

GAHC010309032019



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

Case No. : WP(C)/294/2020

LALAN VERMA AND 4 ORS.
S/O. SRI DHARAMDEO VERMA, R/O. BHUBANKAHAL, P.O. SAIKHOWA
GHAT, P.S. DHOLA, DIST. TINSUKIA, ASSAM, PIN-786154.

2: KESHAB GOGOI
S/O. LT. JAMUNA GOGOI
R/O. INTHEM NAGA PATHER
P.O. INTHEM PENGAREE
P.S. PANGAREE
DIST. TINSUKIA
ASSAM
PIN-786174.

3: MULAN BORUAH
S/O. SRI PRADIP BORUAH
R/O. DISWJAN
P.O. BORGAON
P.S. BARAKURI
DIST. TINSUKIA
ASSAM
PIN-786170.

4: GIRIBALA CHETIA
D/O. LT. DIMBESWAR CHETIA
R/O. PANGNA VILLAGE
P.O. KETETONG
P.S. MARGHERITA
DIST. TINSUKIA
ASSAM
PIN-786181.

5: SMT. JAGYABATI BASFORE
W/O. LT. SUNIL BASFOR
R/O. LACHIT NAGAR

COLLEGE ROAD
MAKUM
P.O. MAKUM
P.S. MAKUM
DIST. TINSUKIA
ASSAM PIN-786170

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HEALTH
AND FAMILY WELFARE (A) DEPTT., DISPUR, GUWAHATI-6, ASSAM.

2:THE SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (A) DEPTT.
DISPUR
GUWAHATI-6 ASSAM.

3:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-36 ASSAM.

4:THE JOINT DIRECTOR OF HEALTH SERVICES
TINSUKIA
ASSAM PIN-786125.

5:THE SCREENING COMMITTEE
REP. BY THE CHAIRMAN (ADDL. DIRECTOR OF HEALTH SERVICES)
HENGRABARI
GUWAHATI-36 ASSAM

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : SC, HEALTH

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

09.01.2023

Heard Mr. P. Bordoloi, the learned counsel for the petitioners and Mr.
B. Gogoi and Mr. D. Upamanyu, the learned counsel appearing on behalf of

the Health Department.

The instant writ petition has been filed by the five petitioners challenging the respective removal orders dated 21.10.2019 issued by the Joint Director of Health Services, enclosed as Annexure-Q (Colly).

The case of the petitioners herein is that this Court vide an order dated 31.07.2019 passed in various writ petitions wherein there was a challenge to the communication dated 06.06.2019 issued by the Director of Health Services, Assam had taken into consideration that the affidavit filed by the Director of Health Services in those proceedings wherein it was stated that a decision was taken by the Director of Health Department to withdraw the show cause notices impugned therein and to issue fresh show cause notices mentioning the specific deficiencies found against each illegal fake employee including the petitioners so that each show caused employee gets an opportunity to know his/her deficiency and to respond effectively. It was also mentioned that in the said affidavit that a direction was issued on 05.07.2019 to the Joint Director of Health Services of the concerned districts who had issued the impugned show cause notices to withdraw the show cause notices and to issue fresh one indicating specific deficiency. In view of the said affidavit, this Court, taking into account that the respondent Health Department has already redressed the grievances of the petitioners therein closed the writ petitions thereby giving the liberty to the respondents to proceed in accordance with law.

The record further reveals that on 16.08.2019, all the petitioners herein were issued separate show cause notices of identical nature. The contents of one of such show cause notice is reproduced herein below:-

“To,

*Sri Laln Verma, Gr.IV
Salkhowaghat St. Dispy.
P.O. Dholla
Disrit-Tinsukia.*

Sub: Show Cause

*Ref: HSE/ Verification/ Gr.IV/ 80/ Pt-I/2017/5840 dtd. Ghy. the 1st
Aug/2019.*

With reference to the above, I am directed to issue this show cause notice to you in respect of proof of genuineness of your appointment as Gr.IV.

As per the above reference letter, you are directed to prove genuineness of your appointment by submitting the (1) approval document of the Director of Health Services, Assam and (2) the approval of Finance (SIU) Dept., Assam to afford opportunity before any adverse action is taken by the concerned authority.

Hence, your reply in writing along with the copy of the above mentioned documents must submit to the Office of the undersigned within 7 (seven) days sharply, from the date of receipt of this notice by you for the onward transmission to the Director of Health Services, Assam within the stipulated time.

This is for your information and necessary action.

*Joint Director of Health Services
Tinsukia, Assam
Date 16.08/2019”*

From a perusal of the above quoted show cause notice, it transpires that the said show cause notice was in respect to the proof of

genuineness of the appointment as Grade-IV and as such the petitioners were directed to prove the genuineness of their appointment by submitting (1) the approval document of the Director of Health Services, Assam and (2) the approval of Finance (SIU) Department, Assam and to afford opportunity before any adverse action is taken by the concerned authority. It further appears that the reply was asked for within 7 (seven) days to the Office of the Joint Director of Health Services from the date of receipt of the said notice for onward transmission to the Director of Health Services, Assam within the stipulated period.

Record further shows that on 21.08.2019, all the petitioners had submitted their replies to the show cause notices issued to them. In the said show cause reply, it has been mentioned amongst others that the documents which were sought for are internal documents of the Department, the copies of which were never served to the petitioners. It was mentioned that since the date of appointment, the petitioners have been serving as Grade-IV employees and have been receiving the salary regularly with all increments as revised from time to time till then which clearly implies that the approval of both the authorities mentioned in Sl. Nos.1 & 2 of the said reply exists. The petitioners, therefore, requested the authority concerned to verify their documents once again in isolation by giving an opportunity of hearing to rebut any discrepancy that may have noticed by them in the order of the appointment and not to terminate their services summarily treating their appointments to be illegal.

Subsequent to the said reply, the Joint Director of Health Services vide orders all dated 21.10.2019, enclosed as Annexure-Q (Colly),

removed the petitioners from services with immediate effect.

Being aggrieved, the petitioners have approached this Court under Article 226 of the Constitution. The ground on which the petitioners have approached this Court is that the show cause notices so issued pursuant to the order dated 31.07.2019 was not a show cause notice pointing out the deficiencies in the appointment orders of the petitioners rather it was the petitioners who were asked to prove that there were no deficiency in their appointments.

The learned counsel for the petitioners has submitted that the entire process of issuing show cause notices was based upon an enquiry being conducted by the Scrutiny Committee wherein the appointments were suspected to be not genuine and it is under such circumstances the initial ground of litigation was instituted wherein the Director of Health Services in his affidavit categorically mentioned that the Director of Health Services shall issue fresh show cause notices mentioning the specific deficiencies found against the illegal fake employees including the petitioners. He, therefore, submitted that sans any deficiency being pointed out in the show cause notices, the said show cause notices were not in terms with the order dated 31.07.2019 by which all the writ petitions were closed in view of the specific stand taken by the Director of Health Services.

Mr. D. Upamanyu, the learned counsel appearing on behalf of the Health Department has submitted that in the said show cause notices, the Joint Director of Health Services had asked the petitioners to submit the various documents so that the question as to whether the petitioners have been genuinely appointed would be ascertained. However, the petitioners by their replies have submitted that those are internal documents to which

they are not in possession.

It is under such circumstances as there was no document placed, the impugned removal orders were passed which are enclosed as Annexure-Q (Colly) to the writ petition.

Upon hearing the leaned counsel for the parties, this Court is of the opinion that the entire episode of removal of the petitioners as similarly situated persons have arisen in view of the report submitted by the Scrutiny Committee whereby various appointments were suspected to be not genuine. The stand of the Director of Health Services in the earlier round of litigations was clear and unambiguous to the effect that they would be issuing fresh show cause notices mentioning the specific deficiencies found against the illegal fake employees including the petitioners. However, a perusal of the show case notice, contents of which have been quoted herein above, would show that there is no mention whatsoever as to what deficiency for which the said show cause notice was issued.

Under such circumstances, this Court is of the opinion that the said show cause notices issued were not in accordance with the order dated 31.07.2019 passed in WP(C) No.4580/2019 wherein the petitioners were parties.

Consequently, therefore, this Court interferes with the order of removal dated 21.10.2019, Annexure-Q (Colly) to the writ petition. However, liberty is given to the respondent, i.e. the Health Department to issue show cause notices by specifying the deficiencies found in the appointment orders of the petitioners.

In view of the above, the instant writ petition, therefore, stands disposed of thereby interfering and setting aside the impugned removal order dated 21.10.2019, Annexure-Q (Colly) and thereby observing that the respondent, i.e. the Health Department shall be at liberty to take appropriate action in terms with the specific stands as observed in the order dated 31.07.2019 to the effect that they would issue show cause notices thereby specifying the deficiency found against the purported appointment orders in favour of the petitioners.

With the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant