

GAHC010176972023



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

**Case No. : WP(C)/4632/2023**

JAN SAIKIA  
S/O- SRI MOHIRAM SAIKIA, VILL- SANTINAGAR, GOGAMUKH, P.O.-  
GOGAMUKH, P.S. DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS  
TO BE REPRESENTED BY THE PRINCIPAL SECRETARY TO THE  
GOVERNMENT OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT  
DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER  
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT  
JURIPAR  
SIXMILE  
GUWAHATI-22

3:THE DIRECTOR  
THE STATE INSTITUTE OF PANCHAYAT AND RURAL DEVELOPMENT  
DEPARTMENT  
G.S.ROAD  
KHANAPARA  
GUWAHATI-22

4:THE PROJECT DIRECTOR  
DRDA  
DISTRICT- DHEMAJI  
ASSAM

5:THE DISTRICT COMMISSIONER  
DHEMAJI  
DIST.- DHEMAJI

ASSAM

6:THE NAHARBARI GAON PANCHAYAT  
UNDER THE SISSIBORGAON DEVELOPMENT BLOCK  
REPRESENTED BY ITS SECRETARY  
VILL- NAHARANI  
P.O. GOGAMUKH  
DIST.- DHEMAJI  
ASSA

**Advocate for the Petitioner** : MR. L GOGOI

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

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 14.08.2023**

Heard Mr. L. Gogoi, learned counsel for the petitioner. Also heard Mr. S. Dutta, learned standing counsel for the P&RD, respondent nos.1 to 4 and 6; and Mr. A. Chakrabarty, learned Govt. Advocate appearing for respondent no.5.

2. In view of the order proposed to be pass, the issuance of notice on the respondents is dispensed with.

3. The impugned order of termination dated 28.03.2023, issued by the respondent no.2 is assailed in this writ petition filed under Article 226 of the Constitution of India.

4. The learned counsel for the petitioner has submitted that the petitioner was appointed as a Computer Assistant on contractual basis vide order dated 27.02.2009. The petitioner had joined service on contractual basis on 02.03.2009 at the Lotak Gaon Panchayat, district Dhemaji. From time to time, the contractual appointment of the petitioner was extended and in the

year 2018, the petitioner was transferred to Kachutali Gaon Panchayat and thereafter, he was transferred to Naharbari Gaon Panchayat in the district of Dhemaji.

5. On 12.03.2023, the Controller of Examination, Board of Secondary Education, Assam had lodged an FIR in the CID Police Station to the effect that as per news telecast in a section of media, hand written model question paper of the HSCL Examination of General Science, which was to be held on 13.03.2023 was available in the hands of certain candidates. Accordingly, CID Police Station case no. 3/2023 was registered under section 120B/420/427/409 IPC read with section 66B of the Information Technology Act, 2000. Thereafter, the petitioner was arrested on 17.03.2023 by suspecting his involvement as one of the prime suspect. The petitioner was released on bail by order of this Court dated 12.05.2023, passed in Bail Appln. No. 1606/2023. However, the grievance of the petitioner is that his service was terminated by an order dated 28.03.2023 without issuing any show-cause notice to the petitioner and without complying with the principles of natural justice as the petitioner was not given an opportunity of being heard.

6. The learned counsel for the petitioner has submitted that the principles relating to enquiry before termination as envisaged under Article 311(2) of the Constitution of India was not followed. It is submitted that the order of termination was stigmatic and therefore, principles of natural justice was required to be followed.

7. Opposing the prayer made in this writ petition, it is submitted by the learned standing counsel for the P&RD that the petitioner was terminated by invoking clause-11 of the terms of contractual employment as Computer Assistant. The said clause is extracted below:

*“11. Termination of contract: The Agency reserves the right to terminate the contractual agreement at any point of time if it is found that the services rendered by the contractual staff is not satisfactory, or if it is found that any declaration of information furnished by him/her proves to be false or willfully suppressed, or if there is any breach of any of the terms and condition of this Term of Contractual Engagement, or if the contractual staff is found to be involved in any act of indiscipline or misconduct, or if the contractual staff is found to be involved in any act that may become embarrassing for the Agency, or if the contractual staff is absent from job for one week without any prior written sanction. In case funds are not available under the administrative contingency head from where the remunerations are paid, the contract may be terminated forthwith without any notice. The decision of the Agency in this regard shall be final and binding on the contractual staff and shall not be subject to challenge.”*

8. Hence, it is submitted that as the conduct of the petitioner was found to be involved in an act which has become embarrassment for the respondent authorities, it was within the power of the respondent no.2 to terminate the service of the petitioner.

9. The Court finds that in the terms of contractual employment of the petitioner as Computer Assistant, clause-2 of the said terms provides that “the contract may also be terminated without assigning any reason before the contract period by either party subject to giving one month’s advance notice to the other party”. Moreover, as indicated in clause-11 of the agreement, in view of the arrest of the petitioner in connection with the CID Case no. 3/2023, it cannot be said that the conduct of the petitioner could not have been found to be embarrassing by the respondent authorities.

10. As the service of the petitioner is terminable by giving one month’s notice, the Court finds that the petitioner is disentitled to the relief of his contractual service being restored in view of the provision of section 14(d) of the Specific Relief Act, which provides, *inter alia*, that a contract which is in its nature determinable are contracts which are not specifically enforceable.

11. Therefore, the Court is of the considered opinion that under the fact and circumstances of this case, the petitioner is not entitled to any relief.

12. Hence, this writ petition stands dismissed at the motion stage without issuance of notice on the respondents.

**JUDGE**

**Comparing Assistant**