



GAHC010014652019

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

Case No. : WP(C)/542/2019

SAGARIKA DEY

WIFE OF SRI DULAL KANTI MAZUMDAR, ASHRAM ROAD, WARD NO. 15,
PS AND DISTRICT- HAILAKANDI, PIN- 788151.

VERSUS

THE STATE OF ASSAM AND 2 ORS.

REP. BY THE SECRETARY TO THE JUDICIAL DEPARTMENT, GOVERNMENT
OF ASSAM, DISPUR, GUWAHATI- 781006.

2:THE CHIEF JUDICIAL MAGISTRATE

HAILAKANDI

AS DISCIPLINARY AUTHORITY OF DISCIPLINARY PROCEEDING NO. 3 OF
2014

HAILAKANDI.

3:THE MUNSIFF NO 1 CUM JUDICIAL MAGISTRATE IST CLASS

HAILAKANDI

AS ENQUIRY OFFICER OF DISCIPLINARY PROCEEDING NO. 3 OF 2014

HAILAKANDI

Advocate for the Petitioner : MR. K K DEY

Advocate for the Respondent : GA, ASSAM



**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 18-11-2022

Heard Mr. K.K. Dey, learned counsel for the petitioner and Mr. H. Sarma, learned counsel for the respondent No. 1, being the authority in the Judicial Department of the Government of Assam. Also heard Mr. T.J. Mahanta, learned senior counsel for the respondents No. 2 and 3, being the Chief Judicial Magistrate, Hailakandi and the Munsiff No. 1-cum-Judicial Magistrate 1st Class, Hailakandi, respectively.

2. The writ petitioner Sagarika Dey who is a Bench Assistant in the Court of Chief Judicial Magistrate, Hailakandi, was subjected to a disciplinary proceeding as per the show cause notice dated 25.09.2014 issued by the Chief Judicial Magistrate, Hailakandi. The disciplinary proceeding culminated in the order dated 27.11.2018 of the Chief Judicial Magistrate, Hailakandi, by which a punishment of withholding/stoppage of five increments without cumulative effect was imposed under Rule 7(ii) of the Assam Services (Discipline and Appeal) Rules, 1964. The said order of punishment is assailed in this writ petition.

3. A fundamental question has arisen as to whether the respondents No. 2 and 3, respectively being the Chief Judicial Magistrate, Hailakandi and the Munsiff No. 1-cum-Judicial Magistrate 1st Class, Hailakandi, can be arrayed as a respondent in the present proceeding in view of the provisions of Sections 2 and 3 of the Judges (Protection) Act, 1985 (for short 'the Act of 1985'). Section 2 of the Act of 1985 defines a Judge to mean not only every person who is officially

designated as a Judge, but also every person who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or who is one of a body of persons, which body of persons is empowered by law to give such a judgment as referred. Section 2 of the Act of 1985 is as extracted:

“2. Definition.—*In this Act, “Judge” means not only every person who is officially designated as a Judge, but also every person—*

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).”

4. Admittedly, the Chief Judicial Magistrate, Hailakandi and the Munsiff No. 1-cum-Judicial Magistrate 1st Class, Hailakandi would be a Judge within the meaning of Section 2 of the Act of 1985. Section 3 of the Act of 1985, inter alia, provides that notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. Section 3 of the Act of 1985 is as extracted:

“3. Additional protection to Judges.—*(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.”*

5. Reading Section 3 of the Act of 1985, we have noticed that the provisions itself begins with a non-obstante clause with the word ‘notwithstanding’

meaning thereby, that whatever may be the provisions in any other law, the provision of Section 3 of the Act of 1985 would prevail over any such other provisions of law. Section 3 of the Act of 1985 makes it explicit that any person who is a Judge as per the definition of Section 2 of the Act of 1985 will not be subjected to any civil or criminal proceeding in respect of any act in the discharge of his official or judicial duty or function. Section 3 clearly distinguishes between the judicial function and an official function of a Judge and as per the statutory provision, a Judge would not be subjected to any civil or criminal proceeding in respect of any discharge of both i.e. judicial function as well as official duty or function.

6. In the instant case, admittedly although the order may be passed in a disciplinary proceeding, which was passed by the Chief Judicial Magistrate, but it cannot be accepted that the said order was not passed by the Chief Judicial Magistrate in course of an official duty. From such point of view, we are unable to accept the array of respondents No. 2 and 3, respectively being the Chief Judicial Magistrate, Hailakandi and the Munsiff No. 1-cum-Judicial Magistrate 1st Class, Hailakandi.

7. Having held so, a further question would remain as to what would be the remedy for the petitioner to assail an order in a disciplinary proceeding, where the petitioner may be aggrieved. We have noticed that as per the Assam Chief Judicial Magistrates Establishment (Ministerial) Service Rules, 1987 (for short 'the Rules of 1987'), there is a provision for appeal in respect of any order that may have been passed by the Chief Judicial Magistrate in respect of his official function, and the appeal would be maintainable before the District Judge of the district concerned and that if the person concerned is further aggrieved by any order that may be passed by the District Judge, an appeal would be



maintainable before the Judicial Department of the Government of Assam. If the petitioner invokes the provisions of the Rules of 1987 and institutes an appeal, the appeal would be before the District Judge and in the event if for any reason the petitioner would further be aggrieved by any such order that the District Judge may pass, the remedy would be before the Judicial Department of the Government of Assam by way of an appeal. In such event, the necessity of arraying the persons who are protected under the Act of 1985 can also be appropriately avoided by the petitioner.

8. With the above observations, the writ petition stands closed. Liberty is granted to the petitioner to act as per law, as indicated above, if so advised.

JUDGE

Comparing Assistant