

GAHC010194422011



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

Case No. : WP(C)/4860/2011

LNK 188 RAMEZUDDIN AHMED
S/O- SAMSUDDIN AHMED, R/O. VILL.- MORIKOLONG, BENGANIATI, P.O.-
CHOTA HAIBARGAON, P.S.- NAGAON, DIST.- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
THROUGH THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
HOME DEPTT., DISPUR, GHY- 6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY- 7
DIST.- KAMRUP
ASSAM.

3:THE INSPECTOR GENERAL OF POLILCE
ASSAM
ULUBARI
GHY- 7
DIST.- KAMRUP
ASSAM.

4:THE DY. INSPECTOR GENERAL OF POLICE ADMINISTRATION
ASSAM
ULUBARI
GHY- 7
DIST.- KAMRUP
ASSAM.

5:THE DY. INSPECTOR GENERAL OF POLICE TAP

ASSAM
ULUBARI
GHY- 7
DIST.- KAMRUP
ASSAM.

6:THE DY. INSPECTOR GENERAL OF POLICE CR
ASSAM
DIPHU
P.O. and P.S.- DIPHU
DIST.- KARBI ANGLONG
ASSAM.

7:THE SUPERINTENDENT OF POLICE
KARBI-ANGLONG DIST.
DIPHU AND DISCIPLINARY AUTHORITY
P.O. and P.S.- DIPHU
DIST.- KARBI-ANGLONG
ASSAM

For the Petitioner (s) : Mr. M.H. Ahmed, Advocate.

For the Respondent (s) : Mr. S.Baruah, Advocate.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
ORDER

22.08.2023

The instant writ petition has been filed by the Petitioner challenging the order dated 09.04.2007 passed by the Superintendent of Police, Karbi Anglong and the Disciplinary Authority of the Petitioner, whereby the Petitioner was dismissed from service with effect from 28.2.2005; challenging the Appellate Order dated 11.3.2010 whereby the Appeal filed by the Petitioner was dismissed and seeking a direction that the Petitioner be reinstated to his service granting him all service benefits w.e.f. from 28.2.2005.

2. It reveals from the records that the Petitioner alongwith one Shri Nripen Das were convicted in Sessions Case No. 22/1998 vide the judgment dated 28.2.2005 for rape of a girl under Section 376/34 of the Indian Penal Code. The Petitioner alongwith the said Nripen Das were sentenced for imprisonment for a period of 5 years alongwith a fine of Rs.500/- and in default for Simple Imprisonment for another one month.

3. It appears that pursuant to the said judgment dated 28.2.2005, the impugned order dated 09.04.2007 was passed whereby taking into account the Enquiry Report, evaluation of the evidence as well as also the decision rendered in the judgment dated 28.2.2005, the Petitioner was dismissed from Government service with retrospective effect from 28.2.2005. The Petitioner thereupon preferred an appeal which was also dismissed vide an order dated 11.3.2010.

4. This Court also finds it relevant to take note of that the Petitioner being aggrieved by the judgment dated 28.2.2005 passed in Sessions Case No. 22/1998 had preferred a Criminal Appeal before this Court which was registered and numbered as Crl. Appeal No. 83/2005. By the time the Appeal was taken up, the Petitioner had already served the sentence and a direction was therefore issued to the Superintendent, District Jail, Diphu to release the Petitioner as the Petitioner had completed his conviction period. Be that as it may be, the conviction of the Petitioner vide the judgment dated 28.2.2005 in

Sessions Case No.22/1998 remained and the said conviction was not set aside in the Appeal.

5. The learned counsel for the Petitioner had submitted that the Disciplinary Proceedings so initiated against the Petitioner was not as per the procedure mandated under the Assam Service (Discipline and Appeal) Rules, 1964 (in short 'the Rules of 1964') and as such the dismissal of the Petitioner is required to be interfered with.

6. Mr. M.H. Ahmed, the learned counsel appearing for the Petitioner submitted that the dismissal of the Petitioner with retrospective effect from 28.2.2005 was not permissible, it could only be prospective. This Court of the opinion that taking into account that the judgment of conviction of the Petitioner in Sessions Case No. 22/1998 was passed on 28.2.2005, the dismissal of the Petitioner w.e.f. 28.2.2005 cannot be said to be bad in law.

7. Be that as it may, this Court finds it relevant to take note of Rule 10 of the said Rules of 1964, wherein it has been mentioned that where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the Disciplinary Authority can consider the circumstances of the case and pass such orders thereon as it deemed fit. In the instant case, the Petitioner has been convicted under Section 376/34 IPC for rape of a girl, that too, being a police personnel. Under such circumstances,

even de hors a disciplinary proceedings, by virtue of Rule 10 of the said Rules of 1964, the Petitioner can be dismissed from service. This Court also finds it relevant to take note of that the Petitioner was a police personnel and it has been proved beyond reasonable doubt as could be seen from the judgment dated 22.8.2005 passed in Sessions Case No.22/1998 that the Petitioner alongwith another had committed rape on a girl. The said conduct of the Petitioner is unbecoming of a police personnel and as such this Court in exercise of the powers under Article 226 of the Constitution do not find this case as a fit case for interference under Article 226 of the Constitution for which the writ petition stands dismissed.

JUDGE

Comparing Assistant