GAHC010273542018

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

Case No. : WP(C)/8618/2018

SUROJIT ROY
S/O. LATE BAHARI MOHAN ROY, R/O. VILL. WEST KUMAR PARA, P.O. RAKHAL KHALER PAR, P.S. SILCHAR, DISTRICT- CACHAR, PIN- 788026, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPTT., PANJABARI, GUWAHATI- 37.

2:THE DEPUTY COMMISSIONER

CACHAR
SILCHAR.

3:THE BLOCK DEVELOPMENT OFFICER

KATIGORAH DEVELOPMENT BLOCK
DIST- CACHAR
ASSAM.

4:THE PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
OFFICE OF THE DEPUTY COMMISSIONER
CACHAR
ASSAM.

5:THE DISTRICT PROGRAMME COORDINATOR

MGNREGA

CACHAR
ASSAM.

6:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSA

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 09.12.2020

Heard Mr. M.J. Quadir, learned counsel for the petitioner and Mr. M. Nath, the learned standing counsel for the P&RD Department.

2) With the consent of the learned counsel for both sides, the matter was heard in the 'admission' stage.

3) By this writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the termination of his contractual service without giving any opportunity to the petitioner of being heard on the ground that the termination was stigmatic.

4) The case projected by the petitioner, briefly stated, is that he was engaged in the year 2010 as Accredited Engineer in the Office of the Project Director, District Rural Development Agency on contractual basis. The contractual engagement was extended from time to time. The Commissioner, Panchayat & Rural Development Department, by an office order dated 24.01.2018, recorded that it has come to his notice that the petitioner was found grossly negligent in performing his assigned duty regarding promotion of PMAY-G activity in his assigned block/ gaon Panchayat, that he had submitted false completion report without verification of incomplete PMAY-G houses leading to incomplete and poor performance of PMAY-G houses in Hailakandi Development Block under Hailakandi District and held that gross

negligence, absence and indiscipline was unbecoming of any person engaged in contractual work with the State Government and that taking cognizance of such conduct on part of the petitioner, the respondent no.1 concluded that the grounds were suitable for termination of the contract wherein the petitioner was engaged as Accredited Engineer of Katigorah Development Block. Accordingly, in lieu of one month's notice needed to be served before termination, it was provided that the petitioner be paid one month's salary and that the District Programme Coordinator, Cachar was directed to report compliance. The learned counsel for the petitioner has submitted that notwithstanding that the appointment of the petitioner was contractual, but it is well settled that if the termination is stigmatic, the respondents ought to have granted to the petitioner an opportunity of being heard. In this regard, the learned counsel for the petitioner has relied on the following cases, viz., (1) *Madan Gopal Vs. State of Punjab, AIR 1963 SC 531*, (2) *Anoop Jaiswal Vs. Govt. of India & Anr., (1984) 2 SCC 369*, (3) *Mrigen Kalita Vs. The North East Regional Institute of Parliamentary Studies, Training and Research & Ors., (2012) 5 GLR 410: 2012 (4) GLT 686*. It is submitted that this is a fit case where till a regular appointment is made, the petitioner may be reinstated in service and in this regard, the learned counsel for the petitioner places reliance on the following cases, viz., (1) *Yashimenla Vs. Addl. Chief Secretary, Govt. of Nagaland & Anr., 2009 (2) GLT 559*, and (2) *Lokho Mao Vs. State of Manipur & Ors., 2011 (2) GLT 131.*

5) The learned standing counsel for the respondents has extensively referred to the affidavit- in- opposition filed by the respondent no.6 and it is submitted that evidence of commission of serious anomalies exists against the petitioner, as such, the termination of contractual service is justified. It is submitted that only after termination of service of the petitioner that the incomplete houses were completed. It is submitted that as the petitioner was under contractual service, before termination, the petitioner was lawfully entitled only to one month's notice or one month's salary in lieu of notice. Accordingly, the termination of the service of the petitioner is justified by the learned standing counsel for the respondents.

6) It is seen that the office order dated 24.01.2018 by which the contract of service of the petitioner was terminated contains statement that the petitioner had given false

completion report without verification of incomplete PMAY-G houses, and that he was grossly negligent, was absent and was undisciplined, and that his conduct was unbecoming of person engaged in contractual work with the State Govt. Therefore, on examination of the impugned order, there is no escape from the fact that the said order is stigmatic. The three Judge Bench of Supreme Court of India, in the case of Madan Gopal (supra), had held that "… It is now well settled that the protection of Article 311(2) of the Constitution applies as much to a temporary public servants as to permanent public servants. By virtue of Article 311 of the Constitution the appellant was not liable to be dismissed or removed from service until he had been given a reasonable opportunity against the action proposed to be taken in regard to him. The appellant was given no such opportunity and Article 311 of the Constitution was therefore not complied with." That being the well settled legal position, there is no necessity to burden this judgment with deliberation on other cited cases.

7) Resultantly, the impugned order having been held to be stigmatic, the Court has no hesitation in setting aside and quashing the order under memo no. DRD-15/140/Pt-I/12/196 dated 24.01.2018. Resultantly, the petitioner is found entitled to be reinstated in service. Accordingly, the respondent no.1, i.e. the Commissioner, Panchayat & Rural Development Department is directed to pass consequential orders within a period of 4 (four) weeks from the date of receipt of certified copy of this order to reinstate the petitioner in service, but the entire period of absence shall be treated as dies non (non-duty). The petitioner will not be entitled to any salary/ wages for the period he has not served and that would also not be counted towards the period of service for the purpose of retiral benefits. However, the petitioner shall be entitled to pay fixation considering all increments notionally.

8) This writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant