

GAHC010074842021



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

Case No. : WP(C)/2899/2021

SMTI BOGI @ KUNKUNI BORDOLOI
W/O LATE CHIBHEN BORDOLOI, RESIDENT OF VILLAGE GAGINBORI, PO,
PS AND DIST MORIGAON, ASSAM 782105

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM. POLITICAL
(B) DEPT. DISPUR, GHY 06

2:THE MEMBER
FOREIGNERS TRIBUNAL
2ND MORIGAON
ASSAM 782105

3:SRI BHUPEN BORDOLOI
S/O LATE JARUA BORDOLOI
RESIDENT OF VILLAGE SIDHABARI
PO NATUAGAON
PS MORIGAON
DIST MORIGAON
ASSAM 78210

Advocate for the Petitioner : MR. D C C PHUKAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 26.06.2024

Heard Mr. D. C. C. Phukan, learned counsel for the petitioner. Also heard Mr. C. K. S. Baruah, learned Government Advocate, appearing on behalf of respondent No. 1; Mr. U. J. Saikia, learned counsel, appearing on behalf of respondent No. 2; and Ms. S. Baro, learned counsel, appearing on behalf of respondent No. 3.

The challenge in the present proceeding, pertains to the issuance of an order, dated 05.11.2020, issued by the Member, Foreigners' Tribunal(2nd), Morigaon, releasing the petitioner from her engagement as a sweeper in the establishment.

As projected in the writ petition, the petitioner, herein, was initially engaged by the respondent No. 2 on wage basis as a sweeper in his establishment on 31.03.2009. Thereafter, her service was extended from time to time.

It is to be noted that the wages of the petitioner was also being enhanced by the respondent No. 2 in conformity with the enhancement by the Government of Assam of

the wages for such category of workers.

It is the contention of the petitioner that without any prior notice issued, she was, vide order, dated 05.11.2020, released from her service and consequently, the respondent No. 3, herein, was so engaged for the works being done by the petitioner, herein, by the respondent No. 2.

Being aggrieved; the petitioner has instituted the present proceeding.

A perusal of the materials brought on record reveals that an adhoc employee has been replaced by another adhoc employee. However, there is no justification brought on record for the purpose of engagement of respondent No. 3 in place of the petitioner, herein,

In the affidavit so filed by the respondent No. 2, a vague statement to the effect that the petitioner was guilty of disobedience and dereliction of her duties and she had not followed the rules and regulations while in office premises, was so made. It was also highlighted that the petitioner was issued with verbal warnings.

The said position is disputed by the learned counsel for the petitioner by contending that the petitioner was never issued with any notice in this connection and this Court not being satisfied with the contentions made in the affidavit filed by the respondent No. 2; the removal of the petitioner, herein, having been so done without there being any reasons assigned for the purpose and the reason assigned subsequently in the affidavit being in the form of a development made in the matter by the respondent No. 2, the same is not being accepted and accordingly, the order, dated 05.11.2020, stands interfered with.

The petitioner shall now be reinstated in her services in her earlier capacity in the establishment of respondent No. 2 and shall be permitted to discharge her duties in such capacity.

In view of the interference made with the order, dated 05.11.2020; the engagement of private respondent No. 3 in the said establishment, would also come to an end.

Given the apprehensions raised by Mr. Saikia, learned counsel for the respondent No. 2, with regard to the conduct of the petitioner, herein, it is provided that in the event, the petitioner does not display a demeanour as mandated of an employee in the said establishment; the respondent No. 2 would be at liberty to take appropriate action in the matter against the petitioner by issuing due notice to her.

It is provided that the petitioner would not be entitled to any wages for the period of removal w.e.f. 05.11.2020 till the date of her reinstatement in terms of this order on the principle of “no work, no pay”.

With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant