

GAHC010170772023



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

Case No. : Writ Appeal No.321 of 2023

RUDRA KANTA MAHANTA
S/O SRI SIBA KANTA MAHANTA,
VILL.- DEOPANI, P.O.- DEOPANI,
P.S.- BORPATHAR, DIST.- KARBI ANGLONG, ASSAM.

VERSUS

1: UNION OF INDIA AND 3 ORS. B
REP. BY THE SECRETARY TO THE GOVT. OF INDIA,
HEAVY INDUSTRIES AND PUBLIC ENTERPRISES DEPARTMENT,
NEW DELH.

2:THE CEMENT CORPORATION OF INDIA LTD.
CORE - V- SEOPE COMPLEX 7-LODHI ROAD NEW DELHI
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR.

3:THE GENERAL MANAGER
CEMENT CORPORATION OF INDIA LTD. BOKAJAN UNIT.

4:DEPUTY GENERAL MANAGER (P AND A)
CEMENT CORPORATION OF INDIA LTD TANDUR CEMENT
FACTORY- 501158 RANGA REDDY DIST. ANDHRA PRADESH

For the Appellant : Mr. P.K. Munir, Advocate.
Mr. A. Gayan, Advocate.

For the Respondents : Ms. K. Phukan, Central Government Advocate for respondent No.1.

: Mr. J. Roy, Senior Standing Counsel, Cement Corporation of India Limited, assisted by Mr. B.P. Sarmah, Advocate for the respondent Nos.2, 3 & 4.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

28.08.2023

This intra-Court writ appeal is preferred by the appellant herein for assailing the final judgment/order dated 19.06.2023 passed by the learned Single Bench dismissing WP(C) No.1678/2011 preferred by the appellant/writ petitioner for assailing the order dated 13.12.2010, whereby the employer Cement Corporation of India Limited (respondent No.2) directed removal of the name of the appellant/writ petitioner from the rolls of the respondent Corporation with immediate effect by providing that the appellant/writ petitioner could apply for his Provident Fund and other dues, if any, which would be settled as per the Rules.

Mr. P.K. Munir, learned counsel representing the appellant/writ petitioner, vehemently and fervently contended that no enquiry was conducted before passing the order of removal of the name of the appellant/writ petitioner from the rolls of the Corporation, and hence, the impugned order is bad in the eyes of law. He, therefore, implored the Court to accept the appeal and reverse the impugned order of termination. However, in view of the fact that the appellant/writ petitioner herein has crossed the age of superannuation, the only prayer which was made was to grant him all consequential service benefits from the date of issuance of the termination order.

Per contra, Ms. K. Phukan, learned Central Government Advocate, representing the respondent No.1 and Mr. J. Roy, learned senior standing counsel, Cement Corporation of India Limited, representing the respondent Nos.2, 3 & 4, vehemently and fervently opposed the submissions of the appellant's counsel. They urged that it is an admitted case that the

appellant/writ petitioner herein was working in the Bokajan Cement Factory of the Corporation. He was transferred to the Tandur Unit vide an order dated 28.08.2008. He was released on 30.08.2008 and was directed to report to the General Manager, Tandur Unit immediately. However, he did not comply with the said direction and approached this Court by filing a writ petition. Despite failure to procure any *interim* protection against the order of transfer, the appellant/writ petitioner did not join on the transferred posting. He was given several notices directing him to join at the Tandur Unit but he failed to do so. Thus, as per the learned counsel for the respondents, it is a case of willful abandonment of service and hence, no enquiry was warranted before removing the name of the appellant/writ petitioner from the rolls of the Corporation. In support of this contention, Mr. Roy, learned senior counsel for the respondent Corporation placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institutional -Vs- Educational Appellate Tribunal & Anr.***, reported in **(1999) 7 SCC 332** and urged that when the misconduct is admitted, there is no requirement to hold a departmental enquiry.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned order and the judgment cited at bar.

It is an admitted case of the appellant/writ petitioner herein that he did not comply with the order of transfer dated 28.08.2008 and indulged in litigation. The writ petition filed by the appellant/writ petitioner for assailing his transfer order did not result into a favourable result and was dismissed, whereafter he challenged the order of the learned Single Judge by filing an appeal. During the pendency of the litigation and when the appellant/writ

petitioner herein did not present any stay order passed by this Court, several notices were issued by the Corporation/Authority directing him to join the post at the Tandur Unit but to no avail. Ultimately, the authorities removed the name of the appellant/writ petitioner from the rolls of the Corporation. Even during the pendency of the WP(C) No.1678/2011, the appellant/writ petitioner never projected that if permitted, he was ready and willing to proceed to Tandur Unit of the Corporation on transfer and perform his duties.

In this background, we are of the firm view that it is a case, wherein the appellant/writ petitioner herein, voluntarily and intentionally abandoned the duties and hence, the misconduct was admitted. Considered in light of the ratio of the Hon'ble Supreme Court judgment in the case of ***Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institutional*** (supra), there was no requirement of holding a departmental enquiry before proceeding to remove the name of the appellant/writ petitioner from the rolls of the Corporation. The impugned judgment and final order dated 19.06.2023 passed by the learned Single Judge dismissing the WP(C) No.1678/2023 filed by the appellant does not suffer from any infirmity warranting interference. Hence, the writ appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant