



2024:GAU-AS:12176

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

Case No. : WP(C)/658/2019

KALAMUDDIN AHMED
R/O- BOSAJAI, HATIGAON, GUWAHATI- 28, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
AGRICULTURAL MARKETING DEPTT, DISPUR, GUWAHATI- 06, ASSAM

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
FINANCE DEPTT
DISPUR
GUWAHATI- 06
DIST- KAMRUP (M)
ASSAM

3:THE CHAIRMAN
ASSAM STATE AGRICULTURE MARKETING BOARD
RAMKRISHNA ROAD
ULUBARI
GHY- 07
DIST- KAMRUP (M)
ASSAM

4:THE CHIEF EXECUTIVE OFFICER
ASSAM STATE MARKETING BOARD
RAMKRISHNA MISSION ROAD
ULUBARI
GHY- 07
DIST- KAMRUP (M)
ASSAM

5:THE CHIEF ACCOUNTS OFFICER
ASSAM
STATE AGRICULTURAL BOARD
RAMKRISHNA MISSION ROAD
ULUBARI
GUWAHATI- 07
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. A KHANIKAR,

Advocate for the Respondent : SC, FINANCE, MR. N J GOGOI,SC, THE ASSAM STATE AGRICULTURE MARKETING BOARD.

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

ORDER

Date : 28.11.2024

Heard Mr. A. Khanikar, learned Counsel for the petitioner. Also heard Mr. N. J. Gogoi, learned Standing Counsel, Assam State Agriculture Marketing Board appearing for the respondent Nos. 3, 4 and 5.

2. The petitioner in the present proceeding has presented a challenge to an order dated 10.01.2017, wherein, on conclusion of a departmental proceedings instituted against him, the same came to be closed with issuance of a warning to the petitioner. The petitioner has further raised a grievance with regard to the stipulation made in the said order dated 10.01.2017, to the extent that the period of his suspension would be limited to the subsistence allowance drawn by him.

3. Vide Show-cause Notice dated 07.09.2016, a departmental proceedings came to be instituted against the petitioner basing on a charge of having remained absent and having not performed his duties during the period w.e.f. 19.07.2016 to 26.07.2016 without permission from his authorities. It was further alleged that the

petitioner had neither informed the authorities about his absence from vigilance duty, nor attended his duties at his original place of posting i.e. at Srirampur Checkgate. The petitioner submitted his written statement of defense in pursuance to the Show-cause Notice dated, on 19.07.2016, denying the charges so leveled against him. The record of the matter reveals that the written statement so furnished by the petitioner not being satisfactory, an Enquiry Officer was appointed to enquire into the allegations so leveled against the petitioner. On conclusion of the enquiry, the Enquiry Officer, submitted his report on 05.12.2016 and basing on the said enquiry report, the Disciplinary authority proceeded to pass the order dated 10.01.2017, which is under challenge in the present proceedings.

4. I have heard the learned counsel for the parties and also perused the materials available on record.

5. The learned Counsel for the petitioner has reiterated the facts as noticed hereinabove; and has further contended that the enquiry report was never furnished to him. He further submits that given the manner in which the enquiry was so conducted, the same stood vitiated and no penalty basing on such vitiated enquiry could be imposed upon the petitioner.

6. Mr. N. J. Gogoi, learned counsel, appearing for the respondents by referring to the affidavit so filed in the matter by the respondents No. 3, has submitted that the order dated 10.01.2017 was so issued in pursuance to the conclusions reached by the Enquiry Officer, in the enquiry held against the petitioner in pursuance to the Show-cause Notice dated 07.09.2016; and accordingly, the same being so done in terms of the findings recorded by the Enquiry Officer, which has not been disputed by the petitioner herein, the order dated 10.01.2017, would not call for any interference.

7. A perusal of the enquiry report reveals that the conclusions so drawn by the Enquiry Officer therein, to the extent that the charge allegations leveled against

the petitioner is proved and has been so drawn basing on his self-examination by the Enquiry Officer of the records so produced. No witnesses had deposed before the Enquiry Officer in the matter and no documents came to be exhibited through any witnesses. The Enquiry Officer has observed in his report dated 05.12.2016, that he had on his own proceeded to examine the documents brought before him by the Disciplinary authority and thereafter, proceeded to draw conclusion that the petitioner was guilty of the allegations so leveled against him.

8. The enquiry report further reveals that the departmental enquiry so instituted against the petitioner was so done in a very casual manner, without following the procedure required to be mandated so followed in the matter. The enquiry report so submitted cannot be in the considered view of this Court construed to be an enquiry report as mandated under the provisions of Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964.

9. Further as contended by the petitioner herein and not disputed by the learned counsel appearing for the respondents, a copy of the enquiry report was also not furnished to the petitioner for his comments thereon. Accordingly, the disciplinary authority basing on such enquiry report, submitted clearly in ignorance of the procedure mandated for conduct of an enquiry, having proceeded to issue the order dated 10.01.2017, warning the petitioner for his misconduct alleged to have committed, this Court is of the view that the order dated 10.01.2017 cannot be sustained and would call for an interference.

10. In view of the conclusions reached herein above and also noticing the manner in which the enquiry against the petitioner was so conducted, the order dated 10.01.2017 would stand set aside. Accordingly, the penalty of warning as imposed upon the petitioner would also stand set aside.

11. The order dated 10.01.2017 having been interfered with the period of suspension of the petitioner would now be required to be regularized as 'on duty' and the petitioner would be entitled to all pay and allowances for the period of his suspension. Accordingly, the respondent authorities would now release to the petitioner, the pay and allowances for the period of his suspension after deducting therefrom the subsistence allowance already drawn by him. The arrear so working out be released to the petitioner within a period of 3 (three) months from the date of receipt of a certified copy of this order.

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

13. The records produced by Mr. N. J. Gogoi, learned counsel appearing for the respondent is returned.

JUDGE

Comparing Assistant