

GAHC010273822023



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

Case No. : WP(C)/7010/2023

JAWAHIR MD EKBAL
S/O- FOYZUR RAHMAN LASKAR,
R/O- H.NO- 445 K,
AULIA TILLA LANE, UTTAR KRISHNAPUR PART II,
P.O- UTTAR KRISHNAPUR,
DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SKILL EMPLOYMENT AND ENTREPRENEURSHIP
DEPARTMENT, ASSAM SECRETARIAT, DISPUR, GUWAHATI-6.

2:THE MISSION DIRECTOR
ASSAM SKILL DEVELOPMENT MISSION
KATABARI
DPS ROAD
NH-37
GARCHUK
GUWAHATI- 781035.

3:THRE CHIEF EXECUTIVE OFFICER
ASSAM SKILL UNIVERSITY PROJECT
3RD FLOOR
DECT OFFICE COMPLEX
REHABARI
GUWAHATI-08

4:ANKUR JAIN
IPS
MISION DIRECTOR- CUM THE CHIEF EXECUTIVE OFFICER
ASSAM SKILL UNIVERSITY PROJECT
3RD FLOOR
DECT OFFICE COMPLEX
REHABARI
GUWAHATI-0

Advocate for the Petitioner : MR. J M A CHOUDHURY
Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 28.02.2024

Heard Mr. J. M. A. Choudhury, learned counsel for the petitioner. Also heard Mr. J. K. Porajuli, learned Govt. Advocate for the respondent No.1 and Mr. S. P. Das, learned standing counsel, Assam Skill Development Mission for the respondent Nos. 2 and 3.

2. Pursuant to an Advertisement dated 29.01.2022, issued by the Mission Director, ASDM, Guwahati for 2(two) posts of Finance Manager and Gender & Indigenous People Specialist, the petitioner applied for the post of Finance Manager. After undergoing the recruitment process, the petitioner was selected for the post of Finance Manager by a Circular dated 21.05.2022. Thereafter, offer letter for the post of Finance Manager - Project Management Unit under Assam Skill University Project was issued to the petitioner on 21.05.2022. Consequent thereto, a contract agreement was entered between the petitioner and the Chief Executive Officers of Assam Skill University Project for a period from 1st of July, 2022 to 31st of May, 2023. On expiry of the first contract agreement, a second contract agreement was entered between the parties on 7th of July, 2023 for the period from 1st of June, 2023 to 30th of April, 2024. However, before the expiry of the contract agreement, the petitioner was given a termination letter on 16.10.2023, issued by the Chief Executive Officer, Assam

Skill University Project. The ground for termination reads as under:

“1. In the Aid Memorie shared by the Asian Development Bank (ADB) on 26m April 2023, observations regarding the functioning of Finance Management Team was raised. This was also flagged by the undersigned many times, however no major remedial action has been observed at your end to improve the functioning of your duties and responsibilities.

2. There is a huge delay is found in submission of Fixation of Ceiling against the budget allocation for FY 2023-2024, due to which an unavoidable hindrance arises which has the potential to hamper the overall progress of the project in long term basis as without sufficient financial provision a project can not achieve its target within the stipulated time.

3. In your tenure as Finance Manager multiple errors in information furnishing and reporting are observed by the undersigned. Recent instance is your email communication to CAAA, where you errors are observed in the submitted presentation sheet. It may be noted that ample times you have been asked to cross verify the data and coordinate with your team members and authority before sharing.

4. There have been ongoing concerns regarding your lack of cordial relation among various stakeholders of project, which have hindered effective collaboration which is very much essential to achieve broader project objectives.”

3. Thereafter, the Chief Executive Officer, Assam Skill University Project issued another Advertisement dated 2nd of December, 2023, calling for walk-in-interview on 05th of December, 2023 for recruitment of Finance Manager for Project Management Unit (AMU), Assam Skill University Project which was held by the petitioner.

4. It is the case of the petitioner that the termination order dated 16.10.2023, was issued at the back of the petitioner without giving an opportunity of hearing and thereby violating the principles of natural justice. Further, the learned counsel for the petitioner submits that the termination order dated 16.10.2023 was in violation of Clause 23 of the agreement dated 07th of July, 2023 which provides that the rules and procedures for matters pertaining to official travels, leaves, resignation/termination and appraisal etc., shall be governed as per HR policy of the PMU for ASU project. He therefore submits that the respondents did not follow the HR policy while terminating the petitioner.

5. Mr. S. P. Das, learned counsel for the respondent Nos. 2 and 3 has produced the records and submits that the termination letter dated 16.10.2023, was issued due to consistent non-performance by the petitioner and also due to various lapses on his part which is clearly mentioned in the termination letter.

6. To a pointed question made by this Court to the learned counsel for the respondent Nos. 2 and 3 as to whether any opportunity of hearing was given to the petitioner, he fairly submits that no opportunity of hearing was given to the petitioner.

7. There is no doubt that in the case of a contractual engagement, the terms and condition of the contract would govern the service condition of the employee. In the present case in hand, the contract agreement signed between the parties have a Clause, permitting termination of the contract at any point of

time, if the services rendered is found to be unsatisfactory. However, what is to be noted is that a bare perusal of the termination letter dated 16.10.2023, demonstrates on the face of record that same was not issued on the basis of any enquiry and was done behind the back of the petitioner without giving an opportunity of hearing to him. In that view of the matter, this Court is of the considered opinion that this is a clear case where the respondents have acted in violation of principles of natural justice and further the termination letter is stigmatic in nature.

8. In view of the above, the termination letter dated 16.10.2023, issued by the Chief Executive Officer, Assam Skill University Project is set aside and quashed. The respondents, particularly, the respondent Nos. 2 and 3 are directed to reinstate the petitioner back into service within a period of 2(two) weeks from the date of receipt of a copy of the order of this Court. It is also made clear that the petitioner shall not be entitled to any back wages.

9. Liberty is also granted to the respondents to proceed against the petitioner, if so advised, however, by following the procedure prescribed by law.

10. With the above observations and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant