

GAHC010207672022



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

Case No. : WP(C)/6680/2022

SAILENDRA BORA
S/O LATE BHADRA KANTA BORA, R/O PANIGAON TOWN, NAMGHAR
PATH, WARD NO-23, P.O. AND P.S.-ITACHALI, DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER TO THE GOVERNMENT OF
ASSAM, COMMISSIONERATE OF PANCHAYAT AND RURAL DEVELOPMENT,
PANJABARI, GUWAHATI-37, ASSAM

2:THE CHIEF EXECUTIVE OFFICER
HOJAI ZILLA PARISHAD
HOJAI
PIN-

3:THE BLOCK DEVELOPMENT OFFICER
BINNAKANDI DEVELOPMENT BLOCK
HOJAI

Advocate for the Petitioner : MR D MAHANTA

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

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

18.09.2023

Heard Mr. D. Mahanta, learned counsel for the petitioner. Also heard Mr. P. Handique appearing on behalf of Mr. K. Konwar, learned counsel for the respondents.

2. The petitioner's grievance is that the petitioner's contractual service had been terminated on the basis of an Inquiry Report dated 04.04.2022, issued by the Chief Executive Officer, Hojai Zila Parishad, which was made behind the back of the petitioner.

3. The petitioner's counsel submits that the petitioner was appointed on contractual basis as Accountant-cum-Computer Operator under the RGPSA Scheme by the respondent No. 2 for a period of six months from 02.01.2015. He submits that the said contract agreement was extended from time to time. However, the petitioner's service was terminated on the ground of misappropriation of fund, vide the impugned Order dated 12.08.2022, issued by the respondent No. 1.

4. The petitioner's counsel also submits that in the criminal case filed against the petitioner, i.e. Murajhar P.S. Case No. 57/2022 under Section 403/420/409 IPC, charge sheet has been filed and trial has started in the case. The learned counsel also submits that as no show cause notice with the inquiry report was issued to the petitioner, prior to termination of his contractual service, the termination order should be set aside and the petitioner should be reinstated into service. He submits that in a similar case, i.e. WP(C) No. 2977/2023, the terminated contractual employee was reinstated in service vide Order dated 01.06.2023. As such, a similar order should be passed in terms of Order dated 01.06.2023 passed in WP(C) No. 2977/2023.

5. The learned counsel for the petitioner submits that the petitioner was issued a show cause notice dated 04.06.2022 and the petitioner made a reply to the same. However, the inquiry report was not made a part of the show cause notice and as such, the termination order had been issued in violation of the principles of natural

justice. Further, the beneficiaries to whom the money was to have been appropriated, had withdrawn their case against the petitioner.

6. The learned counsel for the respondents, on the other hand, submits that the petitioner having misappropriated money which was to be entered into the account numbers of beneficiaries, for construction of PMAY-G houses, and the same having been proved by the Inquiry Report, there was no illegality in terminating the contractual service of the petitioner. The learned counsel for the respondents further submits that as the petitioner's contractual service period has apparently expired by now, the petitioner's only recourse would be to file a suit for damages, in terms of the Judgment and Order passed by this Court in *Ajoy Kumar Haloi Vs. State of Assam & Others*, reported in 2014 (3) GLT 420.

7. The respondents counsel further submits that in terms of the Judgment of this Court in *WP(C) No. 4632/2023, Jan Saikia Vs. State of Assam & 5 Others*, the petitioner is not entitled to the relief of his contractual service being restored, in view of the fact that the contractual engagement of the petitioner is determinable, as per the clauses in the Contract Agreement, which allow for the respondents to terminate the contractual agreement of the petitioner, when the contractual employee is found to be involved in any act that may become embarrassing for the respondents.

8. I have heard the learned counsels for the parties.

9. The petitioner has been found to have misappropriated funds, by diverting funds into account numbers not belonging to beneficiaries, for construction of PMAY-G houses. The petitioner was issued a show cause notice dated 04.06.2022 to give a reply to the same. The petitioner made his reply to the show cause notice on 11.06.2022. However, the show cause notice did not contain the Inquiry Report dated 04.04.2022 made by the respondent No. 2, as can be seen from the application dated

08.09.2022 submitted by the petitioner to the respondent No. 2, requesting to be furnished a copy of the Inquiry Report dated 04.04.2022. The said fact is not disputed by the respondents.

10. In view of the above, it is clear that the petitioner has not been given an opportunity of being heard, in respect of the inquiry report dated 04.04.2022, thereby violating the principles of natural justice. In a similar matter, i.e. WP(C) No. 2977/2023, this Court had set aside the termination order of the contractual employee therein, on the ground that the contractual employee had not been given an opportunity of being heard. The order of termination being stigmatic and being founded on the allegation of misappropriation, it was the duty of the respondents who have issued a proper show cause notice to the petitioner.

11. In view of the above reasons, this Court is of the view that the State respondents have not been fair to the petitioner in terminating his service, without giving him an opportunity of being heard in respect of the inquiry report dated 04.04.2022. Consequently, the impugned order of termination dated 12.08.2022 being arbitrary is hereby set aside.

12. The respondents are directed to reinstate the petitioner back into service. However, it would be open for the respondents to proceed against the petitioner afresh, by serving him a proper show cause notice by including the inquiry report dated 04.04.2022. In the event the respondents proceed to act against the petitioner by serving him proper show cause notice, the entire process for taking a decision after serving a notice on the petitioner should be completed within a period of three months from the date of receipt of a copy of this order.

13. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant