

GAHC010065772021



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

Case : WP(C)/9515/2019

PRABIN KISHORE DAS
S/O LATE CHANDRA KISHORE DAS
R/O VILL-JANIA ROAD
NEAR LIC BUILDING
BARPETA
P.O.
P.S. AND DIST-BARPETA
ASSAM
PIN-781301

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY/ADDITIONAL CHIEF
SECRETARY/SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-6

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
JURIPAR
PANJABARI
GUWAHATI-37

3:THE JOINT DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM
JURIPAR
PANJABARI
GUWAHATI-37

Advocate for : DR. B AHMED

Advocate for : SC
PNRD appearing for THE STATE OF ASSAM AND 2 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

25.01.2024

Heard Mr. I. Choudhury, learned counsel for the petitioner. Also heard Mr. N.K. Dev Nath, learned Standing Counsel for the respondents/Department.

2. This writ petition is directed by the petitioner who was employed as an Extension Officer (Panchayat) at Mandia Development Block, Barpeta. Subsequently, while he was working as Extension Officer (P) of Tihu Barama Development Block, petitioner was placed under suspension with effect from 15.09.2003 by order dated 14.10.2003 passed by the Director of Panchayat and Rural Development, Assam. Petitioner being aggrieved, approached this Court by filing W.P(C) No. 3698/2005 and by interim order dated 06.06.2005, the suspension order passed by the Department was suspended and kept in abeyance and the respondents were directed to allow the petitioner to resume his duties.

3. In terms of the interim order dated 06.06.2005, petitioner was reinstated in his service pending drawl of departmental of proceedings and he was thereafter transferred from Tihu Barama Development Block of Nalbari district to

Kapili Development Block of Nagaon district. Subsequently, show cause notices were issued to the petitioner under Rule 9 of the Assam Services (Discipline and Appeal) Rules 1964. The petitioner responded by filing his written statements and thereafter an Enquiry Officer was appointed. Enquiry proceedings were initiated and the Enquiry Officer completed his enquiry and submitted the enquiry report on 16.09.2010 before the disciplinary authority. However, copy of the enquiry report was never served on the petitioner. On the basis of the enquiry report submitted, the Commissioner, Panchayat and Rural Development, having accepted the enquiry report, issued the order dated 29.12.2010, holding him to be guilty of misconduct and imposed a penalty of removal of dismissal from service under Rule 7(vi) of the Assam Services (Discipline and Appeal) Rules 1964. Against the order of removal of service dated 29.12.2010, petitioner approached this Court by filing W.P(C) No. 1016/2011. The said writ petition was premised on the ground that enquiry report was not furnished and no opportunity of representation was given to the petitioner.

4. A Co-ordinate Bench of this Court by order dated 21.02.2013 allowed the writ petition, interfered with the dismissal order and directed the respondents to furnish a copy of the enquiry report and held that the disciplinary proceedings are not sustainable from the stage where the enquiry report was not given. The respondents were given liberty to proceed with the departmental enquiry *de*

novo by furnishing a copy of the enquiry report to the petitioner and thereafter pass appropriate orders in law. The Writ Petition was accordingly allowed and disposed of.

5. The respondents, however, interpreted this order dated 21.02.2013 as a direction of the Court, setting aside the entire disciplinary proceedings. The respondents therefore, proceeded to conduct a fresh de-novo enquiry and serve show cause notice dated 31.10.2019 on the petitioner and the petitioner was asked to respond to the said show cause notice. Show cause notice also included a list of documents and list of witnesses as well as the statement of allegations. The petitioner, therefore is before this Court in the present writ petition challenging the show cause notice dated 31.10.2019 as being contrary to the directions of this Court by order dated 21.02.2013 passed in W.P.(C) No. 1016/2011.

6. Although notices were issued in the matter as far back as 09.04.2021 and opportunity of filing affidavit was granted by this Court and inspite of several other opportunities being granted to the department, no counter-affidavit is filed by the respondents.

7. Upon careful consideration of the pleadings available on record and also upon due consideration of the submissions made by the learned counsel for the

parties, it is seen that the department appears to have misinterpreted the directions or wrongly interpreted the directions of the co-ordinate Bench of this Court by the order dated 21.02.2013 passed in W.P(C) No.1016/2011. The order dated 21.02.2019 is reproduced as under:

“21.02.2013

Heard Mr. T.J. Mahanta, learned counsel appearing for the petitioner and Mr. J. Handique, learned Govt. Advocate for the respondents.

The petitioner has filed this writ petition challenging the dismissal order on two grounds. Firstly, the order has been passed by an authority who is lower in rank of the appointing authority and secondly, before passing of the order of dismissal, the petitioner has not been furnished a copy of the report of the Enquiry Officer.

It has also been admitted by the authorities in the affidavit-in-opposition filed by the respondent No.3 in para No.14 that the respondent authority has no objection in furnishing the Enquiry Report and the same was not furnished to the petitioner as the petitioner had never sought for the same, which therefore substantiates the contention of the petitioner that no enquiry report was furnished to the petitioner before the final dismissal a was passed.

*In view of the law laid down in **Union of India & ors vs Mohd. Ramzan. Khan; AIR 1991 SC 471** and **ECIL vs. Karunakar, (1993) 4 SCC 727**, the present petition is allowed and the disciplinary proceeding is interfered as not sustainable from the stage where the enquiry report was not given. In other words, the authorities will be at liberty to proceed with the departmental enquiry de novo by furnishing a copy of the enquiry report to the petitioner and pass appropriate order in accordance with law.*

Accordingly, the impugned order dated 29.12.2010 (Annexure-A/20 to the writ petition) is set aside.

With the above observation and direction, the present petition is disposed of to the extent indicated above.

A copy of this order may be furnished to the learned counsel appearing for the parties for communication to the authorities concerned.”

8. A careful perusal of the order as extracted above reveals that relying on

the principle culled out in *Union of India and Ors Vs. Mohd. Ramzan Khan*, reported in 1991 SC 471 and *ECIL Vs. Karunakar*, reported in (1993) 4 SCC 727 rendered by the Apex Court, the writ petition was allowed by the Co-ordinate Bench and the disciplinary proceeding was interfered with as not sustainable from the stage where the enquiry report was not given. The authorities were given liberty to proceed with the departmental enquiry *de novo* by furnishing a copy of the enquiry report to the petitioner and pass appropriate order in accordance with law. However, it is seen that the department besides not furnishing a copy of the enquiry report submitted by the Enquiry officer appointed to complete the enquiry proceedings in respect of show cause notice dated 04.05.2007, the department proceeded to serve a fresh show cause notice dated 21.10.2019 and called upon the petitioner to file his written statement.

9. A perusal of the subsequent show cause notice dated 31.10.2019 does not reflect that the earlier enquiry proceeding was abandoned and that a fresh enquiry proceeding *denovo* has been initiated. Under such circumstances it cannot be said that the earlier enquiry proceedings were abandoned by the department and consequent thereupon a fresh enquiry *de-novo* has been instituted against the petitioner. Although no affidavit has been filed in spite of opportunities being granted by the department, Mr. N.K. Dev Nath, learned

Standing counsel for the department submits that this subsequent show cause notice dated 31.10.2019 which is impugned in the present writ petition was issued in terms of the order dated 21.02.2013 passed in W.P.(C) No. 1016/2011 as the department understands this order as a liberty granted to the department to initiate the departmental enquiry *de-novo* against the petitioner. Such interpretations sought to be given to the order dated 21.02.2013 passed in W.P. (C) No. 1016/2011 by the department or by the learned Standing Counsel cannot be accepted.

10. A bare perusal of the order reflects that the disciplinary proceeding was interfered with as not sustainable from the stage where the enquiry report was not given. This is qualified by the subsequent direction contained in the said order that the authorities will be at liberty to proceed with the departmental enquiry *de-novo* by furnishing a copy of the enquiry report to the petitioner and pass appropriate orders in accordance with law.

11. If the interpretation sought to be given by the department over the learned Standing Counsel is to be accepted then the direction of the Court for furnishing a copy of the enquiry report will carry no meaning if it is to be interpreted that the Court had directed for a fresh *de-novo* enquiry. It is clear from a bare perusal of the order dated 21.02.2013 passed in W.P.(C) No.

1016/2011 that the Co-ordinate bench while interfering with the earlier enquiry proceedings had granted liberty to the respondents to proceed with the enquiry from the stage where the enquiry report was not served on the petitioner and thereafter pass appropriate orders in accordance with law only after furnishing the enquiry report submitted by the Enquiry officer and as has been held by the Apex Court in the Judgment of ECIL (Supra) and other subsequent Judgments.

12. Under such circumstances, this Court has no option but to allow the writ petition by interfering with the show cause notice dated 31.10.2019 to the contrary to the directions contained in the order dated 21.02.2013 passed in W.P.(C) No. 1016/2011. It is trite to mention here that there is no dispute that this order today has attained finality as no appeal or review has been preferred against this order. It is also stated at the Bar that although initially the copy of the enquiry report was not furnished subsequently during the pendency of the proceedings, enquiry report has been furnished. Accordingly, this writ petition is allowed. The impugned show cause notice dated 31.10.2019 is interfered with and set aside and the directions of this Court passed on 21.02.2013 passed in W.P.(C) No. 1016/2011 are reiterated. The department will be at liberty to proceed with the enquiry from the stage where the enquiry report was not furnished at the earlier point in time.

13. The writ petition accordingly stands allowed to the extent indicated above and disposed of. No order as to cost.

JUDGE

Comparing Assistant