

GAHC010170022021



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

Case No. : WP(C)/5511/2021

SAHIBUR RAHMAN
S/O- NASIR UDDIN, R/O- VILL.- PUB JAMUNA GAON, P.O. AMBARI, DIST.-
HOJAI, ASSAM, PIN- 782445.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GHY-06.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
GUWAHATI-37.

3:THE DIRECTOR

PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
GHY-37.

4:THE CHIEF EXECUTIVE OFFICER (CEO)
HOJAI
ASSAM
PIN- 782435.

5:THE BLOCK DEVELOPMENT OFFICER (BDO)
BINNAKANDI DEVELOPMENT BLOCK
HOJAI

ASSAM
PIN- 782435

Advocate for the Petitioner : Mr. S K Talukdar
Mr. J M A Choudhury
Mr. A B T Haque

Advocate for the Respondents : Mr. S Dutta, SC, P&RD

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing & judgment : 12.11.2024

J U D G M E N T & O R D E R (O R A L)

Heard Mr. S K Talukdar, learned counsel for the petitioner and Mr. S Dutta, learned Standing Counsel, P&RD Department appearing for all the respondents. This writ petition is directed against the Office Order dated 01.10.2021 (Annexure-4), terminating the contract engagement of the petitioner with immediate effect.

[2.] Be it stated herein that the petitioner was engaged as Gram Rojgar Shahyak (GRS) on contract basis vide engagement Order dated 01.07.2009 up to 22.02.2010 (Annexure-1). The engagement of the petitioner continued from time to time until he was terminated by the aforesaid impugned Office Order dated 01.10.2021.

[3.] The case projected by the petitioner is that the impugned order is

punitive in nature and that adequate opportunity was not afforded to him prior to passing the same since the very basis of the issuing show-cause notice is the enquiry report submitted by the Chief Executive Officer (CEO), Hojai which had not been served to him. Therefore, he was not in a position to make an effective reply to the show-cause notice. According to the petitioner, he was not the sole authority responsible for the preparation of the Muster Roll and in fact, as per the guidelines in this regard, the Panchayat representatives played a vital role in execution of the MGNREGA schemes and that the village Monitoring Committee constituted by the local people are responsible to monitor the entire schemes and therefore, the allegation made against the petitioner and his termination on the basis of enquiry report submitted by the CEO is bad in law and should be set aside.

[4.] Mr. S K Talukdar, learned counsel submits that besides non-furnishing of the enquiry report made by the CEO, a bare perusal of the impugned order of termination clearly goes to show that the show-cause reply submitted by the petitioner had not at all being considered by the authority concerned before arriving at the conclusion that the petitioner should be terminated on the basis of the findings made against him. He submits that the petitioner may no doubt be a contract employee but at the same time, he cannot be terminated in the

manner it was done since the impugned termination order is punitive in nature and shows gross violation of the principles of natural justice. He submits that similar other employees under the same establishment have also approached this Court through their respective writ petitions and this Court had interfered with the orders of termination, upon finding that the same was in gross violation of the principles of natural justice. One such case cited by the learned counsel is the Order dated 18.09.2023 passed by a Co-ordinate Bench of this Court in *WP(C) No. 6680/2022 (Sailendra Bora vs. State of Assam & 2 Ors.)*. He, therefore, submits that the impugned order of termination should be set aside and the petitioner be directed to be reinstated back into service.

[5.] Mr. S Dutta, learned counsel for the P&RD Department submits that the petitioner was duly given the opportunity to make an explanation on the discrepancies found in view of the fact that he had accompanied the CEO concerned himself wherein, his statements had been recorded. In this connection, he draws the attention of this Court to Annexure-III of the affidavit-in-opposition and submits that the petitioner himself admitted that the thumb impression of the Job Card holders were taken by himself in respect of the Muster Roll Nos. 4349 & 4351, which was also signed by him. Therefore, the petitioner cannot say that the principles of natural justice have been violated

particularly when the show-cause notice has clearly revealed the nature of the allegation while giving him an opportunity to make a reply to the same.

[6.] The learned counsel has further drawn the attention of this Court to paragraph Nos. 8, 9, 11 & 14 of the counter affidavit, while submitting that the statements made therein has not been controverted by the petitioner by filing a rejoinder affidavit and therefore, the uncontroverted statements are only deemed to be accepted by the petitioner.

[7.] The learned counsel further submits that the petitioner contractual employee and therefore, he is governed by the conditions of the contract agreement and in an employment of such nature, the question of conducting a detailed enquiry as in a service governed by statutes will not arise. A show-cause notice, to giving an opportunity to the employee concerned to represent or reply to the allegation, would suffice in order to enable the employer to take a decision whether to retain the employee in service or otherwise. In support of his submissions, the learned counsel has relied upon the case of *Rabindra KR Roy vs. State of Assam & Ors.* (2015 (4) GLR 816 and *State Bank of India & Ors. vs. S.N Goyal*, (2008) 8 SCC 92.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record including the

authorities relied upon.

[9.] The grievance projected by the petitioner is that he has been terminated from service without being given proper opportunity to defend himself in view of the fact that the enquiry report prepared by the CEO concerned was not given to him in order to make an effective reply to the show-cause notice. In order to appreciate such a stand, the relevant portion of the show-cause notice may be abstracted hereunder:-

“On perusal of the report submitted by the CEO, Hojai in his letter No. HZP. 17/2019/Enquiry/ Dtd. 09.07.2021, it has come to the notice of the undersigned that you were reported to have involved yourself in preparing false Muster Roll No. 4349 and 4351 for an amount of Rs. 1,85,472/- in connection with implementation of scheme namely "Repairing of road cum bandh from NLB MRJ PWD Road to Jamal Uddin House (2020-21) under MGNREGA" in Jaynagar G.P under Binnakandi Development Block”

[10.] From the above abstract, it may be seen that the show-cause notice according to the respondent authority concerned was necessitated in view of the enquiry report submitted by CEO, Hojai vide his Letter dated 09.07.2021. The show-cause notice dated 28.07.2021 as can be seen is not accompanied by any enclosed documents and therefore, in the absence of any dispute in this regard including the stand taken in the counter affidavit, the admitted position is

that the petitioner was not given the enquiry report of the CEO concerned. While considering this issue, it may be apt to take into account the case of *Sailendra Bora (supra)* relied upon by the learned counsel for the petitioner which was also a case of an allegation on misappropriation of money meant otherwise for construction of PMAYG houses. Even in that case, this Court had observed that although the misappropriation money was proved by the enquiry report but a copy was not given to the petitioner therein which vitiated the termination of the said petitioner. Consequently, the petitioner was directed to be reinstated with liberty to the respondent authorities to proceed against the petitioner by serving proper show-cause notice and by including the enquiry report. This Court finds that the present case is also squarely covered by the said decision.

[11.] The next contention of the petitioner is that the show-cause reply was submitted by him even though he do not get a copy of the enquiry report but however, the disciplinary authority failed to take into consideration what he had stated in his reply. In this connection, from a perusal of the impugned Office Order dated 01.10.2021, it is seen that all that the disciplinary authority stated was that from the enquiry report submitted by the CEO concerned, the petitioner was found to be involved in preparing false Muster Roll Nos. 4349 &

4351 for an amount of Rs. 1,85,472/-. Due to such financial irregularities and misuse of Government money and gross indiscipline, he was found to be no longer fit to be engaged in contractual work with the State Government and therefore, his engagement was terminated with immediate effect. The petitioner, otherwise in his reply to the show-cause notice, denied the allegation made against him. He explained that transaction of money never happened physically and that the amount was deposited directly into the Bank account to the beneficiary concerned. This apart, he was not solely responsible for preparation and finalization of the M.R since the Gaon Panchayat as well as the village Monitoring Committee so constituted comprising of the local people played a vital role. The impugned Office Order dated 01.10.2021, however, does not reflect that the points raised by the petitioner had been duly considered. Therefore, this Court finds substance in the projection made by the petitioner.

[12.] The learned counsel for the P&RD Department has strenuously argued that the petitioner has failed to rebut the specific statements made in paragraph Nos. 8, 9, 11 & 14 of the counter affidavit. However, on perusal of the same, it is seen that the stand taken by the respondent is that the petitioner was aware about the enquiry being done since he had accompanied the CEO concerned at the time of physical inspection. It is one thing to say that the person concerned

was present at the time of physical inspection and another thing to say that the ultimate enquiry report that was prepared had been supplied to him.

[13.] Paragraph No. 8 of the counter affidavit clearly provides that it was after going through the documents of CEO, Hojai that the petitioner was found to have committed such irregularity which ultimately led to his termination from his service.

[14.] The case of *SBI & Anr. vs. S.N Goyal (supra)* on facts can only be distinguished in view of the fact that the same was in relation to termination of contract employees who had approached the Trial Court for relief. In the given facts of that case, the Trial Court found that the principles of natural justice was not violated but the impugned order of imposing penalty was found to be passed on extraneous consideration and therefore, the Trial Court reserved opportunity to the appellant employee to pass fresh orders imposing appropriate penalty other than dismissal or removal from service. On appeal, the appellate Court maintained the decree passed by the Trial Court and likewise, the High Court as well. The Apex Court, upon considering the case projected before it observed that there was a distinction between public employment governed by statutory rules and private employment governed purely by contract. There can be no argument about the settled position propounded by the Apex Court and

that in the present case, the question is not about directing a full- fledged enquiry but giving appropriate and adequate opportunity to the petitioner to make his defence in view of the allegation made against him based on the enquiry report submitted by the CEO concerned. Therefore, the authority so relied upon is found to be not relevant to the case of the petitioner in the present case.

[15.] It is also noted that several other judgments passed by a Co-ordinate Bench of this Court on the same subject has been referred to by the learned counsel for the petitioner but the same are not required to be gone into in view of the similarity to the case of *Sailendra Bora (supra)* already referred to herein above and also the findings already arrived at above.

[16.] Upon due consideration of the case in its entirety for reasons stated herein above, this Courts finds that the impugned Office Order dated 01.10.2021 cannot be sustained and accordingly, the same is set aside. The respondents are directed to reinstate the petitioner and at the same time, liberty is granted to proceed afresh, if so advised. However, the same can only be done by following the principles of natural justice by giving a copy of the enquiry report concerned.

[17.] In case such an enquiry is contemplated, the respondent authorities shall

make all efforts to complete the same as expeditiously as possible and preferably within a period of 3 (three) months from the date it is initiated.

[18.] The Writ Petition accordingly stands disposed of. No cost.

JUDGE

Comparing Assistant