

GAHC010015492022



2024:GAU-AS:11128

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

Case No. : WP(C)/644/2022

MD. ABU SHAHID
S/O- HABIBUR RAHAMAN, VILL.- BHAKHAITI PATHAR, P.O.
DOLOIGAON, P.S. BHEHUGURI, DIST.- MORIGAON, ASSAM, PIN- 782126.

VERSUS

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

2:THE COMMISSIONER OF PANCHAYAT AND RURAL DEVELOPMENT
ASSAM JURIPAR SIXMILE GUWAHATI PIN- 781022.

3:THE DEPUTY COMMISSIONER AND DISTRICT PROGRAM COORDINATOR
(MGNREGA) MORIGAON VILL P.O. AND DIST.- MORIGAON ASSAM
PIN- 782105.

4:THE PROJECT DIRECTOR DRDA MORIGAON ASSAM
VILL. P.O. AND DIST.- MORIGAON ASSAM PIN- 782105.

5:THE B.D.O. MOIRABARI DEVELOPMENT BLOCK MOIRABARI
P.O. MOIRABARI DIST.- MORIGAON ASSAM PIN- 782126

Advocate for the Petitioner : MR. I H SAIKIA, MR. K KALITA, MS L HMAR, R K HAJONG
Advocate for the Respondent : SC, P AND R.D., GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 30.09.2024

Date of Judgment: 12.11.2024

Judgment & order(CAV)

Heard Mr. I. H. Saikia, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Sudipta Dutta, learned standing counsel, Panchayat & Rural Development Department, Government of Assam, appearing on behalf of respondents No. 1, 2, 4 & 5; and Mr. C. S. Hazarika, learned Government Advocate, Assam, appearing on behalf of respondent No. 3.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, 01.11.2017, issued by the Deputy Commissioner-cum-District Program Coordinator (MGNREGA), Morigaon, terminating his contractual engagement. The petitioner has also presented a challenge to a speaking order, dated 05.01.2022, passed by the Commissioner, Panchayat & Rural Development Department, Assam, rejecting his prayer for reinstatement in his contractual engagement.

3. As projected in the writ petition, the petitioner who was a job card holder under MGNREGA, had applied for the post of Gram Rozgar Sahayak on contractual basis. On his selection for his engagement against the said post; the petitioner came to be appointed vide order, dated 04.01.2014, issued by the Project Director, DRDA, Morigaon, on contractual basis. The said engagement was to continue with effect from the date of his joining or signing of the contractual engagement which is later upto 30.06.2014. Accordingly, the petitioner on 04.01.2014, executed an agreement with the Block

Development Officer, Moirabari Development Block, Morigaon, and joined his service as Gram Rozgar Sahayak. The petitioner, thereafter, continued to discharge his duties as a Gram Rozgar Sahayak. While the petitioner was continuing to discharge his duties as a Gram Rozgar Sahayak, he came to be placed under detention on 01.11.2017, in connection with ACB Police Station Case No. 07/2017 which was registered under various provisions of the Indian Penal Code as well as the Prevention of Corruption Act, 1988, against the petitioner, herein, and other co-accused persons. On being placed under detention in connection with the said case; the petitioner was vide order, dated 01.11.2017, retrenched from his service by cancellation of his contractual engagement. The said order of retrenchment was issued by the respondent No. 3, herein.

4. It is seen that thereafter, an inquiry committee was constituted by order, dated 24.01.2018, by the respondent No. 3, to inquire into the allegations so levelled against the petitioner. The inquiry committee on conclusion of its inquiry, submitted its report on 07.07.2018, and in the conclusions arrived at therein, held that the charges levelled against the petitioner, could not be established. The petitioner not being re-engaged in his service in terms of the said Inquiry Report, dated 07.07.2018, had approached this Court by way of instituting a writ petition being WP(c)1469/2019, praying for reinstatement in his service. This Court vide order, dated 27.10.2021, on noticing the issues so arising therein, was pleased, basing on the agreement entered into by and between the parties to the proceeding; to dispose of the writ petition by directing the petitioner to submit a fresh representation before the Commissioner, Panchayat & Rural Development Department, Assam, and the said authority was directed to take on board, the said representation of the petitioner and thereafter, pass a speaking order within the period so specified in the said order. The petitioner, accordingly, submitted a representation

before the Commissioner, Panchayat & Rural Development Department, on 29.10.2021. The Commissioner, Panchayat & Rural Development Department, on consideration of the representation and the contemporaneous records; proceeded vide order, dated 05.01.2022, to reject the said representation and accordingly, the claim of the petitioner for his re-engagment as Gram Rozgar Sahayak came to be rejected.

5. Being aggrieved, the petitioner has instituted the present proceeding before this Court.

6. Mr. Saikia, learned counsel for the petitioner, has submitted that the petitioner was vide order, dated 01.11.2017, retrenched from his service by the respondent No. 3, herein, without affording to him any opportunity of hearing in the matter. The learned counsel has further submitted that the action on the part of the respondent No. 3 in issuing the order, dated 01.11.2017, was an unilateral act without first affording an opportunity to the petitioner to have his say in the matter with regard to the allegations so levelled against him and reflected in the said order, dated 01.11.2017.

7. Mr. Saikia, learned counsel, has also submitted that the respondent authorities, basing on a representation submitted in the matter by the petitioner, had constituted an inquiry committee vide an order, dated 24.01.2018, to inquire into the allegations so levelled against him. By referring to the Inquiry Report, dated 07.07.2018, Mr. Saikia, has submitted that the inquiry committee on consideration of the allegations so levelled against the petitioner, herein, had concluded that the same could not be established against him.

8. Mr. Saikia, learned counsel, has submitted that in view of the conclusions as arrived at by the inquiry committee, in its Inquiry Report, dated 07.07.2018; the petitioner was required to be reinstated in his service which, however, was not done by the respondent authorities and the petitioner inspite of being exonerated in the inquiry so held, was not favoured with a re-engagement in his contractual engagement. The learned counsel has submitted that in pursuance of the directions passed by this Court in WP(c)1469/2019; the Commissioner, Panchayat & Rural Development Department, had, vide order, dated 05.01.2022, proceeded to reject the claim of the petitioner for reinstatement in his service. It was further submitted that the said authority while passing the said order, dated 05.01.2022, had taken into consideration, the Inquiry Report, dated 07.07.2018, and had disagreed with the conclusions so arrived at, therein.

9. Mr. Saikia, learned counsel, has submitted that the Commissioner, Panchayat & Rural Development Department, before disagreeing with the conclusions as arrived at by the inquiry committee in its Inquiry Report, dated 07.07.2018, ought to have afforded an opportunity of hearing to the petitioner, herein. The order, dated 05.01.2022, having been so passed by the said authority without affording an opportunity of hearing to the petitioner, it is contended that the aforesaid order, dated 05.01.2022, stood vitiated.

10. Mr. Saikia, learned counsel, by referring to the pleadings brought on record on behalf of the petitioner, herein, has submitted that the contractual employees engaged along with the petitioner, including the persons who were arrested along with him in connection with the criminal case, were on being released from judicial custody, allowed to continue in their respective posts on contractual basis. However, the said benefit was not extended to the

petitioner, herein. In the above premises, Mr. Saikia, learned counsel for the petitioner, has submitted that this Court would be pleased to interfere with the orders impugned in this writ petition and would further direct for reinstatement of the petitioner in his contractual service as a Gram Rozgar Sahayak.

11. Per contra, Mr. Dutta, learned standing counsel, Panchayat & Rural Development Department, has submitted that the Commissioner, Panchayat & Rural Development Department, Assam, had duly considered the conclusions of the inquiry committee in its Inquiry Report, dated 07.07.2018, and on having reached a satisfaction that the said report was not satisfactory; considered the grievances of the petitioner in the light of the allegations so levelled against him and proceeded to pass the order, dated 05.01.2022. The learned standing counsel has further submitted that the conclusions reached by the Commissioner, Panchayat & Rural Development Department, in the order, dated 05.01.2022, are supported by cogent reasons and accordingly, the same would not call for interference.

12. Mr. Dutta, learned standing counsel, has further submitted that the contractual engagement of the petitioner was to continue till 30.06.2014, and there is no material brought on record to demonstrate that such contractual engagement of the petitioner was thereafter, continued and was a subsisting one.

13. Mr. Dutta, learned standing counsel, Panchayat & Rural Development Department, has submitted that the contractual engagement of the petitioner having come to an end in terms of his order of appointment and there being no further order issued towards extending such contractual engagement of the

petitioner; the present proceeding would not be maintainable and the petitioner would now be required to institute appropriate proceeding before the competent Court of civil jurisdiction, seeking damages for such disengagement.

14. Mr. Dutta, learned standing counsel, Panchayat & Rural Development Department, has further submitted that the petitioner, herein, was not holding any civil post and accordingly, his service would not come under the ambit of Article 311 of the Constitution of India.

15. Mr. Hazarika, learned Government Advocate, appearing on behalf of respondent No. 3, by referring to the affidavit filed in the matter by the District Commissioner, Morigaon, has submitted that a Show Cause Notice was issued to the petitioner on 30.05.2017, wherein, the allegations so levelled against him, was reflected in categorical terms. The petitioner had thereafter, vide his reply, dated 11.09.2017, responded to the allegations so levelled against him vide the Show Cause Notice, dated 30.05.2017. It is also submitted that the show cause reply as submitted by the petitioner in the matter on being found not to be satisfactory; the District Commissioner, Morigaon, had, vide order, dated 01.11.2017, proceeded to cancel the contractual engagement of the petitioner and retrenched him from his service.

16. It is submitted by Mr. Hazarika, learned Government Advocate, that the order, dated 01.11.2017, having been preceded with issuance of a Show Cause Notice and the petitioner being given to an opportunity to respond thereto and the order, dated 01.11.2017, having been passed after considering such reply of the petitioner, herein; the petitioner cannot present a

challenge to the order, dated 01.11.2017, and accordingly, the prayer of the petitioner, herein, for reinstatement in his contractual engagement would not merit a consideration from this Court.

17. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

18. At the outset, it is to be noted that neither, in the writ petition, nor, in the rejoinder affidavit filed in the matter by the petitioner, herein, to the affidavit-in-opposition filed by the respondent No. 2; any averment was made with regard to the issuance to him of a Show Cause Notice and of he, having responded thereto. It is an admitted position that the petitioner was engaged as a contractual employee against the post of Gram Rozgar Sahayak vide order, dated 04.01.2014, and such contractual engagement was specified to continue till 30.06.2014. The petitioner had also entered into an agreement with the respondent authorities on 04.01.2014, before joining his service. The provisions of the contractual engagement as entered into by the petitioner with the respondent authorities, contains a provision that the service of the petitioner was liable to be terminated if he was found to be involved in any act of indiscipline or misconduct. The petitioner was placed under detention by the investigating agency in connection with a criminal case, noted-above, on 01.11.2017, and was, thereafter, released on bail. It is seen that before the petitioner was placed under detention in connection with the aforesaid criminal case; the respondent No. 3 had on 30.05.2017, issued to the petitioner, a Show Cause Notice basing on the allegations so available against him which had come to light in pursuance of an inquiry conducted in the matter. The petitioner had submitted his reply to the Show Cause Notice, on 11.09.2017. Thereafter, the respondent No. 3, on consideration of the matter, had

proceeded to terminate the contractual engagement of the petitioner vide issuance of the order, dated 01.11.2017. It is also seen that the respondent No. 3 had constituted an inquiry committee vide order, dated 24.01.2018, to inquire into the allegations against the petitioner. The inquiry committee on conclusion of the inquiry, had submitted its report on 07.07.2018, and therein, had held that the charges so levelled against the petitioner, could not be established.

19. The Commissioner, Panchayat & Rural Development Department, in pursuance of the directions as passed by this Court, dated 27.10.2021, in WP(c)1469/2019; had considered the claim of the petitioner, herein, for reinstatement in his service. While considering such claim as raised by the petitioner; the Inquiry Report, dated 07.07.2018, was also taken into consideration. On considering the Inquiry Report, dated 07.07.2018; the Commissioner, Panchayat & Rural Development Department, had concluded that the said Inquiry Report is not comprehensive and was only based on the statements made by the petitioner and others and there was no reference by the inquiry committee to other relevant materials. It was further held that the inquiry committee had not taken into account the NREGA Soft MIS to establish the veracity of the statements made in the inquiry by the petitioner. Accordingly, the said Inquiry Report, dated 07.07.2018, was discarded and the claim of the petitioner for reinstatement in his service came to be rejected.

20. This Court has perused the Inquiry Report, dated 07.07.2018, as submitted by the inquiry committee and perusal of the same does not inspire confidence and it is found that the inquiry was carried-out in a most casual manner. Accordingly, the conclusions of the inquiry committee would not merit an acceptance.

21. It is further to be noted that the respondent No. 3 had issued a Show Cause Notice, dated 30.05.2017, against the petitioner, herein. The petitioner had also submitted his reply to the Show Cause Notice on 11.09.2017, and it is, thereafter, that the respondent No. 3 had proceeded to issue the order, dated 01.11.2017, terminating the contractual engagement of the petitioner, herein, as a Gram Rozgar Sahayak.

22. The respondent authorities before issuing the order, dated 01.11.2017, having issued the Show Cause Notice to the petitioner, herein, and he, having responded thereto; it is to be held that the principles of natural justice has been fulfilled in the present case.

23. The subsequent inquiry carried-out by the respondent authorities and the Inquiry Report, thereof, dated 07.07.2018; having already been held by this Court, herein, to be not acceptable; the same would not advance the case of the petitioner, herein.

24. In view of the factual matrix arising in the present proceeding and more particularly, on the date, the present proceeding was instituted by the petitioner before this Court; there being no order renewing the contractual engagement of the petitioner, herein; this Court is required to examine as to whether it would be permissible for this Court to direct the respondent authorities to re-engage the petitioner, herein, as Gram Rozgar Sahayak, in terms of his earlier contractual engagement.

25. The issue pertaining to the legal rights of a contractual appointee came up for consideration before the Hon'ble Supreme Court in the case of **GRIDCO**

Limited & anr. v. Sadananda Doloi & ors.[reported in **(2011) 15 SCC 16**]. The Hon'ble Supreme Court upon noticing the earlier decisions on the issue, held as follows:

“38. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge.”

26. The decision of the Hon'ble Supreme Court in the case of **U.P. State Textile Corporation Limited v. Suresh Kumar** [reported in **(2011) 15 SCC 180**] being relevant to the issue arising in the present proceeding, is being noticed. The Hon'ble Supreme Court, in the said case; considering the effect of non-extension of the period of contractual engagement, held that the contractual engagement of the respondent, therein, having come to an end, no relief beyond that period, could have been granted. Accordingly, the directions passed in the matter by the High Court allowing the respondent(before Hon'ble Supreme Court) to continue in his services, came to be modified and the respondent was deemed to be in service till the currency of his contractual engagement. The relevant paragraphs of the decision of the Hon'ble Supreme Court in the case of **Suresh Kumar**(supra) is

reproduced hereinbelow :

“4. The learned counsel for the appellant has raised primarily two arguments before us. He has contended that the reference to the unauthorised absence of the respondent could not in any manner be said to be stigmatic and that the finding to the contrary was unsustainable. Alternatively, he has contended that the respondent had joined the post on 7-9-1987 for a period of three years which would have come to an end on 6-9-1990 and as such the direction for reinstatement could not have been granted to him. It has been pleaded that as a consequence of the order of the Tribunal and of the High Court, the respondent has been put back into service.

5. The learned counsel for the respondent has however supported the judgments of the Tribunal and the High Court.

6. In the facts of the case we need not examine the effect of the order dated 26-4-1989 whereby the services of the respondent had been terminated as being stigmatic or not as we are of the opinion that in the light of the fact that appointment itself was for a fixed period of three years which would have come to an end on 6-9-1990, no relief beyond that period could have been given to the respondent by the Tribunal or the High Court. We accordingly feel that these orders need to be modified to the extent that the appellant shall be deemed to be in service up to 6-9-1990 and not thereafter.”

27. Applying the decisions of the Hon'ble Supreme Court, noticed hereinabove, to the facts as arising in the present proceeding, it being crystal clear that the contractual engagement of the petitioner had come to an end on 30.06.2014 and thereafter, admittedly, there being no order extending such contractual engagement of the petitioner; this Court in the guise of exercise of the power of judicial review, would not substitute its decision, for the decision of the executive authority on the ground that the decision of this Court is more reasonable. This Court cannot extend the period of the contractual engagement of the petitioner, herein, after the same had come an end.

28. If the period of contractual engagement of the petitioner was in currency, and a termination of the engagement had occasioned, it would have been open to this Court by exercising its power of judicial review, to examine the legality, or, otherwise of such termination, but, in the facts involved in the present case; that is no longer permissible in view of the expiry of the period

of the contractual engagement of the petitioner on 30.06.2014, which was, thereafter, not extended.

29. If any breach has occasioned with regard to the discontinuation of the services of the petitioner, it would only give rise to a cause of action for damages/compensation, for which, the remedy available is institution of a Civil Suit and not a writ petition.

30. In view of the conclusions as drawn hereinabove, the prayer of the petitioner for a direction towards continuation of his contractual engagement as a Gram Rozgar Sahayak, cannot be accepted.

31. In the above conclusions reached by this Court hereinabove; the impugned order, dated 01.11.2017, issued by the respondent No. 3, herein, and the order, dated 05.01.2022, passed by the Commissioner, Panchayat & Rural Development Department; would not call for any interference from this Court.

32. Accordingly, the writ petition is held to be devoid of any merit and consequently, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant