agreement which amounts to gross indiscipline as well as gross negligence of duty and misconduct on his part. The petitioner had filed a show cause reply dated 15.5.2023, which was not found satisfactory by the competent authority and by office order dated 13.7.2023, the service of the petitioner was terminated with immediate effect.

9. The learned Senior counsel for the petitioner had submitted that the impugned order dated 13.7.2023 does not disclose that any departmental proceeding was initiated against the petitioner and that he was given any opportunity of hearing or if any Memorandum of Charges were framed against him. Accordingly, it is submitted that the procedure prescribed under the *Assam Service (Discipline and Appeal) Rules, 1964* (Rules 1964 in short) has not been followed.

10. The learned counsel for the P&RD Department has submitted that as the petitioner was a contractual employee, there is no requirement of giving an opportunity of oral hearing and providing the petitioner with a copy of enquiry report was a sufficient compliance of principles of natural justice. In support of his contention that oral hearing was not necessary, the learned counsel for the P&RD Department has cited the following cases:

1. *State of Assam Vs. Gauhati Municipal Board, AIR 1967 SC 1398.*

2. MP Industries Ltd. Vs. Union of India AIR 1966 SC 671.

11. In this case, learned Senior counsel for the petitioner has referred to the case of *Ali Ahmed Barbhuiya Vs State of Assam and others, W.P(C) 2977/2023*, decided on 1.6.2023 as well as the case of *Abul Kalam Barbhuiya Vs State of Assam and 5 others, WP(C) No. 3259/2023*, decided on 7.6.2023.

12. In the case of *Ali Ahmed Barbhuiya (supra)*, the petitioner therein was a contractual Computer Assistant and on an enquiry regarding misappropriation of fund of MGNREGA and PMAY-G in the concerned Development Block, the service of the petitioner was terminated. In connection with the said case, this Court had held that the enquiry proceeding was conducted behind the back of the petitioner therein and that the termination of service was not only based on the allegation of misconduct but the same was also stigmatic, and it was held that the petitioner therein was not given any opportunity of hearing in the matter which was in violation of principles of natural justice and accordingly the termination order impugned in the said writ petition was held to be unsustainable and the same was set aside and quashed, leaving it open to the Department to place the petitioner under suspension pending drawal and conclusion of departmental proceeding, if so advised, by also directing the authorities to strictly comply with the requirement of the Rules as well as the principles of natural justice while conducting the enquiry.

13. From the said order it also appears that in the light of the observation made in the said order, 6(six) other writ petitions were also disposed of.

14. In the case of *Abul Kalam Barbhuiya (supra)*, the petitioner therein was an Accredited Engineer (Diploma holder), who was also a contractual appointee and his service was also terminated on the allegation of similar misconduct which was also interfered with by this Court.

15. It is too well settled that even in case of temporary appointment, the principles of natural justice cannot be altogether abandoned. In the present case in hand, the nature of accusation against the petitioner is stigmatic as there is a specific allegation against the petitioner of gross negligence of duty and misappropriation of Government money with malafide intention which appears from the show cause notice to the petitioner dated 6.5.2023. It would have been a different matter if the authorities would have chosen not to renew the contract. However in this case the Commissioner, P & R D Department had issued a show cause notice to the petitioner dated 6.5.2023, which contains stigmatic allegations against the petitioner. The providing of enquiry report to the petitioner is, in the considered opinion of the Court, is not a sufficient compliance of the principles of natural justice. The impugned order of termination dated 13.7.2023, does not disclose that the petitioner was permitted to participate in the enquiry. The order of termination dated 13.7.2023, also does not disclose that the enquiry was conducted in the presence of the petitioner. Hence, the Court does not find any reason to call for the records because the presumption that the petitioner did not participate during enquiry, could not be successfully repelled by the respondents. There is another aspect to this issue. If a delinquent officer is allowed to participate during the enquiry process, which is accepted to be due compliance of principles of natural justice, there is no requirement at all to have a proceedings drawn up against him as envisaged under Rule 9 of Rules 1964. An enquiry is only to enable the disciplinary authority to arrive at a satisfaction that the delinquent employee has committed certain acts of indiscipline which would enable the authorities to draw up a departmental/disciplinary proceeding against him. Even if an enquiry is conducted, which is a precursor to a departmental proceeding, yet when a

departmental proceeding is initiated, the authorities are required to comply with the requirement of Rule 9 of 1964 Rules, which is found to be totally absent in the present case.

16. From the impugned order it appears that pursuant to show cause notice dated 6.5.2023, the reply submitted by the petitioner on 15.5.2023 was not found satisfactory. The reasons why it is not found satisfactory is also not contained in the termination order dated 13.7.2023 and accordingly, the Commissioner, P&RD Department has terminated the service of the petitioner.

17. The reason for issuing show cause notice to the petitioner is on the allegation regarding order passed in PIL No. 80/2021 dated 20.1.2022. On perusal of the said order, which is quoted hereinbefore *jutaxposed* with the contents of notice requiring parawise comments on PIL Case No.80/2021 dated 27.7.2022 which has also been extracted herein above would show that the notice dated 27.7.2022 has no nexus with the order dated 20.1.2022 passed in PIL No. 80/2021.

18. In the case of *Gauhati Municipal Board (supra)*, the provision of Section 298 of Assam Municipal Act was interpreted to the effect that it did not envisage of giving an opportunity of hearing to the Board. Similarly in the case of *M.P Industries Ltd. (supra)*, the issue was related to renewal of lease and in this regard Rule 55 of the Rules, 1964 referred therein was held to recognize the principle that no order would be passed against the applicant unless he has been given an opportunity to make his representation against the comments and the said provision was interpreted to mean that such opportunity need not be by giving a personal hearing. The facts of those cases cannot be imported in a case of termination of contractual employee where his service is sought to be terminated on the ground of misconduct like gross irregularity and

misappropriation of Government fund.

19. In light of the allegation, on which the service of petitioner has been terminated, the Hon'ble Supreme Court of India in the case of *Parshottam Lal Dhingra Vs. Union of India*, reported in *AIR 1958 SC 36* had already held that even for terminating a temporary employee, the principles of Article 311 of Constitution of India was required to be complied with. Similar view of the Supreme Court of India has also been expressed in the case of *Commodor Commanding, Southern Navel Area, Cochin Vs. V.N. Rajan*, (1981) 2 SCC 636, wherein it is reiterated that termination of service of temporary Government servant without any stigma would amount to punishment which may not be made without an enquiry. However, it is specifically held that even as temporary Government servant, the delinquent is entitled to protection under Article 311(2) of Constitution of India where termination involves stigma or amounts to punishment. Therefore, the two cases cited by the learned counsel for respondents do not help to espouse the cause of the respondents and this case is found to be similarly situated with the facts of *Ali Ahmed Barbhuiya (supra)*.

20. Accordingly, the Court is inclined to hold that merely providing of the enquiry report to the petitioner at the stage of issuing of show cause notice is not sufficient compliance of principles of natural justice and as the service of the petitioner was sought to be terminated on the ground of gross irregularity and misappropriation of Government fund, the petitioner is found to be entitled to be given an opportunity of being heard as the nature of stigma attached in the impugned order dated 13.7.2023, apart from being stigmatic, is likely to cause serious prejudice to the petitioner in his future prospect and employment opportunity.

21. Accordingly, the Court is inclined to hold that the termination order No.

CPRD / 46/ 2023 /87 passed on 13th July, 2023 passed by the Commissioner, P&RD Department, thereby terminating the service of the petitioner is not sustainable in the eyes of law and the same is set aside and quashed.

22. The respondents are directed to reinstate the petitioner in service forthwith within a period of 15 days from the receipt of a certified copy of this order. Upon reinstatement, it would be open to the respondent authorities to proceed against the petitioner in accordance with law by serving proper notice indicating specific charges brought against the petitioner. In doing so, it would be open to the respondent authorities to place the petitioner under suspension pending drawal and/or conclusion of the departmental proceeding if so advised. However, upon suspension, the petitioner would be entitled to subsistence allowance. The respondent authorities are directed to strictly comply with the requirement of the provisions of the *Rules, 1964* as well as principles of natural justice. On completion of such enquiry it would be open to the competent authorities to pass such appropriate orders as may be deemed appropriate.

23. This writ petition stands allowed at the motion stage without issuance of notice on the respondents as the case of the petitioner is found to be covered by the decision of this Court in *Ali Ahmed Barbhuiya (supra)* and *Abul Kalam Barbhuiya (supra)*.

JUDGE

Comparing Assistant