

GAHC010072312024



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

Case No. : WA/114/2024

BIYOLA BARUAH
W/O MR. SRI MAHESWAR SAIKIA, R/O VILL. UDAMARI, P.O. BALIPARA,
P.S. CHARIDUAR, DIST. SONITPUR, PIN 784101, ASSAM.

VERSUS

THE UNION OF INDIA ANDN 3 ORS
REPRESENTED THROUGH THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HEALTH AND FAMILY WELFARE NEW DELHI

2:THE DIRECTOR
LOKPRIYA GOPINATH BORDOLOI REGIONAL INSTITUTE OF MENTAL
HEALT
TEZPUR
DIST SONITPUR
ASSAM 784001

3:THE CHIEF ADMINSTRATIVE OFFICER

LOKPRIYA GOPINATH BORDOLOI REGIONAL INSTITUTE OF MENTAL
HEALT
TEZPUR
DIST SONITPUR
ASSAM 784001

4:THE HOD
DEPARTMENT OF PSYCHIATRIC NURSING
LOKPRIYA GOPINATH BORDOLOI REGIONAL INSTITUTE OF MENTAL
HEALT
TEZPUR
DIST SONITPUR
ASSAM 78400

For the appellant : Mr. A.C. Borbora, Senior Advocate
Assisted by Ms. N. Dey, Advocate
For the respondents : Mr. A.K. Dutta, Central Govt. Counsel

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

24-04-2024

(Vijay Bishnoi, C.J.)

1. This intra-Court appeal is filed by the appellant being aggrieved with the judgment and order dated 07.03.2024, passed by the learned Single Judge in W.P. (C) No.2209/2021 filed by the petitioner (appellant herein), whereby the learned Single Judge disposed of the writ petition while refusing to grant the prayer made by the petitioner to set aside the Memorandum dated 26.11.2020 containing the article of charges.

2. Since the learned Single Judge has noted the relevant facts of the case in the impugned order, we are not repeating the same and are only taking into consideration the relevant facts essential for the purpose of deciding this writ appeal.

3. The appellant was posted as a Nursing Tutor in the Lokopriya Gopinath Bordoloi Regional Institute of Mental Health, Tezpur, and is rendering her services as a Staff Nurse in the above referred institution. She was served with a Memorandum dated 22.04.2020, issued by the Chief Administrative Officer of the Institution containing three numbers of charges calling for her explanation. In response to the said charges, the appellant filed her explanation on 27.04.2020.

Thereafter, she was served with another Memorandum dated 26.11.2020 containing six articles of charges as statement of imputation of misconduct or misbehaviour.

4. Initially the appellant filed a writ petition, being, WP(C) 2209/2021, wherein she raised an apprehension that since the Presenting Officer appointed by the respondents is the Administrative Officer and is the custodian of all the official records pertaining to the duty allotment, Attendance Register etc. as well as all correspondences by and between the petitioner and the institute and, moreover, as he will also be required to be present as witness in the enquiry proceedings, he may have personal bias and hostility towards the petitioner and, therefore, he may be removed as Presenting Officer.

5. During pendency of the said writ petition, the appellant filed another writ petition, being, WP(C) No. 5622/2023 seeking a direction to the respondents to release the increments payable to the petitioner, which had been withheld by the respondents on account of pendency of the disciplinary proceedings.

6. It is noticed that WP(C) No.5622/2023 has been allowed by the learned Single Judge by a separate order passed on 07.03.2024 and a direction has been issued to the respondents to forthwith release the increments payable to the petitioner.

As noticed WP(C) No.2209 /2021 was filed by the appellant essentially raising a grievance regarding the appointment of the Presenting Officer. However, during pendency of the said writ petition, the appellant moved an application seeking amendment of the writ petition by incorporating the challenge to the Memorandum dated 26.11.2020, containing article of charges, on the ground that the charges are vague and non-specific and therefore, the appellant is unable to put up a clear

defence. The said application came to be allowed by the learned Single Judge vide order dated 09.01.2024.

7. It is not in dispute that during pendency of the writ petition, the Presenting Officer, earlier appointed, was replaced by a new Presenting Officer and therefore, the learned Single Judge has observed that as both the Enquiry Officer and the Presenting Officer earlier appointed have been replaced as on date, the grievance raised by the petitioner regarding the appointment of the Presenting Officer has been resolved.

8. Regarding the challenge made by the appellant to the Memorandum dated 26.11.2020, containing article of charges as statement of imputation of misconduct or misbehaviour on the ground that the same are vague and non-specific for which the appellant is unable to put up a clear defence, the learned Single Judge has opined that in absence of any final order passed by the disciplinary proceedings as on date, the High Court is not supposed to give any finding on the same while exercising powers under Article 226 of the Constitution of India.

The learned Single Judge has further opined that at this stage it cannot be said with absolute certainty the respondent authorities will impose penalty — major or minor — on the appellant and there is all possibilities that the disciplinary authority, upon consideration of the necessary evidence, may proceed to drop the charges against the appellant. It is further opined that it is equally possible for the disciplinary authority not to accept the findings recorded in the enquiry report even though the enquiry report may conclude that the charges against the appellant are proved. The learned Single Bench has observed that in view of such probabilities, which may result in any decision, only after completion of the entire disciplinary proceedings, at this stage, any definite finding cannot be arrived at that the authorities have initiated the disciplinary proceedings with a vindictive attitude to

prove the charges levelled against the appellant. The learned Single Judge has further observed that since the basic apprehension of bias, which was brought out against the Presenting Officer, is no longer there with the appointment of the new Presenting Officer, no relief can be granted to the appellant.

9. Assailing the said finding, Mr. A.C. Borbora, learned senior counsel appearing on behalf of the appellant has vehemently submitted that the learned Single has failed to appreciate that the Memorandum containing the Articles of Charges is vague and non-specific and, in such circumstances, the appellant is restrained from defending her case, or to put up a clear defence. It is submitted that the entire sequence of events pointed out malice on the part of respondents towards the appellant and, in such circumstances, the impugned Memorandum dated 26.11.2020 was liable to be set aside. The learned senior counsel for the appellant has placed heavy reliance on the decisions of the Hon'ble Supreme Court rendered in the cases of **Anant R. Kulkarni vs. Y.P. Education Society & Others**, reported in **(2013) 6 SCC 515** and **Surath Chandra Chakraborty vs. State of West Bengal**, reported in **(1970) 3 SCC 548**.

10. Per contra, Mr. A.K. Dutta, learned Central Government counsel appearing for the respondents has supported the impugned judgment and has argued that the learned Single Judge has not committed any illegality in not interfering with the Memorandum dated 25.11.2020.

11. Heard the learned counsel for the parties and perused the material available on record.

12. The appellant has challenged the Memorandum containing Article of Charges mainly on the ground that charges are vague and non-specific and therefore the appellant is not able to put up a clear defence. It is noticed that in the impugned

judgment the learned Single Judge has quoted the Memorandum dated 26.11.2020. We have gone through the said Memorandum and are of the *prima facie* view that the charges levelled against the appellant vide Memorandum dated 26.11.2020 cannot be said to be vague and non-specific so much so that the appellant is not able to put up a clear defence of her.

13. An attempt was made on behalf of the appellant to impress upon the Court that the charges levelled against the appellant are not true. We are of the view that at this stage no finding can be given regarding the truthfulness of the charges levelled against the appellant. The Hon'ble Supreme Court, in the case of ***Union of India and Others vs. Upendra Singh***, reported in ***(1994) 3 SCC 357***, has clearly held that it is not advisable to look into the correctness or truthfulness of the charges and any such exercise amounts to taking over the functions of the disciplinary authority.

14. The judgment delivered in ***Anant R. Kulkarni*** (supra) has already been taken into consideration by the learned Single Judge and we are completely in agreement with the view taken by the learned Single Judge on that aspect. So far as the judgment of the Hon'ble Supreme Court in the case of ***Surath Chandra Chakraborty*** (supra) is concerned, there is no quarrel about the law laid down by the Hon'ble Supreme Court in that judgment. However, since we have already gone through the Article of Charges and expressed *prima facie* opinion that the same are not vague or non-specific, the said judgment is of no help to the appellant.

15. In view of the above, we do not find any case for interference with the impugned judgment and, hence, the writ appeal is dismissed.

16. However, any observations made by us regarding the clarity of charges are *prima facie* observations and that would not preclude the appellant to raise that

plea before the disciplinary authority or appellate authority in case disciplinary proceeding goes against her.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant