

GAHC010008462018



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

Case No. : WP(C)/223/2018

WASIM MONSOOR ALI PARVIZ
S/O LT. MONSOOR ALI
R/O OLD BAPURAPARA, NEAR PAKU CINEMA HALL,
P.O. GOALPARA, DIST. GOALPARA,

VERSUS

THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE (A) DEPARTMENT, DISPUR, GUWAHATI-6

2:THE NATIONAL RURAL HEALTH MISSION

REP. BY ITS MISSION DIRECTOR

3:THE MISSION DIRECTOR

NATIONAL RURAL HEALTH MISSION

4:THE DEPUTY COMMISSIONER CUM CHAIRMAN
DISTRICT HEALTH SERVICE
BONGAIGAON.

5:THE SECRETARY

TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (A) DEPARTMENT
DISPUR
GUWAHATI-6

6:THE JOINT DIRECTOR

HEALTH SERVICES CUM MEMBER SECRETARY
DISTRICT HEALTH SOCIETY
BONGAIGAON

7:SUB DIVISIONAL MEDICAL AND HEALTH OFFICER

SRIJANGRAM PRIMARY HEALTH CENTRE
SRIJANGRAM BONGAIGAON

8:DISTRICT PROGRAMME MANAGER

NATIONAL HEALTH MISSION
BONGAIGAON

9:THE DISTRICT ACCOUNTS MANAGER

NATIONAL HEALTH MISSION
BONGAIGAON
ASSA

Advocate for the Petitioner : MR. U K NAIR, MR. R SINGHA,MS. N SHYAMAL

Advocate for the Respondent : SC, HEALTH, SC, NRHM,MR. S S ROY (GA, ASSAM)

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

Date : 13-11-2024

JUDGMENT & ORDER (CAV)

Heard Mr. R. Singha, learned counsel for the petitioner and Ms. A. Bora, learned Standing Counsel, National Health Mission appearing for the respondent nos. 2 to 9.

2. Brief facts of the case is that the petitioner was appointed as Accountant-cum-Assistant Block Programme Manager on contractual basis under the National Rural Health Mission (NRHM) and was posted at Goalpara. The petitioner was promoted to the cadre of Block Accounts Manager in the year 2011 and was transferred to Bongaigaon. During his posting at Bongaigaon the incentives paid to

ASHA workers was said to be in excess than what was actually required to be paid to them. The petitioner was therefore informed by his Superior Officers about the excess payment being credited to the account of the ASHA workers under Shrijangram, BPHC and accordingly, the petitioner immediately started to recover the excess amount. The petitioner was able to make substantial recovery of the excess amount paid to ASHA workers and the same was intimated to the Deputy Commissioner, Bongaigaon vide letter dated 29.11.2016 along with the details of the statements of accounts.

3. However, vide the impugned communication dated 04.01.2017 (Annexure-12) the petitioner was informed by the Joint Director of Health Services-cum-the Member Secretary, District Health Society, Bongaigaon that as an FIR had been lodged against him on 28.10.2016, his service as Block Accounts Manager, Shrijangram, BPHC was being temporarily discontinued. Further it was also stated that till final settlement of the complaint submitted, his salary w.e.f. November, 2016 will not be released. Thereafter, vide communication dated 02.11.2017, the same authority informed the petitioner that he has secured Grade-‘E’ as per the result of review of performance appraisal of DPMU staff for 2015-16 by the Mission Director, NHM, Assam and as such he was released from the District Health Society, Bongaigaon on 20.10.2017. Aggrieved, the petitioner is before this Court.

4. Mr. R. Singha, learned counsel for the petitioner submits that the reason why the service of the petitioner was discontinued temporarily was on account of an FIR said to have been lodged against him. However, as per the knowledge of the petitioner, no FIR has been registered against him and that the petitioner himself approached the police station concerned to find out as to whether any FIR was registered against him. However, as there was no police report submitted against the petitioner, a certificate was issued to him by the Officer Incharge, Abhayapuri police station in the district of Bongaigaon stating that upon consulting the available police station records, no criminal case was found to have been registered against him. The learned counsel therefore submits that there is no basis for discontinuing the services of the petitioner as was communicated to him on 04.01.2017.

5. The learned counsel further submits that the petitioner was said to have been graded ‘E’ as per the result of the review performance appraisal and therefore released from service on 20.10.2017. However, it is the stand of the respondents themselves that self appraisal was not submitted to District Health Society, Bongaigaon as there was an FIR against the petitioner. Further the performance appraisal of the petitioner was viewed in terms of overall gross negligence towards his duty in all aspects in the capacity of Block Accounts Manager. However, since there was no FIR registered against the petitioner and importantly in the absence of any self appraisal the respondent authorities could not

have given him the grading of 'E'. As such there being no justification for giving him such grade and for violation of principles of natural justice, the impugned communication dated 04.01.2017 (Annexure-12) and the impugned communication dated 02.11.2017 (Annexure-15) should be set aside and that the petitioner should be reinstated in service and the salaries that is due to him since November, 2016 to October, 2017 should be paid to him. The learned counsel in support of his submissions relies upon the following authorities :-

- i. ***Saleh Ahmed (Md.) v. State of Assam & Others***, reported in **2011 (5) GLT 661** and
- ii. ***Bongaigaon Refinery Petrochemicals Limited and Others v. Girish Chandra Sarma***, reported in **(2007) 7 SCC 206**.

6. Ms. A. Bora, learned Standing Counsel, NHM on the other hand by referring to the affidavit-in-opposition passed by the respondent no. 6 submits that the petitioner being a responsible officer and working as Block Accounts Manager ought to have ensured that no such excessive payment is made to ASHA Workers towards incentives. The performance of the petitioner when overall viewed, the authorities concerned found him to be grossly negligent towards his duty in all aspects and found him to be not fit to be retained in service. She submits that as per Clause No. 6 of the terms of recruitment, it is clearly provided that it is the job of Block Accounts Manager to assist the Medical Officer In-charge of BPHC in ensuring proper flow of fund and all financial matters and control of its expenditure. Therefore, the petitioner cannot deny his responsibility towards excess payment of incentives to ASHA Workers. As such the petitioner was clearly negligent of his responsibilities and as such his service was discontinued in terms of the conditions of appointment. She therefore submits that the writ petition has no merit and should be dismissed.

7. I have heard the submissions made by the learned counsels of the rival parties and I have perused the materials available on record.

8. As pointed out by the learned counsel for the petitioner, the reason why the service of the petitioner as Block Accounts Manager was temporarily discontinued vide communication dated 04.01.2017 was due to lodging of an FIR against him on 28.10.2016. The said FIR has been annexed in the affidavit-in-opposition filed by the respondent no. 6 at Annexure-C. A perusal of the same however does not indicate that a case has been registered against the petitioner. The petitioner has also annexed a certificate issued by the Officer Incharge of Anhayapuri Police Station dated 04.01.2018 which states that there is no criminal case found to have been registered against the petitioner. Therefore, the discontinuance of the service of the petitioner temporarily appears to be on the premise that some

criminal proceeding was likely to be initiated against the petitioner. However, no such criminal case has been registered. The impugned communication dated 02.11.2017 provides that the petitioner had been graded 'E' as per the result of review of performance appraisal of the DPMU staff for 2015-2016 by the Mission Director, NHM, Assam. However, from the stand taken by the respondent no. 6 in the counter-affidavit filed on 19.03.2019, it is stated at paragraph 12 of the said affidavit that the self appraisal was not submitted to the District Health Society, Bongaigaon as there was an FIR against the petitioner. Therefore, the grading of 'E' appears to have been given to the petitioner without his participation or without being called for an interview. The petitioner no doubt was a contract employee but his appointment/engagement along with other similarly situated persons was renewed or extended from time to time based on the assessment made on the performance appraisal and the details of which were apparently presented by the employees themselves. However, the petitioner as already noted hereinabove, on the basis of an FIR being filed against him, he was temporarily discontinued from his service and subsequently released from service. It may further be seen that from the letter dated 27.10.2016 written by the SDM & HO, Shrijangram, BPHC to the Director of Joint Services, Bongaigaon, the excess amount of payment of ASHA incentives under Shrijangram, Block PHE had occurred because of the documents of ASHA being forwarded by Block Accounts Manager of Shrijangram, BPHC, Sectoral MO, ABPM, ANM and ASHA Supervisors. It therefore appears that the petitioner as Block Accounts Manager alone could not have been singled out for the excess payment since there appears to be a series of process for preparing the incentives payable. The Apex Court in *Bongaigaon Refinery and Petrochemicals Limited and Others (supra)* in the given facts of this case held that if some irregularity was found, the same cannot be made the liability of an individual alone and such liability would have to be shared by all those responsibilities and who are part of the group or committee. In the present case as well, no material has been placed before this Court to show that all those found responsible by the excessive payment of the incentives had been proceeded against.

9. Thus upon due consideration of the case in its entirety, this Court finds merit in the writ petition and accordingly the impugned communication dated 04.01.2017 and 20.11.2017 are set aside.

10. The respondents are directed to reinstate the petitioner and to give him his arrear salaries starting from November, 2016 to 20.10.2017 i.e. the date on which he was released from service. The said exercise shall be carried out within a period of 6 weeks from the date of receipt of a certified copy of this order.

11. With the above observations and directions, the writ petition stands disposed of and allowed. No cost.

JUDGE

Comparing Assistant