GAHC010021062020

2026:GAU-AS:16266

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

Case No. : WP(C)/889/2020

GHANASHYAM BASUMATARY
PROFESSOR OF CARDIOLOGY, S/O- LT. BHABANI CHARAN BASUMATARY, HOUSE NO. 17, LAKHIMINAGAR, HATIGAON, BYELANE-6, KALPATARU PATH, GHY.- 38, DIST. KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HEALTH AND FAMILY WELFARE (B) DEPTT., DISPUR, GHY.-06, DIST.- KAMRUP(M), ASSAM.

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT.
DISPUR
GHY.-06
DIST.- KAMRUP(M)
ASSAM.

3:THE DY. SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT.
DISPUR
GHY.-06
DIST.- KAMRUP(M)
ASSAM.

4:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIX MILE
KHANAPARA
GHY.- 28
DIST. KAMRUP(M)

ASSAM.

5:THE PRINCIPAL-CUM- CHIEF SUPERINTENDENT
JORHAT MEDICAL COLLEGE
DIST.- JORHAT
ASSAM.

6:THE DISCIPLINARY COMMITTEE HEALTH AND FAMILY WELFARE DEPTT.

DISPUR
GHY.-06
DIST.- KAMRUP(M)
ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri R. Sarmah, Advocate.
Advocate for the respondents : Shri D. Upamanyu,
SC, Health Department

Date of hearing : **05.11.2026**
Date of Judgment : **05.11.2026**

JUDGMENT & ORDER

Considering the subject matter involved and also the fact that this writ petition is pending since the year 2020, the same is taken up for disposal at the admission stage.

2. The petitioner, by means of this petition filed under Article 226 of the Constitution of India has put to challenge an order dated 17.09.2019, whereby he has been dismissed from service.

3. Before going to the grounds urged in support of the challenge, it would be convenient if the facts of the case are put down in brief.

4. The petitioner was appointed as a Resident Physician in the Cardiology Department, Guwahati Medical College Hospital in the year 1992. He was

promoted from time to time as Assistant Professor, Associate Professor and lastly was posted as Professor of Cardiology. In the year 2000, the petitioner was found to be absent from duties. However, the matter was closed vide an order dated 18.09.2000, whereby the petitioner was given a warning. It is the case of the petitioner that owing to certain personal inconvenience, he had submitted an application on 12.03.2013 seeking voluntary retirement and the same application was not attended to leading to filing of WP(C)/3920/2017. In the meantime, the authorities had initiated a disciplinary proceeding on the ground of unauthorized absence, which resulted in the impugned order dated 17.09.2019. Accordingly, the earlier writ petition i.e. WP(C)/3920/2017 was dismissed as infructuous vide order dated 15.11.2019. It is the legality and validity of the order of dismissal dated 17.09.2019, which is the subject matter of challenge in the present writ petition.

5. I have heard Shri R. Sarmah, learned counsel for the petitioner. I have also heard Shri D. Upamanyu, learned Standing Counsel, Health Department.

6. Shri Sarmah, the learned counsel has submitted that the impugned order has been passed in gross violation of the principles of natural justice. He has also submitted that there is no proper application of mind to the relevant factors including consideration of the application for grant of voluntary retirement, which he had submitted on 12.03.2013. He has submitted that the Enquiry Report was not furnished to him causing grave prejudice. He has also submitted that due to certain valid reasons, the petitioner was not in a position to attend to his duties and accordingly, he had filed the application for grant of voluntary retirement on 12.03.2013, which ought to have been considered and orders passed. However, instead of doing that, the respondent authorities had proceeded with the disciplinary proceeding, culminating in the impugned order

of dismissal dated 17.09.2019. He has submitted that though the petitioner has, in the meantime surpassed the age of superannuation, due to the dismissal order, he would be deprived of the post retirement benefits. The learned counsel accordingly submits that the impugned decision be interfered with.

7. *Per contra*, Shri Upamanyu, the learned Standing Counsel, Health and Family Welfare Department has strenuously resisted the writ petition. By referring to the affidavit-in-opposition filed by respondent No. 1 on 25.06.2026. He has submitted that it was not the first occasion when the petitioner was found to be unauthorizedly absent. He has submitted that it is an admitted case that in the year 2000 also, the petitioner was found to be unauthorizedly absent which had resulted in an order dated 18.09.2000 whereby Warning was given. In the present case, the petitioner had remained unauthorizedly absent from 22.07.2012 which had resulted in drawal of the departmental proceeding. He has submitted that on 16.08.2014, the show cause notice was issued as the petitioner had failed to report for his service. The said notice was followed by reminder dated 17.10.2015. As the petitioner had failed to give any satisfactory reply, an Enquiry Officer was appointed on 13.02.2017 and numerous notices were issued by the Enquiry Officer directing the petitioner to attend the enquiry proceeding.

8. In this connection, the learned Standing Counsel has drawn the attention of this Court to the averments made in the paragraph 13 of the aforesaid affidavit-in-opposition whereby the details of the notices issued by the Enquiry Officer has been stated. It is disclosed that such notices were issued on 02.03.2017, 29.03.2017, 18.05.2017 on which date, the petitioner had prayed for further accommodation of 15 days due to personal reasons. Though the aforesaid period of 15 days was granted, even thereafter the petitioner did not appear.

9. The learned Standing Counsel has also submitted that further notices were issued on 29.08.2017, 13.10.2017 and 05.03.2018, even whereafter the petitioner did not attend the proceedings and had neglected to defend himself. Ultimately, the Enquiry Report was submitted on 21.05.2018 holding the charge to be proved. He has submitted that though an argument has been made that the Enquiry Report was not furnished, the impugned order of dismissal dated 17.09.2019 which is an elaborate one would itself reveal that not only the report of the Enquiry Officer was submitted, the petitioner had also represented against the same.

10. He has submitted that all reasonable opportunities were granted to the petitioner and thereafter the impugned decision has been arrived at which would not require any interference by this Court.

11. The rival submissions advanced in the Bar have been carefully examined and the materials placed before this Court have been perused.

12. The primary contention advanced on behalf of the petitioner is violation of the principles of natural justice.

13. At the outset before going to the issue to be adjudicated, this Court is reminded of the fact that in exercise of the Certiorari jurisdiction under Article 226 of the Constitution of India, the examination is on the decision making process and not on the decision as such. In other words, it is on the aspect of legality of the impugned decision and not the soundness on which such adjudication process would be made. The Hon'ble Supreme Court in the case of ***Pravin Kumar Versus Union of India and Others*** reported in ***(2020) 9 SCC 471*** has reiterated the aforesaid proposition. For ready reference, the relevant paragraph of the said decision is extracted hereinbelow-

"25. Learned counsel for the appellant spent considerable time taking us through

the various evidences-on-record with the intention of highlighting lacunas and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by Constitutional Courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial Review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome.[Government of Andhra Pradesh vs. Mohd Nasrullah Khan, (2006) 2 SCC 373, 11.]"

14. To appreciate the contention that there has been violation of principles of natural justice, this Court has looked into the materials available. The show cause notice was issued on 16.08.2014 which was followed by a reminder dated 17.10.2015. As no satisfactory response could be made by the petitioner, the respondent authorities had initiated an enquiry by appointment of an Enquiry Officer vide order dated 13.02.2017. This Court has noted that several notices had to be issued by the Enquiry Officer to the petitioner to attend the proceeding which were ignored by him.

15. The affidavit-in-opposition filed by the respondent no. 1 on 25.06.2026 further reveals that on 18.05.2017, the petitioner had prayed for accommodation of 15 days owing to personal reasons which was granted and even thereafter there was no response from the petitioner to be present in the enquiry. The affidavit further reveals that notices were again served on 29.08.2017, 13.10.2017 and 05.03.2018. For ready reference, the averments made in paragraph 13 of the affidavit-in-opposition are expected herein below:

"*13. That as regards to the statements made in paragraph No. 11 of the writ petition, the deponent begs to state that it is vehemently denied that the Disciplinary Authority recorded findings unsupported by evidence or that the enquiry was vitiated by a violation of the principles of natural justice in the instant case. It is further submitted that the official records demonstrate that the Departmental Proceedings were conducted with due application of mind and strict adherence to procedural fairness. The following were kept in mind while recording the findings of the enquiry by the Disciplinary Authority:*

1. Regarding Evidence: the finding of unauthorized absence was based on substantial evidence, including reports from the Principal-cum-Chief Superintendent, Jorhat Medical College & Hospital, confirming that the petitioner remained absent from duties w.e.f. 22.07.2012 without submitting any leave application.

2. Regarding Natural Justice: the petitioner was afforded ample opportunity to defend himself Further, an Enquiry Officer was appointed vide Order dated 13.02.2017. Furthermore, notices for hearing on the following dates were issued:

i) 02.03.2017 (Vide No. HLB.161/98/101, dated, Dispur the 24th February, 2017);

ii) 29.03.2017 (Vide No. HLB.161/98/102, dated, Dispur the 21st March, 2017); and

iii) 18.05.2017 (Vide No. HLB.161/98/103, dated, Dispur the 5th May, 2017)

3. Accommodation of Petitioner's Requests: when the petitioner prayed for 15 days' time vide letter dated 18.05.2017 due to his mother's illness, the Enquiry Officer acceded to the request and rescheduled the hearing to 06.06.2017 (Vide No. HLB.161/98/105, Dated, Dispur the 19th May, 2017). Despite this accommodation, the petitioner failed to appear.

4. Repeated Opportunities: subsequent notices were issued for hearings on 29.08.2017 (Vide No.AX HLB.161/98/106, Dated, Dispur the 19th August, 2017), 13.10.2017 (Vide No. HLB.161/98/107,30 Dated, Dispur the 3rd October, 2017), and a final opportunity on 05.03.2018 (Vide No. HLB.161/98/108, Dated, Dispur the 21st February, 2018). The Enquiry Officer recorded in the "Enquiry report of the Departmental Proceeding, dated 21-05-2018" that the petitioner failed to cooperate with the enquiry despite these multiple notices.

5. Recording of Reasons: the Disciplinary Authority applied its mind to the Enquiry Report and the gravity of the misconduct (unauthorized absence for

over 7 years). The Assam Public Service Commission (APSC) was consulted, and they concurred with the proposed penalty vide their letter dated 29.08.2019. The dismissal was made effective from the date of unauthorized absence, that is, from 22.07.2012, in accordance with service jurisprudence regarding abandonment of service. The final Order dated 17.09.2019 clearly records the reasons for the penalty. Therefore, the contention that the enquiry was vitiated or lacked evidence is wholly legally untenable and denied."

16. As the present adjudication is on the basis of the pleadings in the writ petition and in the affidavit, it would be necessary to see the reply made by the petitioner in his rejoinder affidavit. The reply to paragraph 13 is found in paragraph 11 of the rejoinder affidavit which is as follows:

"*11. That with regard to the statements made in paragraphs 13, 14 and 15 of the affidavit-in-opposition, this deponent disputes the fairness of the same and begs to state that the respondent authority arbitrarily dismissed the petitioner which they cannot do. It ought to have acted on some guiding principle which cannot affect the fundamental right of a citizen. The exercise of any action of such instrumentality will have to be based in some definite guidelines for which the power is being exercised in public interest."*

17. This Court has noticed that there is no denial of the facts stated on affidavit by the respondent no. 1, more particularly with regard to the issuance of notices directing the petitioner to be present in the disciplinary proceeding. The Enquiry Report was finally submitted on 21.05.2018.

18. Though Shri Sarmah, the learned counsel for the petitioner had made an argument that report of the Enquiry Officer was not furnished, a bare perusal of the order of dismissal dated 17.09.2019 would show that not only the report was submitted, the petitioner had also represented against the same. In the opinion of this Court, the petitioner was afforded with a fair and reasonable opportunity to defend himself which is the requirement of law.

19. The impugned order has also dealt with the other aspects, namely, the application for voluntary retirement. On perusal of the same, this Court is of the opinion that such conclusion has been arrived at based on relevant factors

which are germane to the issue involved.

20. Considering the above, this Court is of the view that there is no apparent violation of the principles of natural justice and the order of penalty imposed also does not appear to be disproportionate to the seriousness of the charge which is unauthorised absence for a long period starting from 2012 till the order of dismissal has been passed in the year 2019.

21. In the conspectus of the aforesaid discussion, this Court is of the view that no case for interference is made out.

22. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant