GAHC010065462024

2026:GAU-AS:16393

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

Case No. : WP(C)/1802/2024

ABU BAKKAR SIDDIQUE
SON OF MIZANUR RAHMAN, RESIDENT OF VILLAGE- DIGJANI, P.O. SHOWPUR, P.S. KALGACHIA, DISTRICT- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI-6

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

3:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
DISPUR
GUWAHATI-6

4:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILLA PARISHAD
P.O. AND DISTRICT- BARPETA
ASSAM

5:THE BLOCK DEVELOPMENT OFFICER
SARUKHETRI DEVELOPMENT BLOCK
DIST.- BARPETA

ASSA

BEFORE
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr M. Dutta, Senior Advocate
Mr. A.K. Azad, Advocate

Advocate for the respondent(s): Mr. K. Konwar, learned
Advocate General

Date on which judgment was reserved :**NA**

Date of pronouncement of judgment :**05.11.2026**

Whether the pronouncement is of the :

operative part of the judgment?:**NA**

Whether the full judgment has been :**Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

(Justice, J Shamima Jahan)

Heard Mr. M. Dutta, the learned Senior Counsel assisted by Mr. A. K. Azad, learned counsel for the petitioner and Mr. K. Konwar, learned Addl. Advocate General appearing for all the respondents.

2. By this application filed under Article 226 of the Constitution of India, the petitioner has prayed for setting aside and quashing of the order dated 25.02.2024, issued by the Commissioner, Panchayat and Rural Development Department, Assam, by which the petitioner was terminated from his service.

3. The case of the petitioner is that he was appointed as an Accredited Engineer at 15 No. Dakhin Pub Sarukhetri Gaon Panchayat under Sarukhetri Block in the Barpeta District on contractual basis pursuant to a selection process being undertaken after an advertisement was issued in that behalf. The petitioner joined in the said post on 02.03.2019 and an agreement was executed with the petitioner by the department on 04.03.2019. It is the case of the petitioner that during his service tenure a show cause notice was issued to him on 23.09.2023 by respondent no.2 stating inter alia that the CEO, Barpeta Zilla Parishad had submitted a report along with the complaint petition submitted by one Sri Atowar Ali alleging that the scheme of excavating four numbers of fishery tank under the MGNREGA Scheme was not implemented under the Sarukhetri Development Block. It was further alleged that the petitioner was serving as the In-Charge of GRS of 18 No. of the said Gaon Panchayat and that he was involved in improper implementation of four numbers of fishery schemes under the MGNREGA. By the said show cause notice, the petitioner was asked to submit his written explanation. The

petitioner thereafter stated that pursuant to the said show cause notice, he submitted his written reply on 11.10.2023 denying few of the allegations leveled against him and stating inter alia that the President and Secretary of Gaon Unnayan Committee of the said block had misguided him and other officers while implementing the said scheme. He further states that after submission of his show cause reply, the petitioner was intimated about the date of hearing and he attended the office of respondent no.2 on the date fixed for hearing with all the relevant documents and that later, he received a letter dated 01.12.2023 by which he was intimated that a date of hearing was fixed on 05.12.2023 for drawal of departmental proceeding and accordingly, the petitioner attended the said hearing with the documents. However, he submits that after the hearing was done, nothing was communicated to him regarding the departmental proceeding.

4. The learned Counsel for the petitioner submits that an enquiry was conducted against another regular Block Development Officer namely Makarsing Narzary and an enquiry report was submitted on 21.12.2023. He submits that during the enquiry proceeding against the said BDO, the petitioner was called as a defence witness and he was examined as DW2 and during his examination, the petitioner stated that the concerned sites for implementation of the scheme, were identified by the office bearers of Gaon Unnayan Committee in presence of general public and as per MGNREGA guidelines, he prepared the plan and estimates for the four works and that the work started and the payment was also done. He however submitted that the work in all the four sites have not been completed as the work was stopped after receiving public complaint. The learned Counsel submits that subsequently by order dated 25.02.2024, the Commissioner of Panchayat and Rural Development, Assam had ordered that

pursuant to the enquiry report submitted on 01.01.2024, wherein the petitioner is found to be directly involved in implementation of the scheme and was found to have conducted himself in gross-negligence of assigned official duties as well as for misappropriation of Government fund, he was terminated from his service with immediate effect. Further, it was stipulated that in lieu of the notice period, one month extra salary was directed to be paid to the petitioner and in the said order, it was also stated that the same was passed ex-parte.

5. The learned Counsel for the petitioner submits that the enquiry was conducted against another employee, who was a regular officer under the said block, wherein the petitioner was called as a defence witness and consequent to that enquiry, the petitioner was terminated from service which according to him is ex-facie illegal. He submits that although a departmental proceeding was initiated against the petitioner but the same did not reach its conclusion and the petitioner was terminated from service in pursuant to another inquiry. He submits that although the petitioner was appointed on contractual basis but Article 311 of the Constitution of India was applicable and a full fledged enquiry was required to be conducted against the petitioner. He as such submits that the order terminating the petitioner was stigmatic and the same will have its effect on his future employment and since the said order was illegal, he has prayed for setting aside of the same. He submits that the department in their affidavit-in-opposition had not stated that the said order dated 25.02.2024 by which punishment is inflicted upon the petitioner was passed in respect of another inquiry and not the enquiry held against the BDO. He further submits that there is no doubt that the petitioner was punished pursuant to the said enquiry report submitted on 21.12.2023 and that the reference in the order dated 25.02.2024 about the letter dated 01.01.2024 was in respect of the said

enquiry, the same being the forwarding letter related to the enquiry done against the BDO.

6. To substantiate his argument, he has placed reliance on the judgment of the Hon'ble Apex Court in ***Swati Priyadarshini Vs. State of Madhya Pradesh and Ors.*** Reported in ***(2024) 19 SCC 128*** wherein the Hon'ble Apex Court had held by relying upon the judgment passed by the Hon'ble ***C.J. Chagla in Srinivas Ganesh v. Union of India,*** that even if the Government has by contract, the right to terminate the employment, without going through the procedure prescribed for inflicting the punishment of dismissal or removal, the Government, if finds that the termination of service is sought to be founded on negligence, inefficiency or other disqualification, the requirements of Article 311 of the Constitution of India must be complied with.

7. On the other hand, Mr. K. Konwar, learned Additional Advocate General submits that the petitioner was a contractual employee and in case of contractual employees, he submits that the rules and regulations does not apply and his service is governed only by the terms of the contract. He further submits that a show cause notice was in fact issued to the petitioner on 23.09.2023 and pursuant to the same, he had also filed his reply and he submits that in his reply, the petitioner has admitted his misconduct and as such, no full fledged inquiry is required due to the admission and that the disciplinary authority had rightly inflicted the punishment upon the petitioner. He submits that the contract period of the petitioner has expired and no new contract has been executed with the petitioner.

8. To substantiate his argument, he has placed reliance on the following judgments:

i) ***Ajay Kumar Vs. State of Jharkhand*** Reported in ***(2025) SCC Online Jhar 3186***

ii) ***Uttar Pradesh State Textile Corporation Limited Vs. Suresh Kumar*** Reported in ***(2011) 15 SCC 180***

iii) ***Abu Hurira Mazumdar Vs. The State of Assam and 3 Ors, a judgment delivered by the Hon'ble Gauhati High Court in WP(C) No. 4719/2023***

iv) ***The State of Assam and Ors. Vs. Partha Pratim Saikia, a judgment delivered by the Hon'ble Gauhati High Court in WA No. 256/2025***

9. I have heard the Counsels and have carefully gone through the records of the case.

10. It is noticed that the show cause notice was issued to the petitioner on 23.09.2023 wherein it was stated that a complaint petition was received from one Manjur Ali and based on the same, the concerned authority had stated that petitioner was found involved in improper implementation of the four numbers of fishery schemes under the MGNREGA. It is also stated that as per report, it was found that out of four numbers of fisheries scheme, two numbers of old fisheries existed at the site, where new fisheries were supposed to be excavated and that rest of the two other numbers of fisheries were not found excavated at all at the said site and it was further found that the same was excavated on a Government land.

11. As such, the petitioner was directed to submit his reply. In pursuant thereof the petitioner has replied on 11.10.2023 stating inter alia that after the sites were selected for implementation of the scheme with regard to four numbers of fishery schemes, he as per order of the BDO visited the sites along

with the Secretary and President of Gaon Unnayan Committee and a construction committee was constituted to supervise the work and the work for excavating the fisheries started. He also stated that the BDO had visited the site on several occasion and found proper implementation. He further submits that a complaint was raised by one Atowar Ali stating that fisheries were not excavated properly and that they were not excavated at the prescribed site. He thereafter stated that after sanctioning of all the four numbers of the scheme when he visited the site with the President and Secretary mentioned above, the identification of the four numbers of site were done and he further submits that if there is any mistake in implementation, the mistake was on the part of the President and Secretary of the said committee and not his. He further stated that he was never involved in any improper implementation of scheme and finally, he stated that if any unintentional lapses had occurred, the apology tendered by him be accepted.

