

GAHC010231472016



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

Case No. : WP(C)/5598/2016

ANESWAR SWARGIARY
S/O. SRI PRANESWAR SWARGIARY, R/O. DAKSHIN GANDHIBARI, P.O.
GANDHIBARI, P.S. TAMULPUR, DIST. BAKSA, B.T.A.D., ASSAM, PIN. 781376.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF CO-OPERATIVE, DISPUR, GUWAHATI-6.

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
KHANAPARA
GUWAHATI-22.

3:THE ADDITIONAL REGISTRAR OF CO-OPERATIVE SOCIETIES
B.T.C.
BAKSA
ASSAM.

4:THE ASSTT. REGISTRAR OF CO-OPERATIVE SOCIETIES
DIST. BAKSA
BTAD
ASSAM.

5:DAKSHIN DEFELI BAHUMUKHI SAMABAI SAMITTEE LTD.
ASSAM GOVT. REGISTRATION NO. 17/1973-74 DATE 27/9/73
P.O. GANDHIBARI
BAKSA B.T.A.D
ASSAM REP. BY ITS CHAIRMAN / PRESIDENT SRI NARAYAN SWARGIARY
S/O. LT. SDDHI SWARGIARY
VILL. UTTER GOLBERA
P.O. NIZ DEFELI

P.S. TAMULPUR
DIST. BAKSA
ASSAM
PIN. 781367.

6:SRI NARAYAN SWARGIARY
CHAIRMAN / PRESIDENT
DAKSHIN DEFELI BAHUMUKHI SAMABAI SAMITTEE LTD.
S/O. LT. SDDHI SWARGIARY
VILL. UTTER GOLBERA
P.O. NIZ DEFELI
P.S. TAMULPUR
DIST. BAKSA
ASSAM
PIN. 781367.

7:SRI CHIRAN BASUMATARY
THE THEN CHAIRMAN / PRESIDENT
DAKSHIN DEFELI BAHUMUKHI SAMABAI SAMITTEE LTD.
S/O. LT. BHADA BASUMATARY
VILL. UTTAR GANDHIBARI
P.O. GANDHIBARI
P.S. TAMULPUR
DIST. BAKSA
ASSAM
PIN. 781367.

8:SRI DIPAN SWARGIARY
SECRETARY
DAKSHIN DEFELI BAHUMUKHI SAMABAI SAMITTEE LTD.
S/O. BOLEN SWARGIARY
R/O. UTTAR GANDHIBARI
P.O. GANDHIBARI
P.S. TAMULPUR
DIST. BAKSA
BTAD
ASSAM
PIN. 781367

Advocate for the Petitioner : MR. S DEKA, MR.M CHETIA,MR.A RASHID,MR.S BANIK,MR.T H HAZARIKA

Advocate for the Respondent : MR.S R RABHA R-7, DR.B AHMED(SC, CO-OPP),MR.A DAS(R-7),SC, BTC

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 07/11/2024

Heard Mr. A. Rashid, learned counsel for the writ petitioner. Also heard Mr. V. Rajkhowa, learned Standing Counsel, Cooperation Department, Assam, appearing for the respondent nos. 1 to 4. None has appeared for the remaining respondents.

By filing this writ petition, the order dated 08/06/2016, by means of which, the writ petitioner, who was serving as Secretary in the Dakshin Defeli Bahumukhi Samabai Samity Ltd. was discharged from service, has been put under challenge.

The facts of the case lie in a narrow campus. The petitioner was temporarily appointed as the Secretary of the Dakshin Defeli Bahumukhi Samabai Samity Ltd. vide order dated 01/01/2015 based on the resolution No. 1 of the Managing Committee. While functioning as the Secretary, certain anomalies were detected in relation to the petitioner, which had prompted the Board of the Cooperative Society to issue a show cause notice upon the petitioner dated 18/05/2016 asking him to explain his conduct with regard to the issues raised therein. The petitioner submitted his show cause reply on 21/05/2016. Not being not satisfied with the reply, as per proposal No.3 of the meeting of the Board of Directors (Executive meeting), the petitioner was discharged from the post of Secretary of the Samabay Samity.

This writ petition has been filed *inter-alia* contending that the respondents have acted in violation of the principles of natural justice by failing to give proper opportunity to the petitioner to explain his stand.

The learned departmental counsel has questioned the maintainability of the writ petition by contending that the appointment of the petitioner is purely in private capacity i.e. in a Co-operative Society, made by a non-governmental organisation and, therefore, this writ petition would not be maintainable. According to Mr. V. Rajkhowa, learned Standing Counsel, Cooperation Department, Assam, if the petitioner had any grievance against the functioning of the Board of Directors of the Society, he ought to have approached the Registrar of Cooperative Societies by filing appropriate representation.

It is the admitted position of the fact that the petitioner was not an employee of the State. Therefore, the provisions of Assam (Discipline and Appeal) Rules, 1964 would not be applicable in his case. There is no other Rule laying down the procedure for discharge of employee of a Samabay

Samity. In that view of the matter, it cannot be said that there is violation of any statutory provision or rules in this case. In so far as the allegation regarding violation of the principles of natural justice is concerned, as has been noted above, the petitioner was issued a show cause notice and given an opportunity to submit his reply. Once the reply is submitted, it would always open for the employer to consider the same and take a decision as to what further action is required to be taken in the matter. Moreover, the petitioner was in temporary appointment and, therefore, there is no reason for this Court to hold that he could not have been discharged by a resolution of the Board of Directors, if there was cogent reason to do so. Moreover, a Co-operative Society cannot be treated as an other authority within the meaning of Article 12 of the Constitution of India. As such, a writ petition will not be maintainable to assail any order issued by the Samity.

For the aforesaid reasons, I do not find any good ground to entertain this writ petition. The same is accordingly dismissed.

However, it will be open for the petitioner to ventilate his grievance before the statutory authority, in accordance with law, if so advised.

JUDGE

Sukhamay

Comparing Assistant