GAHC010032282020

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

Case No. : WP(C) 1030/2020

1:HILTON SAIKIA
S/O- LATE HEMCHANDRA SAIKIA, R/O- C/O- LT H C SAIKIA, DHEMAJI, BARPATORIAGAON, P.O- KHUBOLIA, P.S- DHEMAJI, PIN- 787057

VERSUS

1:THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM, HEALTH AND FAMILY WELFARE DEPTT, DISPUR- 781006, ASSAM

2:THE MISSION DIRECTOR
NATIONAL HEALTH MISSION
ASSAM
CHRISTIAN BASTI
GUWAHATI- 05

3:THE DEPUTY COMMISSIONER CUM CHAIRPERSON
CUM CHAIRPERSON DISTRICT HEALTH SOCIETY
SIVASAGAR
ASSAM

4:THE EXECUTIVE DIRECTOR
NHM
ASSAM

5:THE JOINT DIRECTOR OF HEALTH SERVICES
CUM MEMBER SECRETARY DISTRICT HEALTH SOCIETY
GOVT OF ASSAM
DHS
SIVASAGAR
ASSA

Advocate for the Petitioner : MR B SHARMA

Advocate for the Respondent : SC, HEALTH

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 16-10-2020

Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned counsel for the NHM.

2. The petitioner who was serving as a District Programme Manager, NHM Sivasagar was terminated from service by the order dated 31.12.2019 of the Mission Director, NHM, Assam.

3. Being aggrieved, the writ petition has been instituted. A reading of the order shows that the petitioner was arrested in connection with Sivasagar P.S. Case No.913/2019 under Sections 498(A)/376/494 IPC on the basis of a complaint lodged by a lady Smti. Bornali Deuri. The petitioner was also in judicial custody in connection with the said police case and he was released on bail on 27.09.2019 after a period of 11 days. The reason for terminating the service of the petitioner as depicted in the order dated 31.12.2019 is that in view of the ongoing criminal case against him where the charges are of serious nature, it was felt that the service of the petitioner was not required in the greater interest of public service and the mission projects.

4. Accordingly, the contract appointment of the petitioner stood terminated. It is stated by Mr. P. Mahanta, learned counsel for the petitioner that in the meantime, in the complaint Smti. Bornali Deuri had given a statement under Section 164 Cr.P.C. that the marriage between the complainant lady and the petitioner was solemnized in the year 2015 and the petitioner is not connected with any offence and they were together for 4 years. It is stated in the statement that the petitioner had not committed any offence with her and that she is the wife of the petitioner and the petitioner is her husband.

6. The Magistrate recording the statement under Section 164 also arrived at the satisfaction that the statement of the victim appears to have been made voluntarily without any fear or influence.

7. On the basis of the aforesaid statement under Section 164 Cr.P.C., the case against the petitioner resulted in a final report in his favour.

8. In the circumstance, the petitioner raises the claim that as the termination of his service was only because of the criminal case that was instituted against him and that in between the criminal case had been honorably closed on the basis of the statement under Section 164 Cr.P.C. of the complainant therefore, the petitioner seeks for an interference with the order of termination.

9. Service law jurisprudence provides for simultaneous proceeding of a criminal case, as well as a disciplinary proceeding, if initiated. Any order of termination ordinarily would have to be construed to have resulted from any such disciplinary proceeding that may have been initiated, although in the instant case, the procedure adopted was different.

10. Accordingly, either to continue with the order of termination or to recall it would be the prerogative of the disciplinary/appointing authority, who had passed the order of termination and the Court would not be competent to adjudicate the same merely because the criminal case stood closed on the basis of the aforesaid statement of the complainant lady under Section 164 Cr.P.C.

11. In the above circumstance, we are of the view that the ends of justice would be met, if the petitioner makes a representation before the Mission Director, NHM stating his claim in detail as indicated above as well as his reliance on the statement of the complainant lady under Section 164 Cr.P.C. who now states that the petitioner is her husband and no such offence had actually had taken place. The authorities while considering such representation may also take note of that on the basis of such statement under Section 164 Cr.P.C. of the complainant lady, the criminal case instituted against the petitioner was also closed resulting in the final report.

12. The petitioner may submit the representation within a period of 15 days and upon the same being submitted, the Mission Director shall give a consideration to it and pass a reasoned order within another one month from the date of receipt of such representation.

13. The Mission Director may also give a personal hearing to the petitioner to present his case as well as to produce the relevant provisions of law as he may desire.

14. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant