

GAHC010065772021



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

Case No. : WP(C)/2621/2021

PRABIN KISHORE DAS
S/O- LT. CHANDRA KISHORE DAS, R/O- VILL- JANIA ROAD, NEAR LIC
BUILDING, BARPETA, P.O., P.S. AND DIST.- BARPETA, ASSAM, PIN- 781301

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PRINCIPAL SECY./ADDL. CHIEF SECRETARY/SECRETARY TO
THE GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPTT.,
DISPUR, GHY-06

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
JURIPAR
PANJABARI
GHY-37

3:THE JOINT DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
ASSAM
JURIPAR
PANJABARI
GHY-3

Advocate for the Petitioner :

Advocate for the Respondent : SC, PNRD

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA
ORDER

29.04.2024

Heard Mr. I. Choudhury, learned counsel for the petitioner. Also heard Mr. P. Handique, learned Standing Counsel, Panchayat & Rural Development Department.

2] This writ petition is filed by the petitioner for the following directions to be issued to the respondents :

A) A writ in the nature of Mandamus shall not be issued directing the respondents to pay the subsistence allowance of 50% from 15.09.2003 to 13.12.2003 and also 25% of subsistence allowance from 14.12.2003 to 19.09.2005.

B) A writ in the nature of Mandamus shall not be issued directing the Respondents authorities to release the arrear salary with increment from the month of September/2003 to November/2005.

C) A Writ in the nature of Mandamus shall not be issued directing the Respondent authorities to release the salary of the petitioner from the month of January/2011 to March/2013.

D) A writ in the nature of Mandamus shall not be issued directing the Respondent Authorities to all service benefit including arrear salary and annual increment and also the subsistence allowance for which the petitioner is entitled.

E) A writ in the nature of the Mandamus shall not be issued directing the respondent authorities to pay all the dues to the petitioner for which he is

entitled and also pay the pension to the petitioner.

3] It is submitted that earlier the petitioner had filed another writ petition being WP(C) No.9515/2019 which came to be disposed of by order dated 25.01.2024. The facts involved in WP(C) No.9515/2019 are that a Disciplinary Proceeding was initiated against the petitioner and pursuant to which the Disciplinary Authority passed orders terminating the writ petitioner from service. The petitioner, however, was never furnished any copy of the enquiry report. He, therefore, approached this Court by filing WP(C) No.1016/2011 which came to be disposed of by the following order:

“21.02.2013

Heard Mr. T.J. Mahanta, learned counsel appearing for the petitioner and Mr. J. Handique, learned Govt. Advocate for the respondents.

The petitioner has filed this writ petition challenging the dismissal order on two grounds. Firstly, the order has been passed by an authority who is lower in rank of the appointing authority and secondly, before passing of the order of dismissal, the petitioner has not been furnished a copy of the report of the Enquiry Officer.

It has also been admitted by the authorities in the affidavit-in-opposition filed by the respondent No.3 in para No.14 that the respondent authority has no objection in furnishing the Enquiry Report and the same was not furnished to the petitioner as the petitioner had never sought for the same, which therefore substantiates the contention of the petitioner that no enquiry report was furnished to the petitioner before the final dismissal a was passed.

In view of the law laid down in Union of India & ors vs Mohd. Ramzan. Khan; AIR 1991 SC 471 and ECIL vs. Karunakar, (1993) 4 SCC 727, the present petition is allowed and the disciplinary proceeding is interfered as not sustainable from the stage where the enquiry report was not given. In other words, the authorities will be at liberty to proceed with the departmental enquiry de novo by furnishing a copy of the enquiry report to the petitioner and pass appropriate order in accordance with law.

Accordingly, the impugned order dated 29.12.2010 (Annexure-A/20 to the writ petition) is set aside.

With the above observation and direction, the present petition is disposed of to the extent indicated above.

A copy of this order may be furnished to the learned counsel appearing for the parties for communication to the authorities concerned.”

The respondents, however, misinterpreted this order and proceeded to issue a fresh show-cause notice on the writ petitioner, purportedly in terms of the directions of this Court passed by the order dated 21.02.2013 in WP(C) No.1016/2010.

4] The petitioner thereafter filed WP(C) No.9515/2019 putting to challenge the said show-cause notice.

5] Upon considering the rival the submissions made by the learned counsel for the parties, this Court by order dated 25.01.2024 partly allowed the writ petition i.e. WP(C) No.9515/2019 by setting aside the fresh show-cause notice issued to the writ petitioner but giving liberty to the respondents to serve a copy of the enquiry report on the petitioner and proceed thereafter in the said enquiry. During the pendency of the writ petition i.e. WP(C) No.9515/2019, however, a copy of the enquiry report was served to the writ petitioner. The said fact is also reflected in the order dated 25.01.2024 passed in WP(C) No.9515/2019.

6] The present writ petition has been filed with a prayer for release of arrear salary, subsistence allowance, increment, pensionary benefits etc during the period in which the petitioner was removed from his service. It is submitted by the learned Standing Counsel, P&RD Department that presently the Departmental Enquiry is still pending and the authorities have not yet taken a decision on the report submitted by the Enquiry Officer. The learned counsel for the petitioner, on the other hand, submits that although the enquiry report has been furnished to the petitioner, the respondents have not intimated the petitioner as to what steps the petitioner is required to take by the petitioner

pursuant to the service of the enquiry report.

7] Be that as it may, since there is no dispute that the petitioner has been furnished with the enquiry report and no final decision has been taken by the Disciplinary Authority, no effective directions can be issued on the prayers made in the writ petition as it stands today. It is a matter of records that the Disciplinary Proceeding initiated against the petitioner could not be completed in spite of the same being initiated as far as back on 15.07.2008 in view of the DPRD's order No.PDDE (II) 129/2003/124 by issuing a show-cause notice on 04.05.2007. Several judgments of the Apex Court as well as of this Court have emphasized the need for early disposal and conclusion of any disciplinary proceedings initiated against any employee. The disciplinary proceedings should be completed within the shortest possible time by taking priority measures and if the employee is under suspension then all the more reasons for concluding the disciplinary proceedings at the shortest possible time. Reference in this context may be made to the Judgment of Apex Court rendered in *Prem Nath Bali vs. Registrar, High Court of Delhi & Anr.* reported in (2015) 16 SCC 415. The Apex Court has held that the employer, whether State or Private must make sincere endeavour to conclude departmental proceedings once initiated against the employee within the reasonable time by giving priority to such proceedings and as far as possible it should be concluded within 6 (six) months as an outer limit. Relevant paragraphs are of the said judgment are extracted herein below:

26) Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any

inconvenience, loss and prejudice to the rights of the delinquent employee.

27) As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

28) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

Since the disciplinary proceedings are still pending at this stage this Court is of the view that the prayer made in the writ petition should be dealt with by the concerned authority in terms of any such decision that may be arrived at by the Disciplinary Authority pursuant to the disciplinary proceeding initiated against the writ petitioner.

8] It is expected that the enquiry proceedings which were initiated in the year 2007 be brought to its logical conclusion at the earliest by the Disciplinary Authority. It is expected that the enquiry proceedings be completed as expeditiously as possible within the outer limit of 90 (ninety) days from the date of receipt of certified copy of this order.

9] With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant