

GAHC010138562013



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

Case No. : WP(C)/598/2013

PRONAB ADHYAPAK
S/O SRI BHARAT ADHAYAPAK R/O NOTUN PARA, MALLOWALI P.O.
MALLAWOLI DIST.JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM IN
THE CO-OPERATION DEPARTMENT

2:FISHFED REPRESENTED BY ITS MANAGING DIRECTOR.

3:THE REGISTRAR OF CO-OPERATIVE SOCIETIES ASSAM.

4:ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT PAN BAZAR GUWAHATI - 781001 ASSAM.

5:THE DIRECTOR FISHERY DEPARTMENT GUWAHATI - 781016 ASSAM

Advocate for the Petitioner : MR.M K CHOUDHURY

Advocate for the Respondent : MR. G. BORDOLOI, SC, CO-OP.

Linked Case : MC/10/2023

PRONAB ADHYAPAK
S/O SRI BHARAT ADHAYAPAK R/O NOTUN PARA
MALLOWALI P.O. MALLAWOLI DIST.JORHAT
ASSAM.

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THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM IN
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2:FISHFEDREPRESENTED BY ITS MANAGING DIRECTOR.

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FISHERY DEPARTMENT PAN BAZAR GUWAHATI - 781001 ASSAM.

5:THE DIRECTOR FISHERY DEPARTMENT GUWAHATI - 781016
ASSAM.

Advocate for : MR.M K CHOUDHURY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : I.A.(Civil)/3654/2019

PRONAB ADHYAPAK
S/O SRI BHARAT ADHYAPAK
R/O NOTUN PARA
MALLOWALI
P.O. MALLOWALI
DIST. JORHAT
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF ASSAM
CO OPERATIVE DEPTT. DISPUR
GUWAHATI 781006 ASSAM.

2:ASSAM APEX COOPERATIVE FISH MARKETING AND PROCESSING
FEDERATION LTD. (FISHFED)
REPRESENTED BY ITS MANAGING DIRECTOR

HARBALA PATH RUPNAGAR GUWAHATI 781032 ASSAM.

3:THE REGISTRAR OF CO OPERATIVE SOCIETIES 6TH MILE
KHANAPARA GUWAHATI 781021 ASSAM.

4:ADDITIONAL CHIEF SECY. TO THE GOVT. OF ASSAM
FISHERY DEPTT. PAN BAZAR GUWAHATI 781001 ASSAM

5:THE DIRECTORFISHERY DEPTT. GUWAHATI 781016 ASSAM.

Advocate for : MR. M K CHOUDHURY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 23.01.2024

Heard Ms. A. Choudhury, learned counsel for the petitioner. Also heard Mr. G. Bordoloi, learned Government Advocate, appearing on behalf of Respondents No. 1 & 3. However, none appears for Respondents No. 2, 4 & 5.

2. The petitioner by way of instituting this writ petition, has presented a challenge to an Office Order, dated 18.10.2012, by which, he was reinstated in his services as Fishery Extension Officer, FISHFED, but as a fresh appointee, erasing his past services against the same post.

3. The facts requisite to be noticed for adjudication of the issues arising in the present proceedings, is noticed hereinbelow:

In continuation of the earlier episodes of subjecting the petitioner to face departmental proceedings, he was again basing on a fresh set of allegations, placed under suspension vide order dated 05.07.2000. The suspension of the petitioner was followed with the issuance of a Show Cause

Notice, dated 25.07.2000, under Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964, leveling as many as 5(five) allegations including the allegation of unauthorized absence w.e.f. 01.05.2000. The allegations subsequently being decided by the disciplinary authority to be inquired into, an Inquiry Officer came to be appointed in the matter. The Inquiry Officer on conclusion of the inquiry, submitted her Inquiry Report and therein, concluded that all the 5(five) allegations as levelled against the petitioner and the charges framed thereon, stood established against the petitioner. A copy of the Inquiry Report was forwarded to the petitioner and thereafter, the disciplinary authority by also considering the representation as submitted by the petitioner against the inquiry report, proceeded vide order dated 27.03.2001, to impose the penalty of removal from service upon the petitioner. The departmental appeal as preferred by the petitioner against the order dated 27.03.23001 having not yielded any result, he approached this Court by way of instituting WP(c)338/2002. The proceedings in WP(c)338/2002 came to be dismissed for default and was restored only upon order dated 18.01.2010 passed by the Hon'ble Supreme Court. The said writ petition was thereafter finally heard and this Court vide judgment & order dated 01.06.2010 held that out of the 5(five) charges framed against the petitioner, only the charge of unauthorized absence for 1(one) day was established. The matter was thereafter remanded to the disciplinary authority for consideration of the penalty that was to be imposed upon the petitioner in the light of the conclusions as reached by this Court.

