



GAHC010245152019

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

Case No. : WP(C)/7598/2019

SAMIR PAUL
S/O SUNIL PAUL, R/O WEST COLONY, DIMAPUR-797112, NAGALAND

VERSUS

THE BANK OF BARODA AND 4 ORS.
REP. BY THE GENERAL MANAGER, EASTERN ZONE OFFICE BARODA
TOWER, BLOCK NO. 38/2, BLOCK GN, (5TH, FLOOR), SECTOR-V, SALT
LAKE CITY, KOLKATA-700091

2:THE GENERAL MANAGER
EASTERN ZONE OFFICE BARODA TOWER
BLOCK NO. 38/2
BLOCK GN
(5TH
FLOOR)
SECTOR-V
SALT LAKE CITY
KOLKATA-700091

3:THE GENERAL MANAGER
NORTH EASTERN STATES
BANK OF BARODA
REGIONAL OFFICE
GUWAHATI

4:THE ASSISTANT GENERAL MANAGER
NORTH EASTERN STATES
BANK OF BARODA
REGIONAL OFFICE
GUWAHATI



5:THE SENIOR BRANCH MANAGER
BANK OF BORADA
DIMAPUR BRANCH
NYAMO LOTH ROAD (CHURCH ROAD)
DIMAPUR-797112
NAGALAN

Advocate for the Petitioner : MR. B SARMA

Advocate for the Respondent : MR H GUPTA (R1-R4)

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 16-11-2022

Heard Mr. B. Sarma, learned counsel for the petitioner and Mr. U.K. Nair, learned senior counsel for the respondents in the Bank of Baroda.

2. The petitioner Samir Paul was subjected to a disciplinary proceeding pursuant to a charge-sheet dated 26.05.2010. It is stated that the proceedings were carried forward against the petitioner on two earlier occasions, but it stood interfered by different orders of the Court. In the circumstance, by this writ petition the petitioner is aggrieved to the extent that he may be allowed to engage a lawyer of his choice as his defence representative in the enquiry proceeding. A further grievance is also raised seeking a direction that subsistence allowance @ 100% of the pay and allowances as provided in the regulations of the Bank be also provided to the petitioner.

3. In our view, the two causes of action sought to be espoused in this writ petition are separate causes of action which may require two separate judgments within a judgment for its adjudication. Consequently, we refrain from

taking the issue of seeking subsistence allowance @ 100% of the pay and allowances and give liberty to the petitioner to approach again, if so advised.

4. As regards the first issue raised seeking for a direction to engage a lawyer of his choice as a defence representative in the enquiry proceeding, Mr. B. Sarma, learned counsel for the petitioner refers to the Bipartite Settlement dated 10.04.2022 between Indian Banks' Association and AIBEA-NCBE-INBEF as regards the disciplinary action and procedure therefor. Clause 12(a)(i)(x) provides that a delinquent may be permitted to be defended by a representative of a registered trade union of Bank employees of which he is a member as on the date notified for the commencement of the enquiry. Clause 12(a)(i)(y) provides that where the delinquent is not a member of a trade union of the Bank employees on the given date, he may still be represented by a representative of a registered trade union of the employees of the Bank concerned where he is an employee. Clause 12(a)(ii) provides that the delinquent in the alternative may at the request of the union of the Bank employees be represented by a representative of the State federation or All India Organisation to which such union may be affiliated. Clause 12(a)(iii) further provides that the delinquent may be represented with the Bank's permission by a lawyer.

5. Mr. B. Sarma, learned counsel for the petitioner by relying upon the provisions of Clause 12(a)(iii) raises a contention that the petitioner herein has a legal right to be represented by a lawyer of his choice and as such, seeks for such direction.

6. Mr. U.K. Nair, learned senior counsel for the respondent Bank on the other hand, contends that Clause 12(a)(iii) would be applicable with a condition precedent that the request to be represented by a lawyer would only be with

the permission of the Bank. In the instant case, the respondent Bank is disagreeing to grant of such permission to the petitioner for the reasons that they may have.

7. Mr. U.K. Nair, learned senior counsel for the respondent Bank has also produced a communication dated 14.11.2022 from the Bank of Baroda Employees' Association that the union, of which the petitioner delinquent is a member, by recalling their earlier reply dated 26.10.2022 is ready to provide the petitioner with assistance in the departmental enquiry. The communication dated 14.11.2022 otherwise satisfies the requirement of Clause 12(a)(i)(x) of the Bipartite Settlement procedure.

8. But Mr. B. Sarma, learned counsel for the petitioner raises an apprehension that in the earlier process pursuant to the same disciplinary proceeding, certain employees of the Bank who are also members of the union of the Bank employees had deposed against the petitioner and therefore, the petitioner is unable to accept a representative from the union of the Bank employees to represent his case.

9. Without expressing any view on the authenticity and correctness of such submissions of Mr. B. Sarma, learned counsel for the petitioner, we have noticed that under Clause 12(a)(ii), there is also an alternative procedure that the delinquent at the request of the union of the bank employees may be represented by a representative of the State federation or All India Organisation to which such union will be affiliated.

10. Mr. B. Sarma, learned counsel for the petitioner also refers to a pronouncement of the Hon'ble Supreme Court in the case of *Chairman, State Bank of India & Anr. Vs. M.J. James*, reported in (2022) 2 SCC 301, wherein in paragraphs 24 and 26 it has been provided as extracted:

“24. The aforementioned two decisions ascribe to catena of decisions, including English case law on this subject, which accept that the right to be legally represented depends on how the rules govern such representation. Further, if the rules are silent, the party has no absolute right to be legally represented. However, the entitlement of a fair hearing is not to be dispensed with. What fairness requires would depend upon the nature of the investigation and the consequences it may have on the persons affected by it.

26. Thus, the right to be represented by a counsel or agent of one's choice is not an absolute right but one which can be controlled, restricted, or regulated by law, rules, or regulations. However, if the charge is of severe and complex nature, then the request to be represented through a counsel or agent should be considered. The above proposition flows from the entitlement of fair hearing, which is applicable in judicial as well as quasi-judicial decisions.”

11. In paragraph 24, the Hon'ble Supreme Court had provided that if the rules are silent, the party has no absolute right to be legally represented, but, however, the entitlement of a fair hearing is not to be dispensed with. Paragraph 26 provides that the right to be represented by a counsel or an agent of one's choice is not an absolute right but one which can be controlled, restricted or regulated by law, rules or regulations.

12. We have noticed that the proposition laid down by the Hon'ble Supreme Court in paragraphs 24 and 26 in the case of *M.J. James (Supra)* does not confer any absolute right on the delinquent to be represented by a legal representative in an enquiry proceeding, but such rights are circumscribed. However, what is provided by the Hon'ble Supreme Court is that the delinquent definitely has a right to be represented either by a lawyer or by an agent of his own choice. The right to be represented by a lawyer or a legal professional again have to be looked from the aspect that in a plethora of cases, the Hon'ble Supreme Court had laid down the proposition that if the departmental authorities are represented by a legal professional or a lawyer in a disciplinary enquiry correspondingly the delinquent would also have an equal right to be also represented by a legal professional or a lawyer.



13. Having taken note of the aforesaid proposition of law, we are of the view that the ends of justice would be met on the petitioner being provided with a representative of his own choice, preferably either from the State federation or the All India Organisation to which the union of the Bank employees may be affiliated. The petitioner may explore as to who would be an appropriate representative to represent his case and forward the same to the respondent Bank and upon it being done, the respondent Bank may appoint such person as the representative of the petitioner in the enquiry to be conducted and if logistical provisions are required to be provided for such representative in any manner, the Bank is required to do the needful. The petitioner may inform the Bank about the choice of his chosen representative within a period of one month. If the petitioner needs any information from the Bank as regards the choice of his representative, the Bank may cooperate with the petitioner. If the petitioner does not respond within one month, the disciplinary proceeding may continue further, as per law.

Writ petition stands disposed of as indicated above.

A copy of the communication dated 14.11.2022 is kept on record.

JUDGE

Comparing Assistant