

GAHC010216452021



2024:GAU-AS:8850

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

Case No. : WP(C)/6962/2021

RUDRA CHANDRA DAS S/O LATE ANANDA RAM DAS
VILLAGE KUKURMARA, CHAIGAON, PS CHAIGAON, DIST KAMRUP,
ASSAM 781134

VERSUS

1. THE VICE CHANCELLOR, GAUHATI UNIVERSITY AND 4 ORS
GUWAHATI 14

2:THE REGISTRAR GAUHATI UNIVERSITY GUWAHATI 14

3:THE EXECUTIVE COUNCIL GAUHATI UNIVERSITY GUWAHATI 14

4:THE TREASURER GAUHATI UNIVERSITY GUWAHATI 14

5:THE SUPERINTENDENT ESTABLISHMENT BRANCH
GAUHATI UNIVERSITY GUWAHATI 1

Advocate for the Petitioner : MR F U BARBHUIYA, MS S DAS

Advocate for the Respondent : SC, G U,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 25.01.2024

Date of Judgment : 06.09.2024

Judgment & order(CAV)

Heard Mr. F. U. Barbhuiyan, learned counsel for the petitioner. Also heard Mr. P. J. Phukan, learned standing counsel, Gauhati University, appearing on behalf of all the respondents.

2. The challenge in the present proceeding, is to an order, dated 24.09.2020, issued by the Registrar, Gauhati University, terminating the service of the petitioner by invoking the provisions of Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964, *read with* Rule 46 of the Gauhati University Employees Service Conditions, Conduct and Appeal Rules, 1970.

3. The petitioner, herein, pursuant to a process of selection, was appointed as a Cook in the Gauhati University vide order, dated 28.05.1988. The petitioner joined his service on 02.06.1988 and was attached to the Accounts Branch of the said University. The service of the petitioner was utilized by the Gauhati University in various Branches of the University as a Peon. The service of the petitioner was regularized vide order, dated 01.04.1995 w.e.f. 02.08.1991 and subsequently, he was confirmed in his service vide order, dated 03.09.1998 w.e.f. 02.06.1992.

4. The petitioner, on account of ailments suffered by him, could not join his duties w.e.f. 06.02.2019 to September, 2019. It is contended that the petitioner had informed his superiors of the reasons for such absence. The authorities on account of the fact that the petitioner had remained absent; issued notices on 06.05.2019, 23.05.2019, and 26.07.2019, requiring him to resume his service failing which, it was indicated that disciplinary action would be initiated against him. The wife of the petitioner, herein, approached the Superintendent, Establishment Branch of the Gauhati University, and explained the condition of the petitioner, to him. On being asked to submit a medical certificate; the said medical certificate was submitted before the respondent No. 5, through the wife of the petitioner. The petitioner contends that although the medical certificate had reflected that he was fit to resume his duties, however, his physical condition did not permit to resume his

service. Further notices came to be issued to the petitioner and thereafter, vide order, dated 24.09.2020, without institution of any departmental proceeding, the Registrar, Gauhati University, proceeded to terminate the service of the petitioner, herein.

5. Being aggrieved; the petitioner, herein, has instituted the present proceeding.

6. Mr. Barbhuiyan, learned counsel for the petitioner, by taking this Court through the notices so issued to the petitioner, herein, requiring him to resume his duties, has submitted that in the notices; the Gauhati University authorities had contended that in the event, the petitioner does not resume his duties; disciplinary action shall be so taken against him.

7. Mr. Barbhuiyan, learned counsel, by referring to the order, dated 24.09.2020, has submitted that the termination of the petitioner was so effected by the Gauhati University by invoking the powers under Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964. However, the learned counsel has contended that while the provisions of Rule 7 was so invoked, the mandatory provisions for holding an inquiry under Rule 9 of the said Assam Services (Discipline & Appeal) Rules, 1964, was not followed in the matter.

8. Mr. Barbhuiyan, learned counsel, has further contended that no Show Cause Notice came to be issued under the provisions of Rule 9 to the petitioner, drawing up of a departmental proceeding against him on account of the purported misconduct of remaining unauthorizedly absent. The learned counsel has further submitted that after the imposition of the said penalty; the

petitioner had approached the authorities of the Gauhati University, praying for modification of the order of termination so as to enable him to receive his pension and pensionary benefits. However, the respondent authorities only released to the petitioner; his gratuity and leave encashment benefits.

9. Being aggrieved by the manner in which the service of the petitioner was terminated; it is further submitted by Mr. Barbhuiya, learned counsel for the petitioner, that although the gratuity amount was so sanctioned vide the Office Order, dated 08.01.2021; the said order came to be cancelled vide order, dated 11.08.2021, and only the leave encashment benefits were authorized to the petitioner, herein.

10. In the above premises; Mr. Barbhuiya, learned counsel for the petitioner, has contended that the impugned order of termination of the service of the petitioner, dated 24.09.2020, would call for an interference by this Court and the petitioner be also directed to be released his pension and pensionary benefits. It was further contended that the petitioner would have normally retired from his service on attaining the age of superannuation on 31.01.2024.

11. Mr. Phukan, learned standing counsel, Gauhati University, at the outset, has submitted that the termination of the service of the petitioner, vide order, dated 24.09.2020, was so effected by applying the provisions of Clause (b) of the second proviso to Article 311(2) of the Constitution of India.

12. Mr. Phukan, learned standing counsel, Gauhati University, has further submitted that the Gauhati University authorities having come to a conclusion that it was impracticable to hold an inquiry in the matter; the respondent

authorities had proceeded to terminate the service of the petitioner, herein. Mr. Phukan, learned standing counsel, Gauhati University, accordingly, has submitted that the said order, dated 24.09.2020, being so passed, invoking the provisions of Clause (b) of the second proviso to Article 311(2) of the Constitution of India; the provisions of Article 311(2) of the Constitution of India, would have no application in the matter.

13. In this connection, Mr. Phukan, learned standing counsel, Gauhati University, has placed his reliance on a decision rendered by the Hon'ble Supreme Court in the case of ***Union of India & anr. v. Tulsiram Patel & ors.***, reported in **(1985) 3 SCC 398**.

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

15. It is not disputed that the provisions of Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964, were so invoked for the purpose of terminating the service of the petitioner, herein. The petitioner, a confirmed employee of the Gauhati University, had to remain absent from his duties on account of the medical ailments being suffered by him. It is also not disputed that the respondents Gauhati University had issued notices to the petitioner, herein, from time to time, requiring him to rejoin his service and in the said notices; it was mentioned that in the event, the petitioner does not rejoin his duties; disciplinary action under the existing service rules, would be initiated for termination of his service. It is also seen that the petitioner not having rejoined his service in terms of the notices issued on 06.05.2019, 23.05.2019, and 26.07.2019; such notices were also published in the Newspaper. It is revealed from the impugned order, dated 24.09.2020, that the petitioner, not

having rejoined his service in terms of the notices issued to him on 06.05.2019, 23.05.2019, and 26.07.2019 and the Newspaper publication of such notices on 28.11.2019; the matter was referred to the Executive Council of the University and in pursuance upon the resolution of the Executive Council in its meeting held on 12.03.2020, and subsequent approval thereto, of the Vice-Chancellor of Gauhati University, on 02.09.2020; the Registrar by invoking the provisions of Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964, had proceeded to terminate the service of the petitioner, herein.

16. A perusal of the impugned order, dated 24.09.2020, would go to reflect that the termination of the petitioner was so effected by invoking the provisions of Rule 7 of the Assam Services (Discipline & Appeal) Rules, 1964. The provisions of Rule 7, prescribes the penalties that is permissible to be so imposed upon a delinquent covered by the provisions of the Assam Services (Discipline & Appeal) Rules, 1964.

17. However, Rule 9(1) of the Assam Services (Discipline & Appeal) Rules, 1964, proceeds to prescribe that no order imposing on a delinquent, any of the penalties specified in Rule 7, shall be so imposed except after an inquiry held, as far as may be, in the manner, provided in the said Rules. The provisions of Rule 9, mandates the procedure to be followed for holding a departmental proceeding against a delinquent.

18. In the case on hand; it is an admitted position that a Show Cause Notice as requisite under the provisions of Rule 9(2) of the Assam Services (Discipline & Appeal) Rules, 1964, was not issued. Without following the procedure of Rule 9, which is mandatory in nature; the respondent authorities proceeded to invoke the power under Rule 7 to terminate the service of the

petitioner, herein. It is to be noted that termination of the service of a person covered by the provisions of the said Rules of 1964, is not a prescribed penalty under the Rules.

19. Mr. Phukan, learned standing counsel, Gauhati University, has raised a contention that the service of the petitioner, herein, was so terminated by invoking the provisions of Clause (b) of the second proviso to Article 311(2) of the Constitution of India.

20. Clause (b) of the second proviso to Article 311(2) of the Constitution of India, mandates that where the authorities empowered to dismiss or remove a person or to reduce in rank, is satisfied that for some reason, which is to be recorded by that authority, in writing; it is not reasonably practicable to hold such inquiry, the provisions of Article 311(2) of the Constitution of India, would not be applicable.

21. The materials brought on record, in the matter, does not reveal that a satisfaction was drawn by the authorities about the impracticability to hold an inquiry in the matter against the petitioner, herein. In support of the above submissions, Mr. Phukan, learned standing counsel, Gauhati University, has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Tulsiram Patel***(supra).

22. The relevant conclusions of the Hon'ble Supreme Court in the case of ***Tulsiram Patel***(supra) in connection with Clause (b) of the second proviso to Article 311(2) of the Constitution of India, being of relevance; is extracted hereinbelow:

“The Second Proviso – Clause (b)

128. The main thrust of the arguments as regards clause (a) of the second proviso to Article 311(2) was that whatever the situation may be a minimal inquiry or at least an opportunity to show cause against the proposed penalty is always feasible and is required by law. The arguments with respect to a minimal inquiry were founded on the basis of the applicability of Article 14 and the principles of natural justice and the arguments with respect to an opportunity to show cause against the proposed penalty were in addition founded upon the decision in Challappan case. These contentions have already been dealt with and negatived by us and we have further held that Challappan case insofar as it held that a government servant should be heard before imposing a penalty upon him was wrongly decided.

129. The next contention was that even if it is not reasonably practicable to hold an inquiry, a government servant can be placed under suspension until the situation improves and it becomes possible to hold the inquiry. This contention also cannot be accepted. Very often a situation which makes it not reasonably practicable to hold an inquiry is of the creation of the concerned government servant himself or of himself acting in concert with others or of his associates. It can even be that he himself is not a party to bringing about that situation. In all such cases neither public interest nor public good requires that salary or subsistence allowance should be continued to be paid out of the public exchequer to the concerned government servant. It should also be borne in mind that in the case of a serious situation which renders the holding of an inquiry not reasonably practicable, it would be difficult to foresee how long the situation will last and when normalcy would return or be restored. It is impossible to draw the line as to the period of time for which the suspension should continue and on the expiry of that period action should be taken under clause (b) of the second proviso. Further, the exigencies of a situation may require that prompt action should be taken and suspending the government servant cannot serve the purpose. Sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers and agitators as a sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities. After all, clause (b) is not meant to be applied in ordinary, normal situations but in such situations where it is not reasonably practicable to hold an inquiry.

130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter

alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner; to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

131. *It was submitted that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should be paralysed because a delinquent government servant either by himself or along with or through others makes the holding of an inquiry not reasonably practicable.*

132. *It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules. analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).*

133. *The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.*

134. *It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be of no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry.*

This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons.

136. It was next submitted that though clause (b) of the second proviso excludes an inquiry into the charges made against a government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the government servant should be given an opportunity of a hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with so as to enable him to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable.

137. A government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an analogous provision of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules, he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal

or revision. Though in such a case as the government servant if dismissed or removed from service, is not continuing in service and if reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.

138. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

139. During the course of the argument a reference was made to certain High Court decisions and their citations were given. We have carefully gone through those decisions. It is, however, unnecessary to refer to them. Insofar as what was held in those decisions or any of them is contrary to or inconsistent with what has been held by us, those decisions are not correct and are to that extent hereby overruled."

23. A perusal of the conclusions reached by the Hon'ble Supreme Court in connection with Clause (b) of the second proviso to Article 311(2) of the Constitution of India; would go to show that what was held to be not reasonably practicable to hold was the inquiry, contemplated vide the provisions of Article 311(2) of the Constitution of India.

24. The circumstances under which such impracticability to hold an inquiry, would arise, was also indicated by the Hon'ble Supreme Court in its said decision. The Hon'ble Supreme Court in the said decision further proceeded to hold that the recording of reasons by the disciplinary authority for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated under Article 311(2) of the Constitution of India, being a constitutional obligation; must be recorded, in writing, for dispensing with the inquiry.

25. In the case on hand; by applying the decision of the Hon'ble Supreme Court in the case of ***Tulsiram Patel***(supra) to the facts of the present case; it is seen that while it is contended that the provisions of Clause (b) of the second proviso to Article 311(2) of the Constitution of India, was so invoked in the present case; the conditions requisite to, for invocation of the said provision, is clearly absent.

26. The materials as produced, rather, does not bring the termination of the petitioner, herein, to have been so effected by invocation of the provisions of Clause (b) of the second proviso to Article 311(2) of the Constitution of India.

27. In the present case on hand; no departmental proceeding was initiated against the petitioner and the respondent authorities have also not indicated, as to why, it would not be reasonably practicable to hold an inquiry in the matter against the petitioner, herein. There is no allegation against the petitioner, herein, having threatened and/or taken any such steps which would have the effect of the witnesses refraining from appearing in an inquiry, if so initiated against him.

28. The perimetaria provision of Clause (b) of the second proviso to Article 311(2) of the Constitution of India, is available in the provisions of Rule 10 of the Assam Services (Discipline & Appeal) Rules, 1964. However, it is seen that neither, the said provision, nor, the Clause (b) of the second proviso to Article 311(2) of the Constitution of India, was so referred to, in any of the orders so passed by the Gauhati University authorities and/or in any of the Notes put up in the matter against the petitioner, herein.

29. In view of the above provisions; this Court is of the considered view that the order, dated 24.09.2020, terminating the service of the petitioner, herein, was so done, without any jurisdiction. Further, the said order, dated 24.09.2020, cannot be sustained on account of the fact that the same was so issued without following the mandatory provision of Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964.

30. Situated thus, this Court is also of the considered view that a Show Cause Notice having not so issued to the petitioner, in the matter; a departmental proceeding against him, could not have been so stated to have commenced so as to reach a conclusion as to the practicability of holding an inquiry in the matter against him.

31. This Court would further proceed to hold that if a misconduct was so evident against the petitioner, herein; it was the bounden duty of the respondent University to draw an appropriate departmental proceeding against him in the matter and thereafter, proceed to establish the misconduct of the petitioner in such proceedings and thereon, only, it would have been permissible to impose a penalty so prescribed under the provisions of the disciplinary Rules governing the field.

32. In view of the above conclusions reached by this Court; the impugned order, dated 24.09.2020, issued by the Registrar, Gauhati University, stands set aside.

33. This Court having interfered with the order of termination, dated 24.09.2020; the petitioner, herein, is deemed to have continued in his service till the date of his superannuation which had occasioned on 31.01.2024. The petitioner having imposed with the penalty of termination of service, was prevented from continuing his service beyond 24.09.2020. The respondents having restrained the petitioner from rendering his service w.e.f. 24.09.2020 till 31.01.2024; the respondent authorities now cannot be allowed to press the self-serving plea of denying the wages of the petitioner for the period, in question, on the plea of the principle of “no work, no pay.”

34. In view of the facts and circumstances involved herein; this Court is of the considered view that the petitioner is entitled to be paid his salaries for the period w.e.f. 24.09.2020 till the date of his superannuation i.e. 31.01.2024.

35. This Court in support of its conclusion that the petitioner, herein, would be entitled to backwages for the period w.e.f. 24.09.2020 till the date of his superannuation i.e. 31.01.2024; draws support from the decision of the Hon’ble Supreme Court in the case of **Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd.**, reported in **(2016) 16 SCC 663**. The conclusion drawn by the Hon’ble Supreme Court in the said decision being relevant is extracted hereinbelow:

“2. The denial of back wages to the appellant by the High Court vide its order dated 14- 9-2010 was assailed by the appellant by filing Letters Patent Appeal No. 489 of 2011. The High Court rejected the claim of the appellant, while dismissing the letters patent appeal on 26-5-2011. The orders dated 14-9-2010 and 26-5-2011 passed by the High Court limited to the issue of payment of back wages, are the

subject-matter of challenge before this Court.

3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31-12-2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1-1-2003 to 31-12-2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1-1-2003 to 31-12-2005, the respondent cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay".

4. For the reasons recorded hereinabove, we are satisfied, that the impugned order passed by the High Court, to the limited extent of denying wages to the appellant, for the period from 1-1-2003 to 31-12-2005 deserves to be set aside. The same is accordingly hereby set aside."

36. In view of the above position; the authorities of the Gauhati University are directed to compute the salaries receivable by the petitioner for the period w.e.f. 24.09.2020 till the date of his superannuation i.e. 31.01.2024, and to release to him, the same.

37. It is further provided that the period of absence of the petitioner w.e.f. 06.02.2019 till 23.09.2020, shall be treated as on duty for the purpose of computation of his pensionary benefits. However, the petitioner shall not be entitled to any salaries for the said period. The salaries of the petitioner for the said period i.e. w.e.f. 06.02.2019 till 23.09.2020, shall be notionally calculated. The petitioner would be entitled to the arrears of his salaries only w.e.f. 24.09.2020, till the date of his superannuation i.e. 31.01.2024, in terms of the directions passed hereinabove.

38. In view of the fact that the petitioner, herein, had already received his leave encashment benefits; on account of the fact that he has been permitted now to continue in his service till the date of his superannuation i.e. on

31.01.2024; the Gauhati University authorities shall re-calculate his leave encashment benefits and after deducting the amount already released to him, the balance amount due in this account, shall be so released to the petitioner, herein.

39. In view of the interference made by this Court with the impugned order, dated 24.09.2020; the petitioner, herein, would be now entitled to receive his gratuity and other consequential service benefits as would be so entitled to a person belonging to the category wherein the petitioner was so placed on retiring from his service.

40. The amount so working-out on the implementation of the above directions, shall be so computed and released to the petitioner, herein, by the Gauhati University authorities within a period of 3 months from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant