

GAHC010152762024



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

Case No. : WP(C)/4027/2024

M/S AMAN SECURITY SOLUTIONS
REGISTERED OFFICE AT HOUSE NO. 188
3RD FLOOR
OPP. NAMGHAR PATH BUS STOP
PANJABARI
GUWAHATI-781037
KAMRUP(M)
ASSAM
REPRESENTED BY THE SOLE PROPRIETOR
MR. NURUL AMIN
SON OF SAIFUDDIN AHMED.

VERSUS

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY AND 5 ORS
HEAD OFFICE AT PATGAON
RANI
GUWAHATI-781017 AND CITY OFFICE AT NH-37
RESHAM NAGAR
KHANAPARA
GUWAHATI-781022
KAMRUP(M)
ASSAM

2:THE SECRETARY TO THE CHANCELLOR OF UNIVERSITY
RAJ BHAVAN
UZANBAZAR
KHARGULI
GUWAHATI-01
KAMRUP(M)
ASSAM

3:THE VICE CHANCELLOR OF KRISHNA KANTA HANDIQUI STATE OPEN

UNIVERSITY
HEAD OFFICE AT PATGAON
RANI
GUWAHATI-781017 AND CITY OFFICE AT NH-37
RESHAM NAGAR
KHANAPARA
GHY-781022
KAMRUP(M)
ASSAM

4:THE REGISTRAR OF KRISHNA KANTA HANDIQUI STATE OPEN
UNIVERSITY
HEAD OFFICE AT PATGAON
RANI
GHY-781017 AND CITY OFFICE AT NH-37
RESHAM NAGAR
KHANAPARA
GHY-781022
KAMRUP(M)
ASSAM

5:THE DEPUTY REGISTRAR (ADMINISTRATION) OF
KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY
HEAD OFFICE AT PATGAON
RANI
GUWAHATI-781017 AND CITY OFFICE AT NH-37
RESHAM NAGAR
KHANAPARA
GHY-781022
KAMRUP(M)
ASSAM

6:THE LABOUR WELFARE DEPARTMENT
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY-06
ASSAM

Advocate for : MR S P DAS
Advocate for : GA
ASSAM appearing for KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY
AND 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

13.08.2024

1. Heard Mr. S.P. Das, learned counsel for the petitioner, who submits that the petitioner has been providing security guard services to the respondent University, after signing a Memorandum of Understanding (MoU) dated 01.03.2024. The petitioner is aggrieved by the action of the respondent authorities in terminating his security guard service, vide the impugned termination notice dated 01.08.2024 issued by the respondent No.4, which is to the following effect:-

“Sub: Termination notice.

Sir,

In inviting reference to the subject cited above, I am directed to inform you that the University has decided to cease the business services with your agency due to violating of Clause No.3 of the MoU, dated 26th April, 2024.

Therefore, as per the Clause No.15 of the MoU, the University terminates your services w.e.f. 31-08-2024.

Thanking you.”

2. The petitioner’s case is that the respondent authorities have directed the petitioner, vide the impugned letter dated 17.07.2024, to deposit the Employees Provident Fund (EPF) as per the notification dated 17.07.2024 issued by the respondent No.5.

3. The petitioner's counsel submits that the petitioner has been directed to deposit the EPF on the gross monthly pay of the security guards instead of the basic pay, in violation of the MoU dated 01.03.2024 and the Employees Provident Fund Scheme, 1952. He further submits that no notice had been issued to the petitioner prior to the issuance of the termination notice dated 01.08.2024, which is to take effect from 01.09.2024.

4. Mr. P.J. Phukan, learned counsel for the respondent Nos.1, 3, 4 & 5, i.e., the University, submits that in terms of Clause 3 of the MoU dated 01.03.2024, the wages of the security guards are to be paid as per the quoted rates of the petitioner and wages defined in the Government of Assam Notification No. E-262184/60 dated 03.02.2024 including the prevailing rules for payment of ESI, EPF etc. Further, in the event of any update of the Government of Assam notification regarding wages for employees of the private security firms, the same was to be followed. He submits that in terms of Para 15 of the MoU, an agreement can be terminated by the first party with prior notice of one month, in case of unsatisfactory service/violation of the terms and conditions of the agreement.

5. Mr. P.J. Phukan, learned counsel for the University further submits that in terms of clause 29(3) of the EPF Scheme of 1952, the contribution for payment of EPF has to be calculated on the basis of the [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)] actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.

6. Mr. P.J. Phukan submits that the stand of the petitioner that the EPF

amount of the security guards cannot be calculated only on the basis of the basic wages of the security guards, but in terms of the EPF Scheme of 1952 read with the statutory Act and Rules.

7. Mr. P.J. Phukan further submits that as the petitioner had violated the clauses of the Memorandum of Understanding, read with the letter dated 17.07.2024 issued by the respondent No.5, there was no infirmity with the termination order dated 01.08.2024 issued by the respondent No.4. He further submits that as the notice period of one month has not expired as on date, the petitioner can try for a course-correction, with regard to submission of the EPF bills of the security guards by calculating the EPF amount in terms of the EPF Scheme of 1952 and by submitting a representation to the University through the respondent No.5. He submits that in the event the petitioner submits the EPF of the security guards in terms of the EPF Scheme of 1952 and the relevant Rules within this month, the respondent University shall examine the case of the petitioner for continuing its engagement, as per the Memorandum of Understanding dated 01.03.2024.

8. The petitioner's counsel submits that he does not have been any quarrel with the proposal made by the counsel for the University and submits that he will deposit the required EPF of the security guards in terms of the EPF Scheme of 1952. Thereafter, he will submit the receipt of the same showing that he has complied with the request made by the respondent authorities in terms of the letter dated 17.07.2024 issued by the respondent No.5 along with a representation to the respondent authorities, so that the University can take a decision on the petitioner's representation.

9. In view of the submissions made by the counsels for the parties, this Court is of the view that as and when the petitioner submits its application along with the copies of the receipt of submission of the EPF of the security guards in terms of the EPF Scheme of 1952 and the letter dated 17.07.2024, which should be done not later than 30.08.2024, the respondent University should take a decision on the same. Till a decision is taken by the respondents, with regard to the petitioner's representation for setting aside the impugned termination notice dated 01.08.2024, the impugned termination notice should not be given effect to. The above is subject to the condition that the petitioner submits his representation on or before 30.08.2024.

10. At this stage, it has been submitted by Mr. P.J. Phukan, learned counsel for the University that tender documents have been published by the University for engaging security guards afresh. On considering the fact that a fresh NIT has been issued and as this Court is of the view that the respondents (University) should examine the petitioner's representation, if submitted on or before 30.08.2024, the NIT issued by the University for engaging security guards afresh should be kept in abeyance, till a decision is taken by the respondent authorities in respect of the representation that may be submitted by the petitioner.

11. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant