

GAHC010039462023



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

Case No. : WP(C)/1042/2023

PRASHANNA BAISHYA
S/O LT. BANTI RAM BAISHYA R/O VILL. MAZIPAR NEAR L P SCHOOL
TRINAYAN PATH H NO. 20 A P.S. BASISTHA DIST. KAMRUP (M) GUWAHATI
781029 ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM HEALTH
AND FAMILY WELFARE DEPTT DISPUR GUWAHATI 6 ASSAM

2:PROJECT DIRECTOR
ASSAM STATE AIDS CONTROL SOCIETY AND DIRECTOR CUM MEMBER
SECRETARY ASSAM STATE BLOOD TRANFUSION COUNCIL KHANAPARA
GUWAHATI 22 ASSAM

3:THE SUPERINTENDENT GMCH
GAUHATI MEDICAL COLLEGE AND HOSPITAL BHANAGAGARH
GUWAHATI 5 ASSA

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

JUDGMENT & ORDER

Advocate for the petitioner : A. Bhattacharya, Advocate

Advocate for respondents : Shri P. Nayak, Advocate

Date of hearing : 24.04.2024

Date of judgment : 26.04.2024

An order dated 13.01.2023 issued by the Project Director, Assam State AIDS Control Society & Director cum Member Secretary, Assam State Blood Transfusion Council by which the services of the petitioner as Laboratory Technician has been terminated is the subject matter of challenge in this writ petition.

2. The projected case by the petitioner is that he was appointed as a Laboratory Technician by the Project Director, Assam State AIDS Control Society (herein after called the Society) on 16.09.2005 and was allowed to work at the Blood Bank attached to the Guwahati Medical College Hospital (GMCH). Though the period of service was stated to be 6 (six) months, it was extended from time to time. On 11.01.2023 pertaining to an incident occurring in the counter of the aforesaid Blood Bank, and FIR was lodged in the concerned Police Station which was registered as Bhangagarh P.S. Case No. 10/2023 under Sections 420/406 IPC. In connection thereto, the petitioner was also arrested and subsequently

granted bail by this Court on 30.01.2023. In the meantime, vide the impugned order dated 13.01.2023, the service of the petitioner was terminated. The petitioner had submitted a representation and thereafter has filed the present writ petition.

3. I have heard Shri A. Bhattacharya, learned counsel for the petitioner whereas Shri P. Nayak, learned counsel has appeared for the respondents.

4. Shri Bhattacharya, learned counsel has submitted that the impugned action was not preceded by any enquiry and the petitioner was not afforded any opportunity. He submits that though there is a provision in the agreement for such termination, an opportunity is a necessity. In support of his submissions, the learned counsel has referred to the following case laws:

(i) AIR 1958 SC 36 [Parshotam Lal Dhingra vs. Union of India]

(ii) Judgment dated 16.04.2024 of the Hon'ble Supreme Court in SLP (C) No(s). 8788-8789 of 2023 [Sandeep Kumar vs. GB Pant Institute of Engineering And Technology Ghurdauri & Ors.

5. So far as the case of **Parshotam Lal Dhingra** (supra) is concerned, reliance has been placed on the concurring judgment of Hon'ble Justice Vivian Bose, wherein it has been laid down that Article 311 of the Constitution of India would apply to all classes of Government Servants whether they are permanent, quasi permanent, officiating, temporary or on probation. The case of **Sandeep Kumar** (supra) has been relied wherein the termination of service of the appellant therein has been interfered with.

6. *Per contra*, Shri Nayak, the learned counsel for the respondents has submitted that the respondent no. 2 has filed an affidavit-in-opposition on 10.11.2023 opposing the writ petition. He submits that the service of the petitioner with the Society was contractual and bound by the clauses of the agreement. It is submitted that admittedly the petitioner is in service with the Society on the strength of an agreement pursuant to which the initial order dated 16.09.2005 was issued which was for a period of 6 (six) months. By referring to the current agreement dated 02.04.2023 which has been annexed as Annexure I to the affidavit-in-opposition, the learned counsel has drawn the attention of this Court to Clause 6 thereof which provides for termination of service. The learned counsel has also referred to the averments made in paragraph 9 of the said affidavit-in-opposition as per which, the GMCH authorities had conducted a detail enquiry whereby three nos. of its employees were terminated from service and the said enquiry also reveals the culpability of the petitioner and by considering the same, the impugned order of termination has been passed by the Society.

7. The learned counsel for the respondents has relied upon the decision of the Hon'ble Supreme Court in the case of ***Rajasthan State Roadways Transport Corporation vs. Paramjeet Singh*** reported in ***(2019) 6 SCC 250***. In the said case, the termination of a contractual employee was not interfered with. Reliance has also been made on a judgment of this Court dated 10.09.2019 passed in WP(C)/5689/2017 [***Bonti Saikia vs. The State of Assam & Ors.***]. In the said case, this Court while considering a case involving the respondent Society had held that on expiry of the contractual period, the services otherwise automatically get terminated. The learned counsel accordingly submits that the

writ petition be dismissed.

8. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

9. It is not in dispute that the initial order of engagement dated 16.09.2005 had clearly stipulated that such engagement was on contractual basis and was for 6 (six) months which was extended from time to time. The relevant agreement dated 02.04.2022 contains a specific clause for termination of service which is extracted herein below:

“6. Notwithstanding anything contained herein above, the services of the party may be terminated at any time by the Society if the party is found to be guilty of any insubordination, intemperance or other misconduct or of any breach or non performance.”

10. There cannot be any dispute that the parties to the agreement had consented to such a provision. The only issue which has been raised is with regard to an opportunity before such termination of service.

11. The clause regarding termination envisages that such an action can be taken recourse to in case of any insubordination or other misconduct. In other words, even in cases other than termination *simpliciter*, there was an agreement between the parties. The materials on record would suggest that the termination was because of an incident in the Blood Bank of the GMCH wherein the petitioner was engaged. Though a submission was made on behalf of the

petitioner that as a Laboratory Technician, he could not have any role in the said incident, such submission is not acceptable inasmuch as, in the FIR lodged, the petitioner was arrested after preliminary enquiry in spite of the fact that he was not a named accused.

12. The affidavit-in-opposition of the respondent-Society has clearly mentioned that a detail enquiry was held by the GMCH authority on the incident pursuant to which, three of its employees were terminated from service. Since the petitioner was under the respondent-Society and was found to be involved, his services were terminated by the Society vide the order dated 13.01.2023. Therefore, there is substance in the argument that affording of an opportunity would be a futile exercise.

13. There is another aspect of the matter. The current agreement dated 02.04.2022 which has been brought on record was for the period up to 31.03.2023. Therefore, even assuming that a case for interference is made out, no relief can be granted to the petitioner as the agreement in question has spent its force.

14. As regards the case of ***Parshotam Lal Dhingra*** (supra) is concerned, the portion of the judgment relied clearly stipulates application of the provision of Article 311 of the Constitution of India to permanent, quasi permanent, officiating, temporary or on probation whereas in the instant case the engagement of the petitioner was a contractual one and limited by time. The facts in the case of ***Sandeep Kumar*** (supra) is clearly distinguishable as it was the regular appointment of the appellant to the post of Registrar of an Institute

who at that point of time was on probation. This Court has also noted that in the case of ***Rajasthan State Roadways Transport Corporation*** (supra), the Hon'ble Supreme Court has declined to interfere with a termination of service which was based on a contract.

15. In view of the aforesaid facts and circumstances and the discussions made, this Court is of the opinion that no relief can be granted to the petitioner and the writ petition is accordingly dismissed.

16. No order as to cost.

JUDGE

Comparing Assistant