A review petition being R.A. No. 70/2010 came to be instituted and on being satisfied that an error had crept in the judgment & order dated 01.06.2010 in concluding that the petitioner was unauthorizedly absent for only

1(one) day whereas such absence was for around 3(three) months, the judgment & order dated 01.06.2010, was recalled by way of review of the same.

The writ petition was thereafter taken up for fresh consideration and noticing that vide order dated 10.06.2010, only 1(one) of the 5(five) charges were held to be established, maintained that conclusion and proceeded to consider the writ petition accordingly. This Court after noticing all the relevant factors as existing in the matter and appreciating the rival stands of the parties to the proceedings, proceeded vide order dated 10.01.2011, to dispose of the said writ petition remanding the matter to the disciplinary authority requiring a consideration to be made as to whether the charge of unauthorized absence from duty (Charge No. 4) if considered independent of the other 4(four) charges, could entail the penalty of removal from service. The order of penalty dated 27.03.2001 was not interfered with. It was further observed by this Court that in the event, a decision is arrived at to reinstate the petitioner with any one of the lesser penalties, same will not entitle the petitioner to backwages.

The respondent authorities thereafter vide order dated 18.10.2012 reinstated the petitioner in service but such reinstatement was in the form of a fresh engagement against the post of Fishery Extension Officer, FISHFED, by placing him in the entry stage of the scale of pay authorized to the said post. It is this action that is under challenge in the present proceedings. The petitioner in terms of the order, dated 18.10.2012, joined his services on 25.10.2012.

4. Ms. Choudhury, learned counsel for the petitioner, has emphasized that the departmental authorities erred in issuing the order dated 18.10.2012 and that the said order was in clear violation of the directives as passed by this Court vide order dated 10.01.2011.

5. By referring to the order dated 11.01.2011, it is the contention of Ms. Choudhury, learned counsel for the petitioner, that the penalty as imposed upon the petitioner vide order dated 27.03.2001 was in the premises that all the 5(five) charges levelled against the petitioner, stood established. However, this Court having concluded that out of the 5(five) charges levelled against the petitioner, only the charge of unauthorized absence stood established against the petitioner, it is contended that in the changed circumstances, this Court had remanded that matter to the authorities for consideration as to what penalty now would be called upon to be imposed upon the petitioner.

6. Ms. Choudhury, learned counsel for the petitioner, has further emphasized that the tenor of the directions passed by this Court, vide order dated 10.01.2011, and the conclusions with regard to the charges reached, would highlight that this Court required the authorities to impose any other penalty that would not have the effect of terminating the services of the petitioner.

7. Ms. Choudhury, learned counsel for the petitioner, has also submitted that the order, dated 18.10.2012, cannot be deemed to be a penalty imposed upon the petitioner but has to be construed to be an order of reinstatement in service. In this connection; the learned counsel refers and relies upon a decision

of the Hon'ble Supreme Court in the case of ***Deepali Gundu Sarwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & ors.***, reported in ***(2013) 10 SCC 324***.

8. Mr. Choudhury, learned counsel, in the above premises, has required this Court to interfere with the order, dated 18.10.2012, to the extent that it is prospective in nature and thereafter, to direct the respondent authorities to fix the pay and allowances of the petitioner on such reinstatement by construing the services rendered by him against the same post prior to being imposed with the penalty of removal from service.

9. Ms. Choudhury, learned counsel, has further submitted that the petitioner being reinstated in service without imposition of any penalty, the period of his service with effect from the date of imposition of penalty of removal from service has to be regularized as on duty enabling the petitioner to receive all service benefits including pay, seniority, etc..

10. The respondent authorities in the Fisheries Department, more particularly, Respondent No. 2, have not brought on record their stand by way of filing their affidavits in the matter and also no one had appeared at the time of hearing of the instant case, today.

11. Mr. Bordoloi, learned Government Advocate, representing the Respondents No. 1 & 3; has submitted that the said authorities have no role to play with regard to the issues arising in the present proceedings, and as such, they are

formal parties to this proceedings.

12. I have heard the learned counsels appearing for the parties and also considered the materials available on record.

13. The petitioner had approached this Court by way of instituting a writ petition being WP(c)338/2002 assailing an order, dated 27.03.2001, by which, a penalty of removal from service was imposed upon him by the disciplinary authority. The said writ petition was taken-up for final consideration and this Court upon examining each of the articles of charge levelled against the petitioner in the light of the materials coming on record in the inquiry, had reached a conclusion that the 4(four) charges as levelled against the petitioner vide the Show Cause Notice, dated 25.07.2000, were not established and the charge of unauthorized absence from duty w.e.f. 01.05.2000, was only established in the inquiry. Accordingly, holding that the petitioner was unauthorizedly absent from duty only for a single day i.e. 01.05.2000; this Court had remanded the matter to the respondent authorities for a consideration as to the penalty that would now be required to be imposed upon the petitioner in view of the conclusions reached by this Court.

14. The departmental authorities thereafter filed a review petition being R.A. No. 70/2010 on the ground that the unauthorized absence of the petitioner as held by this Court, was not for a single day but for a period of almost 3(three) months. On the said aspect being brought to the notice of this Court, this Court proceeded to recall the order, dated 01.06.2010 by way of review of the same

and the matter was directed to be heard on merits, afresh. Accordingly, the case was heard on merit and vide order, dated 10.01.2011, the said writ petition came to be disposed of. This Court, while disposing of WP(c)338/2002, vide order, dated 10.01.2011, had after noticing the conclusions reached by this Court vide order, dated 01.06.2010, proceeded to maintain the same and remanded the matter to the disciplinary authority for consideration of the matter with regard to imposition of penalty in the light of the conclusions as now reached by this Court and to pass appropriate orders in this connection.

15. The directions as passed by this Court vide order, dated 10.01.2011, being relevant for the adjudication of this issue arising in the present proceedings, is extracted hereinbelow for ready reference:

“For all the aforesaid reasons, while not interfering with the impugned order of penalty dated 27.03.2001, the matter is remanded back to the disciplinary authority to consider as to whether the charge of unauthorized absence from duty (charge No. 4) if considered independent of the other four charges could entail the penalty of removal from service. No opinion is expressed in this regard and the matter is left to the sound discretion of the disciplinary authority. It is made clear that in the event of taking any decision to reinstate the petitioner in service with any one of the lesser penalties, same will not entitle the petitioner backwages. The disciplinary authority shall now pass appropriate order in terms of this judgment & order and consequently with the observations made above as expeditiously as possible preferably within 31.03.2011.”

16. In terms of the said directions passed by this Court, the respondent authorities vide order, dated 18.10.2012, proceeded to issue a fresh order of appointment to the petitioner as Fishery Extension Officer, FISHFED, and placed him in the entry stage of the scale of pay attached to the said post. This Court in the present proceedings, is called-upon to examine the validity of the order, dated 18.10.2012, and to examine as to whether the same has been so passed

in terms of the directions passed by this Court, vide order, dated 10.01.2011.

17. On examination of the directions as passed by this Court, vide order dated 10.01.2011, extracted hereinabove, it is seen that this Court had not interfered with the order of penalty, dated 27.03.2001, and had remanded the matter to the disciplinary authority to examine as to whether for the charge of unauthorized absence only; the petitioner could be imposed with the penalty of removal from service. The said directions being passed in the context of a departmental proceeding and an imposition of a penalty therein; the same has to be understood in the context of Assam Services (Discipline & Appeal) Rules, 1964. This Court, having specifically required the authorities to consider the question of imposition of a penalty, such directions has to be understood to be for imposition of a penalty as mandated under Rule 7 of the said Rules of 1964.

18. It is to be noted that no penalty in terms of the directions passed by this Court, has been imposed upon the petitioner and the order, dated 18.10.2012, had been passed; could be construed to be an order of reinstatement in service. At this stage; it is relevant to note the decision of the Hon'ble Supreme Court in the case of **Deepali Gundu Sarwase**(supra) wherein the term "reinstatement" was considered and held to mean the restoring of an employee to a position which he held before dismissal or removal from service.

19. The paragraphs relevant to the issues arising in the present proceedings, of the decision of the Hon'ble Supreme Court in the case of **Deepali Gundu Sarwase** (supra) is extracted hereinbelow:

“21. The word “reinstatement” has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word “reinstate” means to reinstall or re-establish (a person or a thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word “reinstatement” means the action of reinstating; re-establishment. As petitioner Law Lexicon, 2nd Edn., the word “reinstate” means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word “reinstatement” means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam-Webster Dictionary, the word “reinstate” means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black’s Law Dictionary, 6th Edn., “reinstatement” means:

“To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person has been removed.”

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter’s source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

20. It is to be noted that the order of removal from service issued by the disciplinary authority against the penalty imposed upon the petitioner by the disciplinary authority vide order, dated 27.03.2001, was on the question that all

the 5(five) charges as levelled against the petitioner vide Show Cause Notice, dated 25.07.2000, was established against him in the inquiry. In other words, the order, dated 27.03.2001, was a penalty imposed as a cumulative result of all the 5(five) charges to have been held to be proved. This Court having held in the proceedings initiated by the petitioner in WP(c)338/2002, that it is only the charge of unauthorized absence that was established against the petitioner and the other 4(four) charges were not so established; the penalty of removal from service as imposed upon the petitioner, is rendered unsustainable in the changed circumstances and it is for this very purpose that this Court had vide order dated 10.01.2011, remanded the matter to the disciplinary authority for a fresh consideration.

21. The disciplinary authority was required to consider as to the penalty that would be imposed upon the petitioner for the unauthorized absence for about 3 months. The disciplinary authority ignored the directions passed by this Court, and no penalty whatsoever as prescribed under Rule 7 of the Rules of 1964 came to be levelled against the petitioner. The order dated 18.10.2012 appointing the petitioner as the Fishery Extension Officer, FISHFED, in the context of the facts and circumstances as arising in the matter, has to be deemed as an order of reinstatement.

22. This Court vide order dated 10.01.2011, had provided that in the event, any decision is taken to reinstate the petitioner in service, with any one of the lesser penalties, the same will not entitle the petitioner to backwages.

23. The respondent authorities having reinstated the petitioner in his service in the form of a fresh order of appointment, could not have caused further prejudice to the petitioner by denying to him the service benefits for the services rendered by him in the organization prior to 27.03.2001 and such services could not have been ignored while reinstating the petitioner in his services and in fixing the emoluments that he would now draw upon such reinstatement. The respondent authorities clearly erred in issuing the order, dated 18.10.2012, with prospective effect.

24. It is to be noted that in the context of the directions passed by this Court, the petitioner having been held by the respondent authorities to be entitled to reinstatement in his services albeit in the form of a fresh order of appointment, reflects that the disciplinary authority had also arrived at a conclusion that for the only charge now held to be established against the petitioner, the petitioner's services basing on the same, need not be terminated.

25. In such view of the matter; the respondent authorities ought to have imposed upon the petitioner any of the penalties as provided under the provisions of Rule 7 of the Rules of 1964 which would not have the effect of terminating the employee-employer relationship between the petitioner and the departmental authorities. On such imposition of penalty, the petitioner ought to have reinstated in his services by granting to him notional service benefits from the date of his removal from service i.e. 27.03.2001 and thereafter, fixed the pay and allowances basing on such notional increment with effect from the date he was so allowed to resume his services.

26. Accordingly, the order, dated 18.10.2012, appointing the petitioner to the post of Fishery Extension Officer, FISHFED, to the extent that such appointment of the petitioner is with prospective effect, is held to be bad in law and in violation of the directions passed by this Court, vide order dated 10.01.2011.

27. In view of the conclusions reached by this Court, the following directions are being passed:

(i). The order, dated 18.10.2012, is deemed to be an order reinstating the petitioner in his services in terms of the directions passed by this Court, vide order dated 10.01.2011, in WP(c)338/2002.

(ii). The respondent authorities having not imposed upon the petitioner any penalty in terms of the directions passed by this Court, vide order, dated 10.01.2011; the disciplinary authority is granted liberty to impose a penalty upon the petitioner by strictly considering the matter in the light of the conclusions as arrived by this Court vide order dated 10.01.2011 passed in WP(c)338/2002 that it is only the charge of unauthorized absence for around 3 months that was established against the petitioner in the inquiry held in pursuance of the Show Cause Notice, dated 25.07.2000.

(iii). The disciplinary authority is at liberty to impose any penalty upon the petitioner other than the penalty that would have the effect of terminating the services of the petitioner.

(iv). The respondent authorities upon imposition of the penalty on the petitioner, shall notionally fix the pay and allowances of the petitioner w.e.f. 27.03.2001 till 24.10.2012 and thereafter, w.e.f. 25.10.2012, shall fix the pay and allowances of the petitioner at the appropriate stage of the pay scale of the post of Fishery Extension Officer, FISHFED, in terms of the notional fixation so made.

(v). The respondent authorities while fixing the pay and allowances of the petitioner in terms of the directions passed by this Court hereinabove; shall also account for the penalty that may be imposed upon the petitioner by the disciplinary authority.

(vi). The petitioner shall not be entitled to any pay and allowances for the period w.e.f. 27.03.2001 to 24.10.2012, and the petitioner shall be entitled only to notional fixation for the said period. The arrears of pay accruing to the petitioner w.e.f. 25.10.2012, on account of notional fixation directed hereinabove, shall be computed and released to the petitioner. The period of service of the petitioner w.e.f. 27.03.2001 till 24.10.2012, shall be reckoned for the purpose of fixation of pension and pensionary benefits.

28. The respondent authorities more particularly Respondent No. 2 shall carry-out the exercise requisite for implementation of the directions passed by this Court, hereinabove; and pass consequential orders thereafter, within a period of 90(ninety) days from the date of receipt of a certified copy of this order.

29. The petitioner is required to submit a certified copy of this order along with a forwarding to all the respondent authorities more particularly Respondent No. 2 to taking the matter forward.

30. With the above directions; the writ petition stands disposed of.

JUDGE

Comparing Assistant