12. It is a settled position of law that if the Delinquent Officer in his reply tenders unequivocal, clear and unconditional admission of guilt to a charge sheet, a full fledged departmental inquiry can be dispensed with. However, in the instant case, it is not seen that the petitioner had given his un-equivocal and clear admission of his guilt in the said reply. He had stated in his reply that all the four numbers of schemes were in fact implemented at the said village.

13. A plain reading of the reply of the petitioner shows that the petitioner has given explanation in relation to the charges alleged against him. This is trite law that the admission of charge must be unconditional, unqualified and unequivocal. In the matter of ***Ghanshyam v. State of M.P.*** Reported in **2013 (1) MPLJ 144**, the High Court of Madhya Pradesh held as such:

"8. This is settled in law that unless the admission of guilt/charges is specific, unconditional, unqualified and unequivocal, enquiry cannot be dispensed with. In the present case, the petitioner has put forth his defence and made an effort to show that he is not responsible for the charges and the payment was made on the basis of attendance certified by subordinate employee. Thus, it cannot be said that petitioner has admitted the charges in totality and without any explanation. In (1998)1 SCC 756, General Court-Martial v. Co. Aniltej Singh Dhaliwal, it is held that an admission can be explained by the makers thereof. An admission is not conclusive as to the truth of the matter stated therein and it is only a piece of evidence, the weight to be attached to which must depend upon the circumstances under which it is made."

14. Further in ***Jagdish Prasad Saxena v. State of Madhya Bharat (now Madhya Pradesh***) Reported in ***AIR 1961 SC 1070***, a Constitution Bench of Supreme Court held as under:

" In such a case, even if the Appellant had made some statements which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. But apart from this consideration, if the statements made by the Appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him."

15. As such, an enquiry is required to be conducted against the petitioner. In fact, the departmental proceeding had commenced as stated by the petitioner and he was also called on the day fixed for hearing and he went and the hearing was done but after that he was not apprised of any subsequent proceeding. The department in its affidavit in opposition had also not stated that an enquiry report was submitted after the hearing was done. In fact, this Court has noticed only one enquiry report i.e. an enquiry report with regard to the

allegations drawn against the BDO of Sarukhetri Development Block namely Makarsing Narzary and it is also seen that the said enquiry report was forwarded by the Deputy Secretary of the said department to the Commissioner Panchayat and Rural Development, Assam on 01.01.2024. In the said enquiry report, it is seen that the petitioner was examined as DW2 during the enquiry proceedings and pursuant to the said enquiry report, which was forwarded on 01.01.2024, the Commissioner Panchayat and Rural Development, Assam had passed the order dated 25.02.2024 inflicting punishment upon the petitioner by which the petitioner was terminated from his service with immediate effect. The said order makes it clear that the same was passed pursuant to the enquiry conducted against the BDO as stated above, wherein the petitioner was only a witness. In the said order dated 25.02.2024, it was stated that the petitioner was directly involved in implementation of the scheme and was held responsible for his gross negligence of assigned official duties as well as for misappropriation of Government fund. As such, it is seen that the said order was stigmatic in nature. It is also stated therein that the petitioner has violated Rule 3(1) of Assam Service (Conduct) Rules, 1965. As stated above, the Hon'ble Apex Court had held that in case the termination order is stigmatic, Article 311 of the Constitution of India should be complied with.

16. In the instant case, it is seen that apart from filing the reply to the show cause issued to the petitioner and participating on the day of hearing, no enquiry was conducted against him and the punishment was inflicted. It is also stated in the order dated 25.02.2024 that the order is passed ex-parte which shows that the petitioner was not heard.

17. As such, this Court finds that the order dated 25.02.2024 against the petitioner by which his services was terminated with immediate effect is

unsustainable and as such the same is set aside and quashed. It is further observed that although the petitioner was a contractual employee, the department is at liberty to continue with the services of the petitioner.

18. Petition is as such disposed of.

JUDGE

Comparing Assistant