

GAHC010008042011



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

Case No. : WP(C)/4626/2011

SUMENDRA GOGOI
S/O SRI KALIANATH GOGOI, R/O HENGRABARI, NEAR FOREST GATE,
P.O.HENGERABARI, P.S.DISPUR, GHY-36

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE SECY. TO THE GOVT OF ASSAM, DEPTT. OF PUBLIC
ENTERPRISES, DISPUR, GHY-6

2:THE PRINCIPAL SECY. TO THE GOVT OF ASSAM

DEPTT OF PUBLIC ENTERPRISES
DISPUR
GHY-6

3:THE ADDL. DIRECTOR

INDUSTRIES DEPTT
BAMUNIMAIDAN
GHY-21 CUM I/C MANAGING DIRECTOR
ASSAM SPUN SILK MILLS LTD
JAGIROAD

4:IBRAHIM ALI

ASSTT COMMERCIAL MANAGER AND REVENUE OFFICER
AIDC
GHY-24
THE ENQUIRY OFFICER APPOINTED VIDE LETTER NO. ASMP 102/96-97/241
DTD. 19.09.199

WP(C)/4704/2010

SUMENDRA GOGOI
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NEAR ROREST GATE
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JAGIROAD

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner : Mr. P.J. Saikia Senior Advocate.

For the Respondents : Mr. A. Kalita ... SC, Industries Department.

Mr. N. Goswami. Govt. Advocate.

Date of hearing & judgment : 22.08.2023

JUDGMENT & ORDER

1. Both the writ petitions are taken up for disposal taking into account the similarity of the facts and the parties being the same. From the records of both the writ petitions, it reveals that the petitioner initially was appointed as a Senior Showroom Manager temporarily, vide an order dated 31.03.1981 issued by the then Managing Director of the Assam Spun Silk Mills Limited (for short "the Company"). The record further reveals that on 06.05.1996 a Memorandum of Charge was issued against the petitioner under Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964 read with Article 311 of the Constitution thereby charging the petitioner with negligence of duties, insubordination, inefficiency and loss of confidential credence etc. The petitioner on receipt of the said Memorandum of Charge replied to the same in the 2nd week of June, 1996 and thereupon the petitioner was served with a notice dated 19.09.1996 by the Respondent No.4, who was appointed as the Inquiry Officer to hold enquiry on 30.09.1996, at the office of the Liaison Officer of the Hindustan Paper Corporation. It further reveals from the records that the Inquiry Officer further advised the petitioner to submit a fresh representation and the petitioner had submitted his reply on 07.10.1996. Upon perusal of the said reply, the Inquiry Officer proposed to conduct an inquiry proceeding into the allegations and accordingly fixed 28.10.1996 for examination of the management witness. Thereupon nothing happened in the said inquiry proceedings.

2. It is further relevant to take note of that the Company wherein the petitioner was employed on account of various strikes could not function. Under

such circumstances, the State Government issued a Notification dated 20.09.2004 thereby publishing a scheme to meet the situation like closure of the Company. The said scheme was again revised by a subsequent Notification dated 15.02.1996 issued through the Respondent No.2. Another notification was also issued on 15.02.2006 itself wherein certain guidelines were issued for meeting the basic requirement in disposal/utilization of the assets of the closed State Level Public Enterprise, i.e. the Company. It is further relevant to take note of that pursuant to those two Notifications dated 15.02.2006, another Office Memorandum was issued on 15.05.2008 by the Respondent No.2 wherein various guidelines have been issued for payment of the outstanding salary/wages etc. and ex-gratia payment to the employees of the Public Sector Enterprises released under Voluntary Retirement Scheme (VRS) under the Asian Development Bank's (ADB) AGPRMP. It is relevant to take note of that in Clause 5 of the Office Memorandum dated 15.05.2008, it was specifically mentioned that VRS should not be given to those employees/workers against whom disciplinary proceedings/ prosecution sanction/Court cases or any other case like suspension/dismissal etc. is pending settlement.

3. It is the case of the petitioner that the petitioner duly applied for the VRS in terms with the above Notification. It is seen from the records that an amount of Rs.1,84,315/- was paid to the petitioner on 15.12.2008. It is the case of the petitioner that the said amount was paid in terms with the VRS scheme announced vide the Notification dated 15.02.2006 read with the Office Memorandum dated 15.05.2008. Though the said amount was paid, the petitioner was aggrieved at the quantum of the amount so paid, for which the petitioner filed a writ petition before this Court which was registered and

numbered as WP(C) No.3497/2009. The said writ petition was disposed off, vide an order dated 21.08.2009 wherein this Court granted the liberty to the petitioner to file a fresh representation before the Respondent Authorities detailing the necessary facts, more particularly the heads under which, according to him, he is entitled to further payment under the VRS. This Court directed the Respondents therein that if the petitioner files the representation within a period of 2 (two) weeks, the authority would examine the same and pass appropriate orders thereon and the said consideration was directed to be made within a period of 1 (one) month from the date of submission of the representation.

4. The petitioner thereupon duly submitted the representation. However, no action was taken by the respondent authorities for which an contempt proceedings being Contempt Case (C) No.28/2010 was initiated against one Mr. Noor Mohammad, the Additional Director, Industries Department, who was also the In-charge Managing Director of the Company. In the meantime, before the said contempt proceedings could be taken up, an order was passed on 11.01.2010 informing the petitioner that the petitioner was not entitled to VRS in view of Clause 5 of the Office Memorandum dated 15.05.2008 as there was a disciplinary proceeding which was initiated against the petitioner and was still pending. This communication is the subject matter of challenge in WP(C) No.4704/2010.

5. It is further relevant to take note of that when the Contempt Case (C) No.28/2010 was taken up on 28.06.2010, it was brought to the notice of this Court by the petitioner that the representation of the petitioner had been duly

disposed off and accordingly the said contempt proceedings was closed. It further appears from the records that pursuant to the communication dated 11.01.2010, the petitioner was issued a notice dated 21.06.2011 by the Inquiry Officer i.e. the Respondent No.4 informing, *inter alia*, that the inquiry proceedings which was initiated on the basis of the Memorandum of Charge issued on 06.05.1996 and was postponed due to closure of the Mills had been re-opened and the petitioner was thereupon directed to appear before the Inquiry Officer on 04.07.2011. It further reveals from the record that on 04.07.2011 the Respondent No.4 was unwell for which the inquiry proceedings was taken up on 22.07.2011. Annexure-'L' to the writ petition i.e. WP(C) No.4626/2011 is the Minutes of the departmental proceedings held on 22.07.2011. The contents of the said Minutes however is very important for the purpose of the instant case, inasmuch as, the circumstances under which the said departmental proceedings was re-opened was mentioned along with how the departmental proceedings could be proceeded with. The relevant portion of the said Minutes being pertinent is quoted here-in-below -

“This inquiry dates back to 1996 when I was appointed as Enquiry Officer to inquire into the charges leveled against Shri Sumendra Gogoi, Assistant Commercial Manager, Assam Spun Silk Mills Ltd vide letter No.AMP:P 102/96-97241 dated 19th September, 96. The preliminary sitting of the enquiry took place on 30/09/96 at Guwahati and the second sitting also took place at Guwahati on 14/10/96. A third date was fixed on 28/10/96 for examination of witnesses on behalf of the prosecution, but it could not proceed further as the Assam Spun Silk Mills Ltd was virtually closed down as the Mill became unviable. Neither the charged officer nor the Management of the Mill ever pursued the matter with me during this intervening period. Shri Gogoi is of the opinion that there was no question of his pursuing the matter. With passage of time the original case record has been misplaced and hence could not be retrieved. However on a

request from the authority to revive the proceedings, this enquiry has been taken up again at the stage where it was abandoned. Zerox copies of past records have been supplied to me by the management which enabled me to reconstruct the case file. In order to continue with the inquiry a date was accordingly fixed on 04.07.11 but had to be cancelled as I was laid down with viral fever for four days”.

6. The petitioner thereupon challenged the communication dated 21.06.2011 and the further continuation of the departmental proceedings by filing a writ petition i.e. WP(C) No.4626/2011. This Court finds it relevant to take note of that vide order dated 14.09.2011, Notice of Motion was issued and the departmental proceedings which was re-opened against the petitioner was stayed until returnable date. The record further shows that the interim order was continued until further orders vide an order dated 02.11.2011 and still holds the field.

7. It further reveals from the records that an affidavit-in-opposition was filed by the respondent no.3 in WP(C) No.4626/2011. In the said affidavit-in-opposition, it was mentioned that the petitioner was charge-sheeted on account of his unauthorized absence from duty and for non-resumption of his duty in spite of various correspondences being issued by the Company. Further to that it was also mentioned that the gross financial irregularities and mismanagement were committed by the petitioner while he was in-charge of the Company Showroom at Guwahati as reflected in the report of the Comptroller and Auditor General of India for which he was charge-sheeted as per the decision of the Board of Directors. In paragraph-7 of the said affidavit-in-opposition, it was mentioned that the petitioner was never considered for VRS

as per Clause 5 of the Government Guidelines dated 15.05.2008 as the departmental proceedings was pending against him. It was stated that an amount of Rs.1,84,315/- was paid to the petitioner on 15.12.2008 as salary and other dues till 30.12.1997 on assumption that the leave was available at his credit as on that date without prejudice to the outcome of the departmental proceedings pending against him on the charge of unauthorized absence from duty and financial irregularities. It was further mentioned that the petitioner had gone through the breakup of the bill at the time of signing the undertaking that he had no further claim in the matter and on being satisfied signed the bill and undertaking and received the said amount without any protest.

