

GAHC010173852019



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

Case No. : WP(C)/5551/2019

PRADIP KUMAR DEV MAHANTA
S/O- LATE MAHENDRA CH DEV MAHANTA, R/O- 46, NAOJAN ROAD,
JORPUKHURI PAR, UZAN BAZAR, GUWAHATI- 781001, DIST- KAMRUP (M),
ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM, HEALTH
AND FAMILY WELFARE DEPTT, SACHIVALAYA, DISPUR, GUWAHATI-
781006

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT
SACHIVALAYA
DISPUR
GUWAHATI- 781006

3:THE DEPUTY SECRETARY
TO THE GOVT OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT
SACHIVALAYA
DISPUR
GUWAHATI- 781006

4:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GHY- 06

5:THE KARBI ANGLONG AUTONOMOUS COUNCIL
REP. BY THE PRINCIPAL SECRETARY
DIPHU
KARBI ANGLONG
ASSAM

6:THE SECRETARY
HEALTH AND FAMILY WELFARE DEPTT
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU
DIST- KARBI ANGLONG
ASSAM

7:THE JOINT DIRECTOR OF HEALTH SERVICES
DIST- KARBI ANGLONG
DIPHU
KARBI ANGLONG
ASSAM

8:THE MEDICAL AND HEALTH OFFICER IN CHARGE
BOKAJAN PUBLIC HEALTH CENTRE
BOKAJAN
DIST- KARBI ANGLONG
ASSAM

9:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 78102

Advocate for the Petitioner : MR. B D GOSWAMI

Advocate for the Respondent : SC, HEALTH

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri BD Goswami, Advocate.

For the Respondents : Mr. DP Bora, SC, Health & FW
Deptt.,

Mr. C Boruah, SC, Accountant
General, Assam and
Shri RS Ronghang, SC, KAAC.

Dates of Hearing : 30.04.2024.

Date of Judgment : 08.05.2024.

JUDGMENT & ORDER

The principal grievance raised in this petition is with regard to an order dated 30.07.2018 by which, the petitioner has been removed from service after a disciplinary proceeding. The petitioner has also prayed for certain other reliefs, including release of service benefits and arrears of pay.

2. There is a chequered history of this case, including previous rounds of litigation.

3. The facts, as projected by the petitioner are that he was working as a Doctor under the Health Department, State of Assam. In course of his service, the petitioner was put under suspension vide an order dated 16.03.1989 followed by a disciplinary proceeding. The suspension was, however, revoked and the petitioner was reinstated in service and posted as Medical & Health Officer-I (M&HO-I) at the Bokajan CHC, Karbi Anglong in an existing vacancy. The petitioner claims to have submitted joining report on 31.07.2000, however, the charges were not handed over and no duties were allotted to him. It is submitted that the joining report was accepted by the KAAC vide order dated 11.01.2001.

4. At that stage, the petitioner had filed WP(C)/7240/2001 before this Court on the aspect of brining the disciplinary proceeding to a conclusion and on the aspect of joining in his new place of posting. The said writ petition was disposed of vide order dated 06.02.2002 with a direction to conclude the departmental proceeding by passing final orders. On the aspect of joining in service, the authorities of the KAAC were directed to pass necessary orders to enable the petitioner to perform his duties as M&HO-I at the Bokajan PHC.

5. The departmental proceeding had culminated in an order dated 20.01.2004 with a penalty of stoppage of promotion of the petitioner for 3 years and the period of suspension was treated as on duty. It is the contention of the petitioner that the salaries for the aforesaid period of suspension have not been paid and the petitioner was also not allowed to join his services. On 24.02.2006, an explanation was called for from the petitioner on the aspect of remaining unauthorisedly absent. The petitioner had thereafter submitted a representation on 01.06.2006 followed by a show cause notice dated 07.03.2012 with which, a statement of allegations was enclosed. The said notice was responded to by the petitioner on 12.02.2013 whereafter an inquiry was held. The inquiry report was forwarded to the petitioner by the disciplinary authority on 16.12.2014 soliciting his response. The petitioner, accordingly submitted his reply on 06.04.2015. The petitioner had thereafter filed another writ petition, being WP(C)/7498/2016 which was disposed of vide order dated 21.04.2017 directing for concluding the disciplinary proceeding by passing a final order. Consequently, the impugned order has been passed on 30.07.2018 whereby the penalty of removal from service under the Assam Services (Discipline and Appeal) Rules, 1964 has been

imposed. It is the legality of the aforesaid order as well as for other reliefs indicated above for which this writ petition has been filed.

6. I have heard Shri BD Goswami, learned counsel for the petitioner and Shri DP Borah, learned Standing Counsel, Health & Family Welfare Department, Assam. Also heard Shri C Boruah, learned Standing Counsel, Accountant General, Assam as well as Shri RS Ronghang, learned Standing Counsel, Karbi Anglong Autonomous Council (KAAC).

7. Shri Goswami, learned counsel for the petitioner submitted that the earlier order of penalty dated 20.01.2004 has nothing to do with the impugned proceedings which have culminated in the order of removal from service dated 30.07.2018. Further, during the pendency of the earlier proceeding, the suspension order was revoked vide order dated 05.07.2000 whereby the petitioner was reinstated in service and posted in the Bokajan CHC. Pursuant thereto, the petitioner claims to have joined at Bokajan by submitting a Joining Report on 31.07.2000. However, the charges were not handed over and neither any duties were allowed to be performed. He submits that even the order of the KAAC dated 11.01.2001 is vague. Reference has been made to the order dated 06.02.2002 passed by this Court in the earlier writ petition, being WP(C)/7240/2001 wherein, apart from a direction for completion of the disciplinary proceeding, a direction was also issued to allow the petitioner to join in his service. It is further contended that though the petitioner was reinstated in service, the remaining part of his salaries has not been paid. It is submitted that under those circumstances, the initiation of the second disciplinary proceeding on the ground of unauthorised absence is wholly unreasonable. The

learned counsel has also referred to the order passed by this Court on 21.04.2017 in the second writ petition, being WP(C)/7498/2016 whereby the disciplinary proceeding was directed to be concluded.

8. Shri Goswami, learned counsel for the petitioner has drawn the attention of this Court to the calculation sheet annexed as Annexure-24 towards his claim for remaining part of the salaries and under the GPF. Attention of this Court has also been drawn to the order dated 03.10.2019 passed by this Court in the present writ petition wherein an observation was made that pendency of the writ petition would not be a bar for release of the remaining 25% of the salaries which is claimed by the petitioner.

9. *Per contra*, Shri Borah, the learned Standing Counsel, Health Department has strenuously opposed the writ petition. He has submitted that though it is a fact that pursuant to the order dated 05.07.2000 of posting the petitioner at the Bokajan CHC, a joining report was submitted on 31.07.2000, the records would show that apart from submission of the joining report, the petitioner did not complete the other necessary formalities, namely, handing over/taking over charge. He submits that even if the allegation made by the petitioner regarding not handing over charge is assumed to be correct, there are no materials or pleadings to even suggest that any complaint was made by the petitioner to the authorities. Responding to the contention that after closure of the first disciplinary proceeding vide order dated 20.01.2004, it was not necessary to pass a fresh order of posting as such posting order was already issued on 05.07.2000 when the suspension was revoked. It is also pointed out that an explanation was called for vide communication dated 24.02.2006 as to why the

petitioner had not taken over charge at Bokajan and the petitioner did not even submit any reply to the same. He hastily adds that though on 01.06.2006, a communication was made by the petitioner, the same was only a representation and not the explanation called for and there was no reference even to the communication dated 24.02.2006. The learned Standing Counsel by producing the records of the disciplinary proceeding in original has submitted that the due process of law was followed and the petitioner was given full opportunity to defend himself. The learned Standing Counsel has also raised the issue of lack of *bona fide* on the part of the petitioner in filing the present writ petition whereby a wrongful gain has been sought to be made.

10. Shri Ronghang, learned Standing Counsel, KAAC has endorsed the submissions made on behalf of the Health Department. By referring to the affidavit-in-opposition filed on 20.01.2021, the learned counsel has contended that though a joining report was submitted by the petitioner on 31.07.2000 pursuant to the posting order dated 05.07.2000, the petitioner did not complete the taking over/handing over of charge formalities. No charge report was ever submitted and since 01.07.2000, the petitioner did not attend the duties and the Council was also not informed about the reasons.

11. Shri Boruah, learned Standing Counsel, Accountant General, Assam has submitted that an affidavit-in-opposition has been filed on 14.12.2020. He submits that the role of his client would come subsequently and for GPF, the petitioner is required to submit necessary application. The issue of absence of any formal taking over order has been raised. It has also been contended that no reply has been received on this aspect till date.

12. The rival contentions of the learned counsel for the parties have been considered and the materials available on record have also been carefully examined. The original records produced by the Health Department have also been perused.

13. The entire challenge to the impugned order of removal from service dated 30.07.2018 has been structured on the correctness of the allegation/charge, namely, unauthorised absence from duty. There is no ground of challenge on any procedural impropriety or illegality. A writ court in matters of examination of the outcome of a disciplinary proceeding plays a secondary role which is limited to the aspect of examining only the decision making process. Such examination would include the aspect of the procedure followed and as to whether the decisions arrived at are based on relevant materials and factors. The element of lack of *bona fide* can also be looked into. The scope of examining the correctness of the allegations is absolutely limited as the same is within the domain of the disciplinary authority. However, in a given case, when the allegations are absolutely without any basis or perverse or have been made out of *mala fide*, this Court in exercise of its writ jurisdiction may still interfere.

14. In the instant case, the posting of the petitioner in the Bokajan CHC by order dated 05.07.2000 was on the revocation of the order of suspension in connection with a disciplinary proceeding which was pending. The petitioner claims to have submitted his Joining Report on 31.07.2000. There is nothing on record to show that the petitioner had completed the formalities of handing over/taking over charge at the Bokajan CHC. Any issue regarding the

requirement of approval from the KAAC under which the Bokajan CHC is situated is put to rest by the communication dated 11.01.2001 by the KAAC. There is nothing on record that the petitioner had lodged many complaints on the aspect of not allowing him to take over charge which has been sought to be highlighted now.

15. The earlier round of litigation by the petitioner by filing WP(C)/7240/2001 was disposed of vide order dated 06.02.2002 directing completion of the departmental proceeding. Though there was a direction regarding allowing the petitioner to join in his service, the joining, as such was not the issue which was admittedly done on 31.07.2000 by submitting a Joining Report and it is only the handing over/taking over charge formality which was not fulfilled by the petitioner. The earlier order of penalty dated 20.01.2004 of stoppage of promotion for 3 years was not the subject matter of any challenge. The order, however, clarified that the period of suspension was to be treated in duty.

16. To further examine the aspect of the allegation that the petitioner was not allowed to join, this Court has checked the relevant pleadings which are found in paragraphs 3 and 4 of the writ petition. The verification of the aforesaid pleadings in the accompanying affidavit, however, is made to be true as per information. Unlike a civil suit, a proceeding under Article 226 of the Constitution of India does not involve the procedure of adducing evidence through witnesses who are subjected to cross-examination. As such, the affidavit accompanying the writ petition assumes immense importance as the aspect of proof of the pleadings is done only through this affidavit.

17. This Court is not in a position to accept the submission of Shri Goswami, learned counsel for the petitioner that on completion of the earlier disciplinary proceeding vide order dated 20.01.2004, a fresh order of posting was required to be passed. This Court has noticed that in the said proceeding, the order of suspension was revoked on 05.07.2000 whereby the petitioner was posted at the Bokajan CHC as the Medical & Health Officer. In view of such order of posting already existing, the aforesaid contention made on behalf of the petitioner does not appear to be tenable at all.

18. It is not in dispute that before initiating the second disciplinary proceeding, an explanation was called for from the petitioner on 24.02.2006. Though the petitioner claims to have submitted a reply dated 01.06.2006, this Court finds force in the contention made on behalf of the Department that the aforesaid communication dated 01.06.2006 is not a reply to the letter dated 24.02.2006. A close perusal of the so-called reply dated 01.06.2006 would reveal that apart from there being no reference to the letter dated 24.02.2006, the contents are not at all towards furnishing any explanation.

19. As regards the initiation of the present disciplinary proceeding, it is the admitted case of the petitioner that in response to the show cause notice dated 07.03.2012, he has submitted a reply on 12.02.2013 which was followed by an inquiry. As observed above, there is no ground of any impropriety in the said inquiry. The second show cause notice was issued to the petitioner on 16.12.2014 which he had replied on 06.04.2014. The second writ petition, being WP(C)/7498/2016 which was disposed of on 21.04.2017 was only on the aspect of expediting the disciplinary proceeding. The disciplinary proceeding finally

culminated in the impugned order dated 30.07.2018 of removal from service.

20. The charge against the petitioner is unauthorised absence from 31.07.2000. The said charge is undoubtedly a grave charge wherein the incumbent concerned is a government servant in the post of a Medical & Health Officer in a Community Health Centre. The imposition of penalty of removal from service does not appear to be in any manner harsh or disproportionate.

21. The petitioner has also claimed the balance of his salary for the period when he was under suspension. The earlier disciplinary proceeding had culminated in an order of penalty dated 20.01.2004 of stoppage of promotion for 3 years. The observation that the suspension period is to be treated on duty is only towards maintaining a continuity in service so that there is no break. Such observation would not automatically lead to a conclusion that the petitioner would be entitled to the balance salaries over the subsistence allowance, more so when the disciplinary proceeding has ended in an order of penalty.

22. The petitioner has made a calculation of the claim in Annexure-24 on the broad heads which is roughly as follows:

A) Balance salary for the period of suspension	:	Rs. 2,21,343/-
B) Pending full salary from 2000 to 2019	:	Rs. 1,28,80,532/-
Total	:	Rs. 1,31,01,875/-.

(One crore thirty one lakhs one thousand eight hundred seventy five)

23. Apart from the claim as aforesaid appears to be astronomical, the said claim is wholly untenable for reasons more than one. Firstly, there was a charge of unauthorised absence for the period in question which was established in the disciplinary proceeding followed by the penalty of removal from service. Secondly, such claim is barred by the principles of “no work no pay” and there is nothing on record to show that such situation had emerged for any omission/commission not attributable to the petitioner.

24. This Court has also noticed that in the chart so prepared by the petitioner, he has made the following statement:

“The starting salary of newly joined M&HO-1 with MBBS, MD degree is Rs. 59,641.00 per month without Non-Practicing Allowance (NPA).

The present salary drawn by the equivalent Doctors who has joined in the service in the year 1986 is approximately Rs.1,30,000.00 per month without NPA.”

25. It is clear from the aforesaid claim that the petitioner was never taking Non-Practicing Allowance (NPA) which indicates that the petitioner was in active private practice as a Medical Practitioner. From the above, it appears that by means of this present petition, the petitioner has abused the process of law by which a wrongful gain has been sought to be made by causing wrongful loss to the State exchequer. For abusing the process of law, that too, in a Court of equity, this Court is of the opinion that an exemplary cost is required to be

imposed on the petitioner. However, considering the fact that the petitioner is about 66 years of age, this Court has taken a lenient view on the above aspect and has not imposed any such cost.

26. Writ petition is accordingly dismissed. Records in original are returned to the Standing Counsel, Health Department.

JUDGE

Comparing Assistant