

GAHC010194692011



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

Case No. : WP(C)/6433/2011

SMT BEDAWATI SAIKIA
W/O SRI MUKUL DAS R/O VILL- HATICHUNG KAMARCHUK, P.O.
HATICHUNG, P.S. JAJORI DIST. NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DIPSUR, GUWAHATI-6

2:THE DIRECTOR GENERAL OF POLICE
HEAD QUARTER
ULUBARI
GUWAHATI-7.

3:THE DEPUTY INSPECTOR GENERAL OF POLICE A
ASSAM
GUWAHATI.

4:THE DEPUTY INSPECTOR GENERAL OF
POLICE CR
DIPHU. DIST KARBI ANGLONG
ASSAM.

5:THE SUPERINTENDENT OF POLICE
MORIGAON
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : Mr. K. M. Hassan, Advocate

Advocate for the Respondents : Mr. N. Goswami, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 25.07.2023

Date of Judgment : 25.07.2023

JUDGMENT AND ORDER (ORAL)

The petitioner herein being aggrieved by the order of removal dated 05.11.2005 and not for treating the period of her absence as on duty has approached this Court by filing the instant writ petition.

2. The case of the petitioner herein is that the petitioner was appointed as Woman Police Constable on 04.07.1998 at Morigaon Police Reserve. After completion of training, the petitioner was posted at Moirabari Police Station wherein she resumed duties on 06.10.2001. It is the further case of the petitioner that the petitioner continued to render her services without any blemish till 27.10.2004. However, unfortunately, the petitioner suffered from mental illness and became senseless for which the petitioner was compelled to take necessary medical treatment. It has been stated in the writ petition that the petitioner had taken treatment in the Nuero-Psychy Clinic, Nagaon as well as at the Lokopriya Gopinath Bordoloi Regional Institute of Mental Health, Tezpur.

3. During this period, when the treatment was going on, the petitioner received show cause notice. But on account of her mental illness, she was not in a condition to reply. The petitioner claimed that she recovered from her mental illness in the month of July, 2010 and the Medical Authority had also given a certificate in that regard.

4. Thereupon, the petitioner approached the concerned respondent

authorities for permitting the petitioner to join in her service. The petitioner came to learn that vide an order dated 05.11.2005, in Departmental Proceeding No.1/2005, the petitioner was dismissed from her service. The petitioner thereupon submitted an application on 30.05.2011 before the Director General of Police, Assam along with relevant medical documents. The said communication dated 30.05.2011 was forwarded by the Deputy Inspector General of Police (A), Assam to the Deputy Inspector General of Police (CR), Diphu, Assam to look into the matter thoroughly and take necessary action, vide a communication dated 05.07.2011. The petitioner further filed an appeal on 23.09.2011 challenging the order of removal dated 05.11.2005 before the Deputy Inspector General of Police (CR), Diphu. In the said appeal, the petitioner had in detail stated about her mental illness and had also enclosed the relevant medical documents in that regard. However, as no action was taken in the said appeal filed on 23.09.2011, the petitioner filed the instant writ petition on 14.12.2011.

5. This Court vide an order dated 21.12.2011 had issued Rule. It appears on record that the respondent No.5 had filed an affidavit-in-opposition. In the said affidavit-in-opposition, various details have been mentioned as to how the Departmental Proceeding was initiated and how the notice was duly served as well as the order of dismissal dated 05.11.2005 was justified. In paragraph No.11 of the said affidavit-in-opposition, it was mentioned that the application filed by the petitioner on 30.05.2011 was forwarded to the Appellate Authority who passed an order on 22.07.2011 thereby rejecting the appeal. There is, however, no mention whatsoever as regards the fate of the appeal so filed on 23.09.2011.

6. This Court further finds it relevant to take note of that Annexure-3 of the

affidavit-in-opposition which is the order dated 22.07.2011 passed by the Deputy Inspector General of Police (CR), Assam who is the Appellate Authority. A perusal of the said order, however, does not disclose in any manner that the said Appellate Authority has taken into account the petitioner's mental illness during the period and has merely decided the Appeal on the basis that the order dated 05.11.2005 was passed by observing all the required formalities.

7. I have heard the learned counsels for the parties. The basic issue on which the petitioner has assailed the order dated 05.11.2005 is that the said Departmental Proceeding was initiated at the time when the petitioner was suffering from mental illness which incapacitated the petitioner from contesting the said Departmental Proceeding. This very aspect was duly taken in the communication dated 30.05.2011 as well as also in the appeal which was filed on 23.09.2011.

8. This Court has also perused the order dated 22.07.2011 passed by the Appellate Authority. However, strangely the Appellate Authority did not take note of the said aspect of the matter as to whether the petitioner was actually incapacitated on account of mental illness to contest the Departmental Proceeding as well as performing her duty during the period. The medical documents which were placed by the petitioner, the reference of which could be seen in the letter dated 30.05.2011 as well as the Appeal which was filed on 23.09.2011, have not at all been taken into consideration or even discussed by the Appellate Authority.

9. Taking into account the above, this Court is of the opinion that the Appellate Authority has not exercised its Appellate power in the manner in which it ought to have done so. The fact that as to whether the petitioner was incapacitated or as to whether the petitioner can be allowed to rejoin is a

question which needs to be decided on the basis of certain fact findings to be carried out by the Authority empowered to adjudicate such facts. This Court under Article 226 of the Constitution would not like to venture on the said aspect of the matter as the same would require adjudication on certain questions of facts and more so when the Appellate Authority failed to consider the same. It is under such circumstances, this Court, therefore, sets aside the order dated 22.07.2011 passed by the Appellate Authority, i.e. the Deputy Inspector General of Police (CR), Assam and directs the said Appellate Authority to decide afresh the said Appeal so filed by the petitioner on 23.09.2011 by giving the petitioner an opportunity of hearing.

10. The petitioner is further directed to serve a certified copy of the instant order to the Deputy Inspector General of Police (CR), Diphu, Assam along with a copy of the Memo of Appeal thereby enclosing therein the necessary documents on the basis on which the petitioner claims that she was incapacitated on account of mental illness during that period.

11. The said appeal be decided within a period of 3 (three) months from the date a certified copy of the instant order as well as the documents as stated herein above are served upon the respondent No.4, i.e. the Appellate Authority.

JUDGE

Comparing Assistant