8. This Court further finds relevance to take note of paragraph no.8 of the said affidavit-in-opposition wherein there was an explanation given as to why the departmental proceedings remained dormant for more than 14 years. It was mentioned that the disciplinary proceeding was kept pending for many years due to unusual facts and circumstances of the Mills. It was mentioned that such pendency was not deliberate but under compelling circumstances arising out of a precarious financial condition of the Mills which had ultimately resulted in closure of the Mills by the Government. It was mentioned that the enquiry was re-started as per the direction of the Government vide letter no. ASM.102/81-82-245 dated 15.06.2011. It is also pertinent to note that it is the categorical stand of the respondent authorities that the petitioner was not been given the VRS benefits as the same was not permissible in view of Clause 5 of the Office Memorandum dated 15.05.2008.

9. To the said affidavit-in-opposition filed by the Respondent No.3, an

affidavit-in-reply was filed by the petitioner. This Court finds it relevant to observe that at paragraph no. 6 of the said affidavit-in-reply which was in reply to paragraph no. 7 of the affidavit-in-opposition, it was mentioned that the statements made in paragraph no. 7 of the affidavit-in-opposition was self contradictory. It was mentioned that the amount received by the petitioner is much less than the amount which the petitioner was entitled under the VRS. It was however admitted by the petitioner that he had "put the signature purely on bona fide as to the correctness of the calculations made by the authority which later on was found to be incorrect."

10. This Court further finds it appropriate to take note of that a similar affidavit-in-opposition was also filed by the respondent no.3 in WP(C) No.4704/2010, wherein also it was mentioned that the petitioner was not granted the VRS in view of Clause-5 of the Office Memorandum dated 15.05.2008. Be that as it may, an affidavit-in-reply was filed by the petitioner enclosing therein the receipt-cum-undertaking, wherein it has been mentioned that the total entitlement of the petitioner was Rs.2,00,949/- and after making of necessary deduction on account of CPF, UF and others, the petitioner was only entitled to Rs.1,84,315/-. It is also seen from the receipt-cum-undertaking which was made a part of that affidavit-in-reply filed by the petitioner on 06.03.2013, that date of VRS accepted was mentioned as to be effective from 01.12.1997.

11. In the backdrop of the above, this Court have duly heard the contentions of the respective counsels. Upon hearing the learned counsels, two points for determination arise for consideration.

- (i) Whether the disciplinary proceeding which was initiated on the basis of the Memorandum of Charge dated 06.05.1996 can be allowed to be continued further in view of the fact that almost 27 years have passed by since the initiation ? and
- (ii) Whether the petitioner is entitled to any further amount from the Company or the respondent authorities ?

12. Let the Court first take-up the point for determination. The materials on records which have been already discussed above would show that the Memorandum of Charge was issued on 06.05.1996 and the petitioner had duly replied in the 2nd week of June, 1996. Thereupon, the Respondent No.4 was appointed as the Inquiry Officer and the petitioner also participated in the said inquiry proceedings till 1996. The materials on record and the admitted facts show that nothing happened in respect to the said inquiry proceedings since the year 1996 till 15.06.2011, when a decision was taken by the Government to re-start the inquiry proceedings. Pursuant thereto on 21.06.2011, a notice was issued to the petitioner whereupon the petitioner appeared before the Inquiry Officer. On 22.07.2011 in the said inquiry proceedings it was duly noted under what circumstances the said inquiry proceedings was re-opened. The relevant portion of the said Minutes of the inquiry proceedings dated 22.07.2011 has already been quoted above. Thereupon the petitioner filed the instant writ petition and there was a stay to the said departmental proceedings, vide an order dated 14.09.2011 and the said interim order still holds the field. It is further relevant to take note of that the respondent authorities though had filed an affidavit-in-opposition but there was no application or any attempt being made for vacating the said interim order so that the departmental proceedings

could be continued against the petitioner. As on today when the matter is being taken up, almost 27 years have passed by.

13. This Court further finds it relevant to take another pertinent aspect that is the enclosure to the affidavit-in-reply filed in WP(C) No.4704/2010 wherein it has been shown that the petitioner was permitted to avail the VRS w.e.f. 01.12.1997. The respondent authorities have also acted on the said receipt-cum-undertaking by paying an amount of Rs.1,84,315/- as have been admitted in the Affidavit-in-Opposition. This receipt-cum-undertaking as well as the respondents having acted upon and made payment of Rs.1,84,315/- to the petitioner shows that the Respondent Authorities had taken a conscious decision then that there was no departmental proceedings which was pending as on 26.12.2008 or for that matter on 15.12.2008 when the amount was disbursed to the petitioner. The above will therefore show that though the disciplinary proceedings was initiated in the year 1996 but the Respondent Authorities had abandoned the said disciplinary proceedings. This aspect of the matter is also apparent from the minutes of the inquiry proceedings held on 22.07.2011, the relevant portion of which had been quoted hereinabove. It is also discernible from the conduct of the Respondents that pursuant to an order passed by this Court on 21.08.2009 in WP(C) No.3497/2009 whereby the petitioner was granted the liberty to submit the representation and with a further direction upon the Respondent Authorities to consider the representation within a period of one month, the Respondent Authorities woke up from their deep slumber. At that relevant point of time, the communication dated 11.01.2010 was issued intimating the petitioner that he cannot be granted the VRS in view of the pendency of the departmental proceedings although at that relevant time the

Government even had not taken any decision to re-start the departmental proceedings as could be seen from the affidavit filed by the Respondent No.3 wherein it was mentioned that the Government took a decision to re-start the departmental proceedings only on 15.06.2011. It further appears from the Minutes of the inquiry proceedings dated 22.07.2011 that the original records had already been misplaced and there was an attempt being made to re-construct the said original records with photocopies.

14. During the course of the hearing, this Court had put a specific query upon the counsels appearing on behalf of the Respondents as to whether the Respondent No.4 still is in service taking into account that the instant litigation has been pending for the last 13 years and he was initially appointed as an inquiry officer in the year 1996. Appearing on behalf of the Respondents Mr. A. Kalita, the learned counsel submits that he has no instructions in that regard but probably the Respondent No.4 must have retired.

15. In view of the above circumstances and taking into account that the departmental proceedings was initiated in the year 1996 and 27 years have passed by and in the meantime the VRS of the petitioner had also been accepted as could be seen from the receipt-cum-undertaking and the petitioner being paid the amount of Rs.1,84,315/- on 15.12.2008, this Court is of the opinion that in the exceptional facts of the case the further continuation of the departmental proceedings against the petitioner would not be in the interest of justice and accordingly the said departmental proceedings so reinitiated against the petitioner stands set aside and quashed.

16. Now coming to the second point for determination as framed by this Court as to whether the petitioner is entitled to any additional amount. This Court vide the order dated 21.08.2009 in WP(C) No.3497/2009 had given the liberty to the petitioner to submit a representation and the respondent authorities were accordingly directed to consider the same within one month. The respondent authority however had rejected the said representation only on the ground that there was a departmental proceedings pending against the petitioner for which the Petitioner is not entitled to VRS in terms with Clause 5 of the Office Memorandum dated 15.05.2008. It is relevant as well as pertinent also to reiterate that as on 11.01.2010 when the said impugned communication was issued, there was no decision of the Government to re-start the departmental proceedings as could be seen from the affidavit filed by the Respondent No.3, wherein it was specifically mentioned that only on 15.06.2011, the decision was taken by the Government to re-start the departmental proceedings. Be that as it may, as the challenge to the communication dated 11.01.2010 has been pending before this Court in WP(C) No.4704/2010 and the reason for which the impugned communication dated 11.01.2010 was issued i.e. pendency of the departmental proceedings which have been quashed by this Court vide the directions and observations made herein supra, this Court is of the opinion that interest of justice would be met if the Respondent No.3 is directed to take a re-look upon a fresh representation if submitted by the petitioner as regards the entitlements, taking into consideration that as on date there exists no departmental proceedings against the petitioner. The petitioner is given liberty to submit a representation within 30 days from today and upon such representation submitted, the Respondent No.3 shall consider the same as to whether the petitioner is entitled to any further amount and if found on

verification that the petitioner is entitled to any further amount, the said amount be paid to the petitioner. The said exercise be carried out within 3 (three) months from the date of submission of the representation by the petitioner. The respondent no.3 is further directed to submit a compliance report before the Registry of this Court upon disposal of the representation.

17. With the above, both the writ petitions stand disposed off.

JUDGE

Comparing Assistant