

GAHC010014242016



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

Case No. : WP(C)/2561/2016

MS. UPASANA DAS
D/O LT. HIMANGSHU KR. DAS, H/NO.102, KHARGULI, NEAR UNNAYAN
SAMITY, P.O. KHARGULI, GHY-4, DIST- KAMRUP METRO

VERSUS

THE TEZPUR UNIVERSITY and 2 ORS.
REP. BY THE REGISTRAR, NAAPAM, TEZPUR, DIST- SONITPUR, ASSAM,
PIN-784028

2:THE VICE-CHANCELLOR TEZPUR UNIVERSITY
NAAPAM TEZPUR DIST- SONITPUR ASSAM PIN-784028

3:THE REGISTRAR TEZPUR UNIVERSITY
NAAPAM TEZPUR DIST- SONITPUR ASSAM PIN-784028

4:SRI SAMARESH BARMAN
S/O. SANTOSH KR. BARMAN R/O.- QUARTER NO. C-21(ASSAM TYPE)
TEZPUR UNIVERSITY CAMPUS NAPAAM
DISTRICT- SONITPUR ASSAM PIN- 784028

Advocate for the Petitioner : MR.N BARUA

Advocate for the Respondent : SC, T U

Linked Case : WP(C)/4770/2015

MS. UPASANA DAS
D/O LT. HIMANGSHU KR. DAS HOUSE NO. 102
KHARGULI NEAR UNNAYAN SAMITY
P.O. KHARGULI GUWAHATI
DIST. KAMRUP R PIN - 781004.

VERSUS

THE TEZPUR UNIVERSITY and 2 ORS
REP. BY THE REGISTRAR NAAPAM TEZPUR DIST. SONITPUR ASSAM.

2:THE VICE-CHANCELLOR TEZPUR UNIVERSITY
NAAPAM TEZPUR DIST. SONITPUR ASSAM PIN – 784028.

3:THE REGISTRAR TEZPUR UNIVERSITY
NAAPAM TEZPUR DIST. SONITPUR ASSAM PIN - 784028.

Advocate for : MR.M K CHOUDHURY
Advocate for : MR.N C DAS appearing for THE TEZPUR UNIVERSITY and 2 ORS

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 09.01.2024

Date of Judgment: 09.01.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. M. Sarma, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned counsel appearing on behalf of all the respondents in WP(c)4770/2015; and Mr. C. K. S. Baruah, learned counsel appearing on behalf of Respondents No. 1, 2 & 3; as well as Mr. S. Borthakur, learned counsel appearing on behalf of Respondent No. 4 in WP(c)2561/2016.

2. The present order would dispose of the writ petitions i.e. WP(c)4770/2015 and WP(c)2561/2016 instituted by the petitioner basing on the same set of facts.

3. By way of instituting the present proceedings i.e. WP(c)4770/2015, the petitioner has *inter alia* sought for a direction to the respondent authorities for her reinstatement as Public Relation and Information Officer(P.R.I.O.) in the Tezpur University and for a further direction to refrain from issuing any fresh

advertisement for filling up the post of Public Relation and Information Officer(P.R.I.O.) in the said Tezpur University. The petitioner has also prayed for release of her salaries w.e.f. 02.06.2015 i.e. when this Court in WP(c)1734/2014 had set aside the order releasing her from her services till her reinstatement. The petitioner had thereafter instituted a writ petition being WP(c)2561/2016 before this Court with an additional prayer for quashing of an advertisement, dated 23.03.2016, issued by the respondent authorities for recruitment against the post of Public Relation and Information Officer(P.R.I.O.) in the Tezpur University.

4. The facts requisite for adjudication of the issues as arising in the present proceedings, is noticed hereinbelow:

The petitioner, in pursuance of an advertisement, dated bearing Registration No. 01/2012, dated 05.01.2012, issued by the Registrar, Tezpur University, inviting applications, amongst others, for the post of Public Relation and Information Officer (P.R.I.O.), submitted her application against the said post. It is to be noted that the said post of Public Relation and Information Officer(P.R.I.O.) as stipulated in the said advertisement, dated 05.01.2012, was reserved for candidates belonging to the Scheduled Caste community. The petitioner on being successful in the selection as held in pursuance of the advertisement, dated 05.01.2012, was issued with an order of appointment, dated 20.03.2012, appointing her as the Public Relation and Information Officer(P.R.I.O.) of Tezpur University. It is to be further noted that the terms and conditions as spelt-out in the said order of appointment reveals that the

petitioner's initial appointment was on adhoc basis for a period of 2 years against a permanent post and the said period was treated as period spent on probation. The performance of the petitioner was thereafter to be assessed after lapse of one and half years of service. The materials made available on record reveals that the assessment of the petitioner's services was so made and accordingly, the period of her probation came to be extended till 22.03.2014. The services of the petitioner during the period of her extended probation, came to be terminated vide order, dated 13.12.2013 on the ground of her involvement in posting comments against an ex-Professor of Tezpur University in a social networking site i.e. Facebook, which was held to be unbecoming of a responsible officer holding the post of Public Relation and Information Officer(P.R.I.O.) of the University and detrimental to the interest of the University.

It was also noted in the said order, dated 13.12.2013, that the petitioner's performance in her services was assessed by the University and the same was found to be unsatisfactory and accordingly, the Tezpur University proceeded to terminate her services w.e.f. 13.12.2013. Being aggrieved, the petitioner by instituting a writ petition before this Court being WP(c)7526/2013 assailed the said order, dated 13.12.2013. During the pendency of the said writ petition, the authorities of the Tezpur University, vide communication, dated 12.03.2014, issued by the Registrar, Tezpur University, informed the petitioner that the order of her termination from service vide order, dated 13.12.2013, was withdrawn with immediate effect. In the said view of the matter; this Court vide order, dated 20.03.2014, by reckoning the developments taking place in the matter, closed the said writ petition being WP(c)7526/2013.

It is to be noted that on closure of the said writ petition being WP(c)7526/2013; the Registrar, Tezpur University, vide order, dated 21.03.2014, proceeded to release the petitioner from her services of Tezpur University w.e.f. 22.03.2014 on the ground that the term of her adhoc appointment for 2 years was completed and accordingly, she was so released from her services. Being aggrieved, the petitioner approached this Court by way of instituting the WP(c)1734/2014, presenting a challenge to the order, dated 21.03.2014, issued by the Registrar, Tezpur University. This Court, thereafter, took-up the matter for final disposal and vide order, dated 02.06.2015, proceeded to dispose of the said writ petition being WP(c)1734/2014 by interfering with the order, dated 21.03.2014.

The petitioner submitted a certified copy of the order, dated 02.06.2015, passed by this Court in WP(c)1734/2014, before the authorities of the Tezpur University and the petitioner not being permitted to resume her services, and an advertisement bearing No. 04/2016, dated 23.03.2016, being issued by the Tezpur University, inviting applications, amongst others, for the post of Public Relation and Information Officer(P.R.I.O.); the petitioner had instituted the above-noted two writ petitions before this Court.

5. The learned counsels for the parties have made their submissions in tune with the pleadings as brought on record.

6. The issue as arising in the present proceedings, is as to whether the petitioner in pursuance of the order, dated 02.06.2015, passed by this Court in

WP(c)1734/2014, was required to be reinstated in her services in the Tezpur University and the further issue that calls for consideration would be as to whether the respondent authorities was within its rights to proceed to issue the subsequent advertisement, dated 23.03.2016, bearing No. 04/2016, inviting, amongst others, fresh applications for the post of Public Relation and Information Officer(P.R.I.O.) in the Tezpur University.

7. In view of the issue that arise for consideration of this Court; it is necessary to refer to the order, dated 02.06.2015, passed by this Court in WP(c)1734/2014. This Court while examining the challenge as presented by the petitioner before it, in respect of the order of release issued to the petitioner, vide order, dated 21.03.2014, had examined the background leading to the issuance of the said order, dated 21.03.2014. This Court upon examining the matter, in details, had come to a conclusion that the termination order, dated 13.12.2013, itself makes it clear that the conduct of the petitioner was regarded as unbecoming of a responsible officer holding the post of Public Relation and Information Officer(P.R.I.O.) of the University and that her actions were detrimental to the interest of the University and further, that the release order, dated 21.03.2014, was not passed basing on any fresh material coming before the authorities for consideration and the same was solely based on the materials that were so considered while issuing the earlier order of termination, dated 13.12.2013. This Court proceeded to further note that the release order, dated 21.03.2014, does not make mention of any misconduct on the part of the petitioner, however, the same also was held to not indicate that the same was passed for want of satisfactory performance on the part of the petitioner on the basis of any assessment made.

8. The order, dated 21.03.2014, was held to have not inspired the confidence of the Court and accordingly, the said order was held to be not an order of termination, simpliciter. This Court, thereafter, recorded a finding that the order of release of the petitioner as effected vide order, dated 21.03.2014, was actually issued on the basis of the misconduct as alleged against her and the same was the foundation for dispensing of her services from the Tezpur University. Accordingly, this Court had interfered with the order, dated 21.03.2014.

9. The findings as recorded by this Court in the order, dated 02.06.2015, passed in WP(c)1734/2014 being relevant to the issue arising in the present proceedings, the same are extracted hereinbelow:

“9. What culls out from the various judgments cited is that an order dispensing with the service of a probationer, which is innocuous and does not cast any stigma, is not to be interfered with. An exception is brought in, in the case when such termination appears to be punitive in nature. To ascertain the position as to whether the order impugned is a termination simpliciter or punitive in nature found on misconduct, is the exercise to be carried out having regard to the facts of the case. In the affidavit filed by the Tezpur University, mention is made that the petitioner's involvement in posting comments in Face Book was not acceptable and has caused an adverse impact upon the enquiry initiated against another faculty member of the same Department. It is also stated that the said act of the petitioner was unbecoming of an Officer of the University. Statement has also been made to justify the grounds on which the earlier termination Order dated 13.12.2013 had to be withdrawn, attributing the same to certain procedural lapses and not on any other account. While saying so, the stand of the Respondent University is that the withdrawal of the earlier termination Order dated 13.12.2013 do not mean that the petitioner was exonerated from the charges. The most vital statement made in the affidavit-in-opposition is in respect of the statement made in paragraph 20 of the affidavit-in-opposition which, on a bare reading, indicates that the issue with regard to involvement in the Facebook occurred sometime prior to 29.09.2013. The fact that the conduct of the petitioner being involved in the Facebook episode was playing in the mind of Respondent University and the same being made one of the grounds for issuing the earlier termination Order dated 13.12.2013 cannot be wished away. A bare perusal of the said termination Order dated 13.12.2013 itself makes it clear that the conduct of the petitioner was regarded as unbecoming of a responsible officer and that her actions are detrimental to the interest of the University. Although the Reviewing Authority, by note dated 01.10.2013, had indicated that the petitioner cannot be recommended for confirmation, however there is no material on record to show that such recommendation of the Reviewing Authority had been considered and accepted by the Board of Management.”

10. *The sequence of events would also go to show that the earlier Order of termination dated 13.12.2013, on challenge made before this Court in WP(C) No. 7526/2013, was kept in abeyance by order of this Court dated 20.12.2013 and during the pendency of the said writ petition the said order of termination dated 13.12.2013 was withdrawn. The writ petition was closed on 20.03.2014 on ground that no lis survived for consideration and the order impugned in the present proceeding was passed immediately on the next date i.e. on 21.03.2014. The sequence of facts and dates only indicates that the Facebook episode was all along playing in the mind of the respondent authority and by removing the adverse remarks by withdrawing the termination order dated 13.12.2013, replaced and repeated their intention to dispense with the services of the petitioner by the impugned order dated 21.03.2014 which, at first glance, appears to be an innocuous one.*

11. *A dispassionate and objective view would be that the Release Order dated 21.03.2014 was not passed on any fresh material, save and except, what was playing in the mind of the Respondent University at the time of issuing the earlier termination Order dated 13.12.2013. Although the Release Order dated 21.03.2014 do not make mention of misconduct on the part of the petitioner, however the same also do not go to indicate that the same had been passed for want of satisfactory performance on the part of the petitioner or on the basis of assessment made. The Office Order dated 21.03.2014, in fact, appears to be too innocuous to inspire the confidence of the Court that the same was in the nature of a termination simpliciter having regard to the facts of the case. In fact, the issue with regard to the Facebook episode and the conduct of the petitioner being regarded as unbecoming of a responsible officer and that her actions were detrimental to the interest of the Institution, had been the dominant factor in eventually dispensing with the services of the petitioner. By their own statement made in the affidavit-in-opposition, the stand of the respondent authority is that although the earlier Order of termination dated 13.12.2013 stands withdrawn, however, the same should not be construed as exonerating the petitioner from the charges. This itself vindicates the mind-set.*

12. *The decisions of the Apex Court relied upon by Mr. N.C. Das, learned senior counsel do not come to the aid of the respondent, inasmuch as, the affidavit filed by the respondent authority in the present case portrays a different picture to show that alleged misconduct was the foundation for dispensing with the services of the petitioner. As this Court has the power to lift the veil to ascertain whether the order assailed is by way of termination simpliciter or punitive in nature or whether the order assailed is a camouflage or a cloak in the garb of termination simpliciter, for all the reasons stated and discussed above, it is held that the foundation of the order dated 21.03.2014 was on the basis of the Facebook episode and on the accusation made against the petitioner that her conduct was unbecoming of a responsible officer and also that her action was detrimental to the interest of the institution. To reiterate, although a bare perusal of the Release Order dated 21.03.2014 appears to be an innocuous order so issued in terms of Clause 3 of the appointment order, however, from the discussions above it leaves no room for doubt that the same was based on misconduct alleged against the petitioner. No opportunity having been afforded to the petitioner prior to the issuance of the Office Order dated 21.03.2014 and for the reasons stated above, the Office Order dated 21.03.2014 cannot stand the scrutiny of law and is liable to be set aside, which is accordingly done."*

10. It is to be noted that the petitioner was appointed as Public Relation and Information Officer(P.R.I.O.) against a permanent vacant post after a due process of selection. Although the initial appointment of the petitioner was stated to be on adhoc basis, however, the same was further clarified with the stipulation that the initial period of 2 years would be treated as to be on probation.

11. Admittedly, the services of the petitioner was being extended from time to time upon assessment of the services rendered by her and the assessment so made, the authorities of the Tezpur University had extended the probation period till 23.12.2014. However, ignoring the said position, holding the action of the petitioner in making some posts in a social networking site i.e. Facebook, as unbecoming of a responsible officer holding the post of Public Relation and Information Officer (P.R.I.O.) of the University and to be detrimental to the interest of the University, she came to be terminated from her services. The said order, dated 13.12.2013, also makes a mention that her performance was assessed and her performance was found to be unsatisfactory.

12. The termination order, dated 13.12.2013, was clearly stigmatic in nature. However, on proceedings instituted by the petitioner before this Court, the authorities had proceed to withdraw the same vide communication, dated 12.03.2014.

13. A perusal of the order, dated 21.03.2014, shows that the same only stipulates that the term of adhoc appointment of the petitioner having expired

after a period of 2 years, she stood released from her services as Public Relation and Information Officer(P.R.I.O.) of the Tezpur University w.e.f. 22.03.2014. As noted hereinabove; the initial appointment of the petitioner was not on adhoc basis but was against a regular post made in pursuance of a process of selection but it was denoted as a adhoc appointment. However, it was also mentioned that the said period of 2 years would be treated to be period spent on probation. Given the manner in which the petitioner was appointed, it reveals that the appointment of the petitioner was a substantive appointment.

14. This Court vide order, dated 02.06.2015, having already held that the order, dated 21.03.2014, not having been passed basing on any fresh material that is to say that there was no further assessment of the services of the petitioner after the assessment that was made while extending her services till 22.03.2014; the release of the petitioner from her services, is to be construed to be one so effected basing on the misconduct as alleged against the petitioner in the earlier order, dated 13.12.2013.

15. No opportunity of hearing having been afforded to the petitioner prior to her release from the services which was already held by this Court to be solely based on a misconduct alleged against the petitioner; the order, dated 21.03.2014, was interfered with. The plea that has been brought on record by the authorities of the respondent University is that this Court after interfering with the release order, dated 21.03.2021, having not directed for reinstatement of the petitioner in her services, no reinstatement order was so issued by the respondent University.

16. Such a view of the matter is clearly erroneous in-as-much as the petitioner was continuing in her services on probation after being so appointed in pursuance to an advertisement and after a due process of selection and the period of her services having been so extended by the respondent University by holding the same to be a period of probation, the order of release of the petitioner from her services, dated 21.03.2014, having been interfered with by this Court, no order of reinstatement was called for in the matter in-as-much as the order of release being interfered with; the petitioner is deemed to have continued in her services. As such, the respondent University had violated the order, dated 02.06.2015, passed in WP(c)1734/2014, in not allowing the petitioner to continue with her services after the order of her release, dated 21.03.2014, was so interfered with by this Court. No other meaning can be assigned to the directions as passed by this Court vide order, dated 02.06.2015, passed in WP(c)1734/2014, and that too, in view of the findings as recorded therein by this Court to arrive at a decision to interfere with the order, dated 21.03.2014.

17. At this stage, it is to be noted that the respondent authorities had proceeded with the selection process as initiated vide the subsequent advertisement No. 04/2016 for the post of Public Relation and Information Officer(P.R.I.O.) and appointed one Shri Samaresh Barman against the said post. This Court having not passed any interim directions in the matter at the initial stage, the respondent authorities proceeded with the selection process and appointed Shri Samaresh Barman as the Public Relation and Information Officer(P.R.I.O.). It is to be noted that said Shri Samaresh Barman was impleaded as Respondent No. 4 in WP(c)2561/2016.

18. The Respondent No. 4 being not at fault for the said appointment as effected in his case; this Court after a lapse of such considerable period of time, would not like to interfere with the appointment so made in respect of the Respondent No. 4 although the same was in violation of the directions passed by this Court vide order, dated 02.06.2015, in WP(c)1734/2014, which in effect had continued the services of the petitioner in the Tezpur University.

19. In view of the above conclusions as reached by this Court that the petitioner's services in terms of the directions passed by this Court vide order, dated 02.06.2015, in WP(c)1734/2014, continued in the Tezpur University; the following directions are called for in the matter:

(i). The respondent authorities shall deem the petitioner to be continuing in her services w.e.f. 22.03.2014, in view of the interference made by this Court vide the order, dated 02.06.2015, of the order of release of the petitioner, dated 21.03.2024.

(ii). The post held by the petitioner having been filled up by a subsequent selection process and the Respondent No. 4 in WP(c)2561/2016, having been appointed against the said post of Public Relation and Information Officer (P.R.I.O.); this Court having not interfered with the appointment of the Respondent No. 4; the respondent University shall now allow the petitioner to continue in her services against any other equivalent post and/or create a supernumary post for continuation of the services of the petitioner w.e.f. 22.03.2014.

(iii). This Court, vide order, dated 02.06.2015, having held that the order of release, dated 21.03.2014, issued to the petitioner was based on a misconduct as alleged against her in the earlier order of termination, dated 13.12.2013; the respondent University would be at liberty to proceed against the petitioner by drawing up appropriate proceedings in the matter and coming to a due conclusion thereon with regard to the allegation levelled against the petitioner in the order of termination, dated 13.12.2013, by providing due opportunity of hearing to the petitioner.

(iv). The continuation in the services of the petitioner shall be subject to the outcome of the proceedings that would be initiated and concluded against the petitioner in terms of the directions hereinabove.

(v). The authorities of the Tezpur University in terms of the directions passed hereinabove; shall forthwith allow the petitioner to resume her services in the manner as required hereinabove, without, however, disturbing the services of the Respondent No. 4 and it is only after the petitioner is permitted to resume her services, that appropriate proceedings in terms of the directions passed hereinabove, shall be so instituted against the petitioner.

(vi). Given the facts and circumstances as involved in the matter, on resumption of her services by the petitioner, she would not be entitled to any arrears of pay and allowances. However, the pay and allowances of the petitioner shall be notionally calculated from 22.03.2014, till the date

she is allowed to resume her services and basing on the notional calculation so made also including therein, the Revisions of Pay(RoP) that may have occasioned in the meanwhile, fix the pay of the petitioner in the post of Public Relation and Information Officer(P.R.I.O.) and/or any other equivalent post available or a supernumary post created for the purpose by the university and thereafter, her salaries shall be duly released in terms thereof, till the proceedings that is to be initiated against the petitioner, is so concluded and orders are passed thereon.

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

JUDGE

Comparing Assistant