

GAHC010233112024



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

Case No. : WP(C)/5697/2024

DR SASANKA SEKHOR SHARMA
S/O LATE MAHENDRA NATH SHARMA,
R/O HOUSE NO. 38, ADARSHAPUR, BYE LANE NO.3, P.O. KAHILIPARA,
GUWAHATI-19, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DIRECOTR
DIRECTORATE OF TECHNICAL EDUCATION
KAHILIPARA
GUWAHATI- 781019.

4:THE INQUIRY OFFICER
OFFICE OF THE STATE ENQUIRY OFFICER
ASSAM SECRETARIAT (CIVIL)
BLOCK A
1ST FLOOR
DISPUR
GUWAHATI-

Advocate for the Petitioner : MR H K DAS, MR N K SARMA,MS D MAHANTA

Advocate for the Respondent : SC, HIGHER EDU,

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR
O R D E R

05.11.2024

Heard Mr. H.K. Das, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel, Higher Education Department, Assam for the respondent Nos. 1, 2 and 3.

2. The petitioner is presently serving as an Associate Professor in the Department of Electrical Engineering, Assam Engineering College, Jalukbari, Assam.

3. A road accident took place on 28/29th May, 2023, wherein 06(six) students of the Assam Engineering College, Jalukbari, lost their lives. In connection with the said accident, the petitioner was issued a show cause notice on 21.09.2023. In the said show cause notice, the statement of allegation, list of documents and the list of witnesses were also enclosed. The petitioner replied to the show cause notice on 03.07.2024. Thereafter, the Secretary to the Government of Assam, Higher Education Department issued a Notification on 13.08.2024, appointing the Inquiry Officer as well as the Presenting Officer. The petitioner by a communication dated 21.08.2024, wrote to the disciplinary authority requesting to nominate a Defence Assistant in respect of the petitioner. The said communication was sent to the disciplinary authority via email. By another communication dated 15.09.2024, the petitioner suggested the name of one retired officer to be nominated as the Defence Assistant to assist the petitioner. In the meantime, the Inquiry Officer by a communication dated 05.09.2024, set

the departmental enquiry against the petitioner in motion by fixing 18.09.2024. As no Defence Assistant was nominated despite making several requests by the petitioner, the petitioner again submitted an application on 19.09.2024 for nominating a Defence Assistant. In the meantime, the Deputy Secretary to the Government of Assam, Higher Education, by a communication dated 18.10.2024, informed the petitioner that the Higher Education Department regrets the proposal for allowing the nominated Defence Assistant by the petitioner to serve as the Defence Assistant in the departmental proceeding.

4. Thereafter, the Inquiry Officer again fixed 24.10.2024 and 25.10.2024 for examination of witnesses with regard to the departmental proceeding against the petitioner by two communications, both dated 18.10.2024. In the meantime, the petitioner again proposed for allowing one Sri Subhra Mallick Chowdhury to be the Defence Assistant in the said disciplinary proceeding. The consent letter was also given by the said Sri Subhra Mallick Chowdhury on 22.10.2024. However, till date, no Defence Assistant as requested by the petitioner has been provided by the disciplinary authority and in the meantime, the Inquiry Officer again fixed 06.11.2024 as the date of hearing with regard to the departmental proceeding against the petitioner.

5. The learned counsel for the petitioner submits that Rule 9(5) of the Assam Service (Discipline and Appeal) Rules, 1964 (Rules of 1964 in short), clearly provides that the delinquent officer may request before the disciplinary authority for appointment of a Defence Assistant and the same on the approval of the disciplinary authority has to be given to the said delinquent officer. However, in the present case in hand, despite requests

being made, the disciplinary authority is not permitting the petitioner to have a Defence Assistant and thereby jeopardizing the case of the petitioner in the said departmental proceeding.

6. Mr. K. Gogoi, learned Standing Counsel, Higher Education Department, Assam in his usual fairness submits that Rule 9(5) of the Rules of 1964 provides that if the petitioner requests for a Defence Assistant, the same would be given to the petitioner after the approval of the disciplinary authority.

7. This Court on perusal of the materials available on record has found that the petitioner on several occasions had requested the disciplinary authority for nominating a Defence Assistant to assist the petitioner in the said departmental proceeding against him. The first request made by the petitioner was rejected on 18.10.2024. Thereafter, the petitioner again made a proposal for appointment of one Sri Subhra Mallick Chowdhury to be nominated as the Defence Assistant to assist the petitioner in the said disciplinary proceeding. The records further indicate that the said Sri Subhra Mallick Chowdhury has given his consent to act as the Defence Assistant on 22.10.2024.

8. This Court has perused Rule 9(5) of the Rules of 1964 and the same reads as under:-

“(5) The Disciplinary Authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereafter referred to as the inquiring authority). The Government servant may present his case with the assistance of any other Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the

circumstances of the case so permits."

9. On a perusal of the Rule 9(5) of the Rules of 1964, it clearly provides that the Government servant may present his case with the assistance of any other Government servant approved by the disciplinary authority. But he may not engage a legal practitioner for the purpose.

10. In the present case, the petitioner has already sent his proposal for appointment of one Government servant to act as Defence Assistant in the disciplinary proceeding against the petitioner. However, what is noticed is that the disciplinary authority is yet to take a decision and in the meantime, the Inquiry Officer is proceeding against the petitioner without his Defence Assistant, which would jeopardize the case of the petitioner in the said departmental enquiry.

11. Accordingly, the disciplinary authority is directed to take steps forthwith to allow the petitioner to have a Defence Assistant to assist him in the said departmental proceeding. Till the Defence Assistant is nominated to assist the petitioner, the disciplinary proceeding against the petitioner shall not proceed any further from today.

12. Needless to say that once the Defence Assistant is provided to the petitioner, the disciplinary proceeding would proceed accordingly.

13. With the above observations and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant