

GAHC010016712014



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

Case No. : WP(C)/5393/2014

ON THE DEATH OF ABDUL MALIK BARBHUIYA, HIS LEGAL HEIRS ABDUL HANNAN BARBHUIYA AND 4 ORS. REP.

BROTHER OF LATE ABDUL MALIK BARBHUIYA, R/O VILL.- NOORNAGAR,
P.O.- KATRIALI, P.S.- KATIGORAH, DIST.- CACHAR, PIN- 788805, ASSAM.

2: MOMOTA BEGUM BARBHUIYA
SISTER OF LATE ABDUL MALIK BARBHUIYA
R/O VILL.- NOORNAGAR
P.O.- KATRIALI
P.S.- KATIGORAH
DIST.- CACHAR
PIN- 788805
ASSAM.

3: MONOWARA BEGUM BARBHUIYA
SISTER OF LATE ABDUL MALIK BARBHUIYA
R/O VILL.- NOORNAGAR
P.O.- KATRIALI
P.S.- KATIGORAH
DIST.- CACHAR
PIN- 788805
ASSAM.

4: ABDUL MANNAN BARBHUIYA
BROTHER OF LATE ABDUL MALIK BARBHUIYA
R/O VILL.- NOORNAGAR
P.O.- KATRIALI
P.S.- KATIGORAH
DIST.- CACHAR
PIN- 788805
ASSAM.

5: SAYNA BEGUM BARBHUIYA
SISTER OF LATE ABDUL MALIK BARBHUIYA

R/O VILL.- NOORNAGAR
P.O.- KATRIALI
P.S.- KATIGORAH
DIST.- CACHAR
PIN- 788805
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, PUBLIC
HEALTH ENGINEERING DEPTT., DISPUR, GHY- 6.

2:THE CHIEF ENGINEER
ASSAM PUBLIC HEALTH ENGINEERING DEPTT.
HENGABARI
GHY- 36.

3:THE ADDL. CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING DEPTT.
BARAK VALLEY and A.C. G ZONE
ASSAM
GHY- 21.

4:THE SUPERINTENDING ENGINEER
PUBLIC HEALTH ENGINEERING DEPTT.
CACHAR CIRCLE
SILCHAR
DIST.- CACHAR
ASSAM.

5:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING
SILCHAR DIVISION NO. 1
SILCHAR
CACHAR
ASSAM.

6:THE ASSTT. EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING
SILCHAR
SUB-DIVISION NO. 1
SILCHAR
CACHAR
ASSAM

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri M. Sharma.
Advocate for respondents : Shri D. Gogoi, SC, PHE

Date of hearing : 14.05.2024

Date of judgment : 17.05.2024

The instant petition under Article 226 of the Constitution of India has been filed with the following prayer.

“I. A writ in the nature of Certiorari should not be issued quashing the impugned speaking order No. EE/PHE/MIsc-45/2013-14 dated 17.12.2013 passed by the Executive Engineer, Public Health Engineering, Silchar Division-I, Silchar based upon which disciplinary proceedings were initiated against the petitioner for alleged unauthorised absence from duties; and as to why:

II. A writ in the nature of Certiorari should not be issued quashing the impugned office order No. 22/2014-15 dated 2.7.2014 passed by the Executive Engineer, P.H.E, Silchar Division-I, Silchar dismissing the petitioner from service with retrospective effect from the date of alleged unauthorised absence i.e. from 1.8.1996; and as to why:

III. A writ in the nature of Mandamus and / or any other appropriate writ, order or direction should not be issued commanding / directing the respondent authorities to forthwith reinstate the petitioner in his post of Work Charged Khalasi and further direct the respondent authorities to release the pay and allowances due to the petitioner since August 1999 and other consequential benefits that may be available under the rules, and

IV. Upon cause / causes being shown and upon hearing the parties and after perusal of the records be pleased to make the Rule absolute and/or pass other order / orders as Your Lordships may deem fit and proper

and

Pending disposal of the case, Your Lordships may be pleased to pass an order in the interim observing that the pendency of the case will not be a bar to pay the due pay and allowances as is admissible to the petitioner since August 1999 and/or pass such other order / orders as to Your Lordships may seem fit and proper in the facts and circumstances of the case."

2. The facts projected in the petition is that the petitioner was initially appointed as a skilled worker on 18.05.1989 in the Public Health Engineering Department at Silchar Division I and was subsequently promoted as Work Charged Khalasi on 29.08.1989. It is projected that on 30.03.1996, the petitioner had sustained injuries due to electric shock while on duty for which hospitalization and treatment for a long period was required. The petitioner claims to have joined back in service on 16.07.1999. However, his salaries were paid only up to July 1996. The petitioner claims to have applied for medical leave for the period of absence till 15.07.1999. An order dated 24.12.2003 has also been relied upon by the petitioner whereby the services of the petitioners with many Work Charged employees were regularized.

3. The petitioner had earlier approached this Court by filing WP(C)/4665/2005 with a direction for arrear salaries which was disposed of by this Court by directing payment of the salaries after verification of the records. As no action was taken, the petitioner had filed a second writ petition WP(C)/1363/2013 which was disposed of vide order dated 04.06.2013 allowing the petitioner to approach the Executive Engineer, PHE along with the medical papers for regularization of his absence of leave and the authority to pass necessary orders for payment of the salaries. Pursuant to the aforesaid direction, a Speaking Order has been passed on 17.12.2013 holding that the petitioner had not

submitted the original medical documents and only Xerox copies were submitted. A Departmental Proceeding was also initiated against the petitioner vide Show Cause Notice dated 13.03.2014 which the petitioner had replied on 19.03.2014. It is the contention of the petitioner that he was not aware of any action towards holding an enquiry and vide the impugned order dated 02.07.2014, the petitioner was dismissed from service with retrospective effect from 01.08.1996 on the charge of unauthorized absence. It is the validity and legality of the aforesaid action which is the subject matter of challenge in this writ petition.

4. I have heard Shri M. Sharma, learned counsel for the petitioner. I have also heard Shri D. Gogoi, the learned Standing Counsel, PHE who has also produced the records of the Departmental Proceeding in original.

5. Shri Sharma, the learned counsel for the petitioner has submitted that the entire issue has been taken and dealt with by the respondent authorities in a wholly insensitive manner. At the outset, the learned counsel has submitted that the original petitioner had expired on 26.04.2018 and in the present proceeding, he was substituted by his legal heirs consisting of 2 brothers and 3 sisters as the petitioner was a bachelor. It is submitted that the original Medical Certificates were given to an Officer earlier and therefore, insisting upon the same was not at all justified. It is submitted that the services of the petitioner being regularized vide the order dated 24.12.2003, the question of his unauthorized absence would not arise. By referring to the records, it is submitted that the medical leave was granted to the petitioner for the period of 30.03.1996 to 15.07.1999 and on 16.07.1999, he had rejoined his service. However, the salary

of the petitioner was paid only up to 01.08.1996.

6. As regards the Disciplinary Proceeding, Shri Sharma, the learned counsel has submitted that after furnishing the reply to the Show Cause Notice on 19.03.2014, the petitioner was kept in dark and without holding any enquiry, the impugned order of penalty dated 02.07.2014 has been passed.

7. *Per contra*, Shri Gogoi, the learned Standing Counsel has submitted that the aspect of submission of the medical documents in original has not been able to be answered by the petitioner as at no point of time such documents were submitted by the petitioner in original.

8. The records would also reveal that though on 16.07.1999, the petitioner had come to the office for a day, he did not perform his duties thereafter and kept on remaining absent continuously without any explanation. It is further submitted that acceding to the request of the petitioner to allot light duties, he was allotted duties in the storeroom which also he did not discharge and abstained himself.

9. With regard to the contention regarding the validity of the enquiry and the procedures adopted, the learned Standing Counsel has submitted that after receipt of the reply of the petitioner to the Show Cause Notice dated 13.03.2014, an enquiry was held wherein the petitioner was asked to attend and defend himself. However, the petitioner, on his own volition did not participate in the same. The contention of the petitioner that he was not aware of the enquiry is belied by the documents on record. It is submitted that the

regularization order dated 25.12.2013, as projected is not a correct reflection inasmuch as 200 numbers of Work Charged employees were brought under the regular establishment and that by itself would not mean or indicate that the petitioner was regularly attending his duties till then. The learned Standing Counsel submits that till the date of issuing the Show Cause Notice on 13.03.2014, the petitioner was continuously absent and accordingly the order of penalty of dismissal dated 02.07.2014 is fully justified. Sri Gogoi further submits that the original petitioner having expired on 26.04.2018, no relief, otherwise also can be given to the substituted petitioners under the principle of no work, no pay.

10. The rival submissions have been duly considered and the materials including the original records have been carefully examined.

11. The challenge to the impugned order of dismissal from service of the original petitioner vide order dated 02.07.2014 is structured on two broad grounds. Firstly, the allegation of unauthorized absence is itself questioned and denied and secondly, that the procedure adopted in the Departmental Enquiry was not in accordance with law.

12. So far as the allegation of unauthorized absence is concerned, the reason sought to be cited is the incident when the petitioner had sustained injuries by electrical shock for which he was on medical leave from 30.03.1996 to 15.07.1999. Though the petitioner claims to have rejoined on 16.07.1999, there are contrary materials on record to show that the petitioner did not attend his duties thereafter. Even if the aforesaid fact is deemed to be a disputed one, the

second aspect of the challenge, namely, the procedure adopted in the Departmental Enquiry is to be examined. Admittedly, the Show Cause Notice dated 13.03.2014 along with which the statement of allegation was enclosed would show that the misconduct was unauthorized absence from 01.08.1996 till the date of issuing the Show Cause Notice. It is the admitted case that the original petitioner had replied to the said notice on 19.03.2014. The allegation of holding the enquiry without informing the petitioner has been examined by verification of the records. It appears that though it is a fact that the petitioner was not present in the enquiry, there are materials to establish that the notice of the enquiry was duly sent to the petitioner by registered post and there are certificates from the Postal Department of its delivery. The aforesaid issue can be put to rest by a reply dated 20.06.2014 by the petitioner to the second Show Cause Notice wherein the version of the petitioner has been reflected. It therefore appears that the ground that the petitioner was not given a reasonable opportunity to defend himself in the Disciplinary Proceeding is an afterthought and would not be available to the petitioner.

13. Though it is a requirement of law to give all reasonable opportunities to a delinquent to defend himself in a Disciplinary Proceeding, if such delinquent chooses not to participate or defend himself, a proceeding cannot be held to be either irregular or illegal. This Court has also seen from the records regarding the Enquiry Report. The said Enquiry Report clearly reveals that the charge of unauthorized absence was properly enquired into and all the relevant documents were taken into consideration. The Enquiry Officer had also taken into consideration the aspect when the petitioner because of his condition was given lighter duties in the storeroom which was also not discharged by him and he kept on absenting from duties continuously. This Court is of the considered

opinion that the role of a writ court being that of a secondary authority in matters of Disciplinary Proceeding, whereas the primary role is claimed by the Disciplinary Authority, unless gross irregularity or illegality is found in the procedure adopted, this Court would be loath in interfering with the findings of the said enquiry. In any case, unauthorized absence for such a long period is a gross misconduct. This Court has also considered the aspect that the original petitioner had expired on 26.04.2018 as a bachelor and the present substituted petitioners are only his brothers and sisters. In any event, under the principles of no work no pay, no salaries would be entitled to by the original petitioner.

14. In view of the above, no relief can be granted to the petitioner and accordingly the writ petition is dismissed.

15. No order as to cost.

16. Records to be handed over back to the learned Standing Counsel.

JUDGE

Comparing Assistant