

GAHC010283622018



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

Case No. : WP(C)/3/2019

IKBAL HUSSAIN LASKAR
S/O KABIR UDDIN LASKAR
R/O VILL- AND P.O. KANAKPUR, PART-II
P.S. SILCHAR, DIST. CACHAR, ASSAM,
PIN - 788005.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
THROUGH THE PRINCIPAL SECRETARY-CUM-CHIEF EXECUTIVE OFFICER,
ASSAM STATE DISASTER MANAGEMENT AUTHORITY TO THE GOVT. OF
ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR, GUWAHATI - 781006.

Advocate for the Petitioner : MD. A J ATIA, MS A H ATIA, MS J MARIYAM

Advocate for the Respondent : GA, ASSAM, MR. J HANDIQUE (SC, REVENUE DEPT.)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 10.09.2024.

Date of judgment : 10.09.2024

JUDGMENT & ORDER (Oral)

Heard Mr. A. J. Atia, learned counsel appearing for the writ petitioner. Also heard Mr. J. Handique, learned Standing Counsel, Revenue & Disaster Management Department, Govt. of Assam appearing for the respondents.

2. The order of termination from service of the writ petitioner dated 17.11.2018 with retrospective effect from 11.08.2018, has been put under challenge in this writ petition. The brief factual background of the case is that in response to an advertisement notice issued by the Chief Executive Officer, Assam State Disaster Management Authority inviting applications for filling up 16 posts of Project Officer for Disaster Management (District HQ), the writ petitioner, being qualified for the post, had submitted his application and thereafter, he had taken part in the selection process. On conclusion of the selection process the petitioner emerged as a successful candidate and accordingly, vide engagement letter dated 24.12.2009, the petitioner was offered appointment as Project Officer under the Assam State Disaster Management Authority, stationed at Morigaon.

3. On receipt of the engagement letter dated 24.12.2009 issued by the Chief Executive Officer, Assam State Disaster Management Authority i.e. the respondent No.1, the petitioner had joined at Morigaon. Thereafter, he was transferred and posted under the District Disaster Management Authority (DDMA) at Karimganj and finally as Project Officer under the DDMA, Hailakandi. While serving as Project Officer, DDMA, Hailakandi the petitioner claims to have received a telephonic call on 20.08.2018 informing him that his ailing father, aged about 65 years, who was suffering from ortho-neurological problems, had suddenly fainted. On receipt of such

information the petitioner rushed to his native village and thereafter, got involved in the treatment of his father which also included a trip to Guwahati. According to the petitioner, he had verbally apprised the authorities about the compelling circumstances under which he had to rush back home with a further intimation that he would soon submit leave application seeking leave for a period of one month with effect from 21.08.2018. Notwithstanding the same, a show cause notice dated 04.09.2018 issued by the State Project Coordinator, Assam State Disaster Management Authority was served upon the petitioner calling upon him to explain as to why, his service contract with the Assam State Disaster Management Authority should not be terminated for gross indiscipline and official misconduct on account of being unauthorisedly absent from duty with effect from 21.08.2018 till the date of issuing the show cause notice.

4. Upon receipt of the show cause notice dated 04.09.2018 the petitioner submitted his reply explaining the circumstances under which he had remained absent since 21.08.2018. In his reply, the petitioner had further stated that he would submit leave application seeking earned leave for one month with effect from 21.08.2018, supported by medical documents. In his reply the petitioner had also stated that he did not remained absent intentionally and therefore, it is not a case of misconduct or indiscipline. Notwithstanding the reply furnished by the petitioner, by issuing the impugned order dated 17.11.2018, the service of the petitioner had been terminated with retrospective effect from 11.08.2018. Aggrieved by the order dated 17.11.2018 the petitioner had preferred an appeal before the appellate authority. However, no relief was granted to him in the appeal. Hence, this writ petition.

5. By referring to the materials available on record, Mr. Atia, learned counsel for the writ petitioner has argued that the impugned order of termination from service is wholly arbitrary and illegal inasmuch as the same was issued without considering the show cause reply submitted by the writ petitioner. It is also the submission of Mr. Atia that the provisions of Assam Civil Service (Discipline & Appeal) Rules, 1964 (herein after referred to as the Rules of 1964) was applicable in case of the petitioner. Notwithstanding the same, the authorities have not followed the prescribed procedure under the Rules of 1964 while imposing the major penalty of termination from service on the petitioner.

6. It is also the contention of the learned counsel for the petitioner that from the communication dated 29.08.2018 issued by the respondent No.3 it is apparent that certain allegations have been brought against the petitioner based on which the order of termination was issued. Notwithstanding the same, neither any charge-memo was served upon the petitioner nor was he given an opportunity to defend his interest in the matter. Such being the position, submits Mr. Atia, the impugned order of termination dated 17.11.2018 is wholly arbitrary, illegal and has been issued in flagrant violation of the principles of natural justice. As such, submits Mr. Atia, the same is liable to be struck down by this Court. Mr. Atia has also prayed for an order from this Court directing reinstatement of the petitioner by contending that as per instructions obtained by him, vacant posts are still available under the respondent No.1 i.e. the Assam State Disaster Management Authority so as to accommodate the petitioner.

7. Mr. Handique, learned Standing Counsel for the Revenue & Disaster Management Authority appearing for the respondents has argued that the petitioner had remained absent from duty without obtaining prior permission from the authorities. Moreover, the writ petitioner was found lacking in efficiency and integrity. Under such circumstances, the authorities were left with no option but to terminate his contractual service. Mr. Handique has, however, submitted in his usual fairness that in view of the specific condition contained in the contract agreement, the provisions of the Rules, 1964 ought to have been followed in this case before issuing the order of termination but there was no such compliance of the provisions of the Rules.

8. I have considered the submissions made by the learned counsel for both the sides and have also gone through the materials available on record.

9. At the very outset, it would be pertinent to mention herein that the initial appointment of the writ petitioner as Project Officer in the DDMA was contractual, which was valid for a period of three years subject, however, to further renewal. As per the terms and conditions of the contract, the employee would be entitled to 15 days casual leave and other leave as per Assam Leave Rules. The contract agreement also provides that the employee will be covered by the Assam Civil Service Conduct Rules, Assam Civil Services (Discipline and Appeal) Rules, Assam Leave Rules and any other such Rules and guidelines of the Government of Assam that is in force or may come into force from time to time. From the above conditions contained in the contract agreement it is, thus, apparent that the Rules and regulations governing the conditions of service of a Government servant working

under the State Government of Assam have been made applicable to the contractual appointees such as the writ petitioner as well. As such, under the contract agreement, if any disciplinary action was required to be taken against the petitioner leading to termination of the service contract, the same would have to be done only after complying with the provisions of the Rules, 1964.

10. Rule 7 of the Rules of 1964 lays down the penalties that can be imposed on a Government servant. Termination of service and/or dismissal from service is a major penalty under the Rules of 1964. Rule 9 of the Rules of 1964 provides the procedure to be followed while imposing major penalty. Rule 9 is reproduced herein below for ready reference :-

“9. Procedure for imposing penalties.

(1) Without prejudice to the provisions of the Public Servant; (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in rule 7 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided.

(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegation on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement of his defence and also to state whether he desires to be heard in person.

At the time of delivering the charges, the Disciplinary Authority shall invariably furnish to the Government servant a list of documents and witnesses by which each article of charges is proposed to be sustained.”

11. From a plain reading of the provisions of Rule 9 it is apparent that if the authority chooses to impose major penalty upon a Government servant, the same can be done only after framing definite charge on the basis of allegations on which, enquiry is proposed to be held and the delinquent is given sufficient opportunity to defend his interest in the enquiry proceeding. Not only that, an enquiry is also required to be held so as to prove and establish the charge. However, as noted herein above, in the present case, the authorities have not complied with the requirement of Rule 9 before issuing the impugned order of termination from service dated 17.11.2018.

12. I also find from the materials on record that the Deputy Commissioner-cum-District Disaster Management Authority, Hailakandi i.e. the respondent No.3, had issued a letter dated 29.08.2018 addressed to the respondent No.2 on the subject of renewal of annual contract of the writ petitioner wherein, certain allegations had been levelled against him. Such allegations include poor performance by the petitioner and tampering with ACR. In the letter dated 29.08.2018 it has further been mentioned that the writ petitioner was unfit to continue as District Project Officer as he was irregular, inefficient, dishonest and incapable and lacks complete knowledge of disaster management. These allegations, on the face of the record, cast a stigma on the writ petitioner and if found correct, could be the basis of an order imposing major penalty. Therefore, the petitioner was entitled to an opportunity to respond to such allegations which opportunity he was denied, since no charge memo containing such allegations was ever served upon the petitioner.

13. Although the show cause notice dated 04.09.2018 does not mention any of these allegations, yet, considering the fact that the letter dated 29.08.2018 was issued prior to issuance of the show cause notice dated 04.09.2018 as well as the order of termination dated 17.11.2018, hence, the possibility of the letter date 29.08.2018 influencing the mind of the authorities in terminating the service of the petitioner cannot be ruled out. It is also not possible for this Court to make an assessment at this stage as to if and in what manner, the communication dated 29.08.2018 had influenced the mind of the disciplinary authority while issuing the impugned order of termination dated 17.11.2018.

14. From the discussions made in the foregoing paragraphs, this Court is of the unhesitant opinion that the respondent authorities have not only acted in clear contravention of the terms and conditions of the contract agreement as well as the provisions of the Rules of 1964 which were equally binding upon them but have also denied the protection and procedural safeguard of the principles of natural justice to the writ petitioner while terminating his service.

15. Assuming that the writ petitioner was unauthorisedly absent for the period mentioned in the show cause notice, even then, since he was entitled to leave including casual leave and earned leave for the period covering his period of absence and considering the ground on which the petitioner had to remain absent and also in view of the leave application allegedly submitted by him, it is not understood as to why, instead of considering his prayer for grant of leave, the petitioner's service had to be terminated, that too, without holding a proper

departmental enquiry.

16. For the reasons stated herein above, this Court is of the unhesitant opinion that the impugned order of termination of service dated 17.11.2018 is unsustainable in the eyes of law and the same is accordingly set aside.

17. In the additional affidavit dated 12.09.2023 filed by the petitioner, it has been mentioned that there is a vacant post of Project Officer in the establishment of the State Project Coordinator, Assam State Disaster Management Authority which has not been filled up till today. The said assertion has not been denied or disputed by the respondents. Be that as it may, in view of the interference caused to the impugned order of termination of service dated 17.11.2018, the respondents are directed to reinstate the petitioner within two weeks from today. Upon such reinstatement, it will be open for the respondents to proceed against the writ petitioner afresh in accordance with law, or to take a fresh decision on the question of renewal of his contract, if so advised.

With the above observation, the writ petition stands allowed.

There would be no order as to cost.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant