



GAHC010082472023

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

Case No. : WP(C)/2162/2023

AMAL KUMAR LAHA
S/O- LATE ASHWINI KR. LAHA,
R/O- LINK ROAD (MAIN), HOUSE NO. 18,
P.S.- SILCHAR,
DIST.- CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
HEALTH AND FAMILY WELFARE (B) DEPARTMENT,
SACHIVALAYA, DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPARTMENT
SACHIVALAYA
DISPUR

GUWAHATI- 781006.

3:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPARTMENT
SACHIVALAYA
DISPUR

GUWAHATI- 781006.

4:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPARTMENT
DISPUR
GUWAHATI- 781006.

5:THE INQUIRY OFFICER CUM JOINT SECRETARY TO THE GOVT. OF



ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
DISPUR

GUWAHATI- 781006.

6:THE DIRECTOR
MEDICAL EDUCATION
ASSAM
KHANAPARA
SIX MILE

GUWAHATI- 781022.

7:THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
FAKHRUDDIN ALI AHMED MEDICAL COLLEGE AND HOSPITAL
JOTI GAON
BARPETA

PIN- 781301

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, HEALTH

Linked Case : WP(C)/8004/2019

AMAL KUMAR LAHA
S/O. LT. ASHWINI KR. LAHA
R/O. LINK ROAD (MAIN)
HOUSE NO.18
P.S. SILCHAR
DIST. CACHAR
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
DISPUR
GUWAHATI-781006.



2:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
DISPUR
GUWAHATI-781006.
3:THE ADDL. SECRETARY
TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
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GUWAHATI-781006.
4:THE DIRECTOR

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FAKHRUDDIN ALI AHMED MEDICAL COLLEGE AND HOSPITAL
JOTI GAON
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PIN-781301.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioners : Shri S. Borthakur, Advocate

Advocate for respondents : Shri D.P. Borah, SC, Health & Family Welfare Department

Date of hearing : 01.05.2024

Date of judgment : 01.05.2024

Both the writ petitions being connected and filed by the same petitioner, an analogous hearing have been conducted and the same are being disposed of by this common judgment and order.

2. The facts projected by the petitioner are that he was serving as an Anaesthetist in the Health Department and was appointed in the year 1983. In course of his service, he was transferred to the Fakhruddin Ali Ahmed Medical College & Hospital, Barpeta on 28.06.2013. At that time, the petitioner has also faced a Departmental Proceeding which however was closed vide an order dated 25.06.2015 with a penalty of 'Censure' being imposed. On 28.12.2017, the petitioner had submitted an application seeking Voluntary Retirement. It is contended that such application was under the provisions of F.R. 56(c). It is the specific case of the petitioner that there was no communication in response to the said application and accordingly by the deeming provision of the aforesaid provision of law, the application for Voluntary Retirement was held to be accepted after expiry of 3 (three) months. Long thereafter, on 27.02.2019, a Show Cause Notice was issued to the petitioner whereby he was directed to submit his statement of defence on the allegations of being unauthorizedly absent. At that stage, the first writ petition being WP(C)/8004/2019 was filed and initially, this Court vide order dated 13.11.2019 had made an observation that the Disciplinary Proceeding would be subject to the outcome of the writ petition. It appears that the Disciplinary Proceeding was accordingly gone ahead in which the petitioner had also participated and the same culminated in an order dated 10.03.2023 whereby the petitioner has been dismissed from service. The aforesaid order dated 10.03.2023 of Dismissal is the subject matter of challenge in the second writ petition being WP(C)/2162/2023.

3. I have heard Shri S. Borthakur, learned counsel for the petitioner. I have also heard Shri D.P. Borah, learned Standing Counsel, Health & Family Welfare Department who submits that affidavit-in-opposition has also been filed on 24.03.2021 in the first writ petition i.e., WP(C)/8004/2019.

4. Shri Borthakur, the learned counsel for the petitioner has submitted that F.R. 56 comes under Chapter IX dealing with Compulsory Retirement. Under F.R. 56 (c), a Government Servant is also given the option to give notice of not less than 3 (three) months in writing to retire from service and there are two alternative conditions attached. Firstly, such Government Servant is required to have attained the age of 50 years or has completed 25 years of service, whichever is earlier. The learned counsel submits that the petitioner fulfills both the requirements and therefore, he was eligible for submitting such an application. The learned counsel submits that the Department never responded to the aforesaid application and therefore, there would be a deemed acceptance of such offer to retire. In this connection, the learned counsel has relied upon the case of ***Dinesh Chandra Sangma vs. State of Assam and Ors.*** reported in ***(1977) 4 SCC 441***. In the said case, the Hon'ble Supreme Court was dealing with a member of the judicial service who, on fulfilling the conditions under F.R. 56 (c) had submitted for his Voluntary Retirement. It has been held that unless such application is rejected within the specified period of 3 (three) months, the same would be deemed to have accepted.

5. As regards the Show Cause Notice dated 27.02.2019, the learned counsel for the petitioner has clarified that the sole allegation is unauthorized absence

since the date of submission of the application for Voluntary Retirement. It is submitted that such action suffers from jurisdictional error as the employer employee relationship was severed on deemed acceptance of the application for Voluntary Retirement dated 28.12.2017 on expiry of the period of 3 (three) months. The learned counsel accordingly submits that the order of penalty of dismissal dated 10.03.2023 is to be declared *non-est* as it emanates from a proceeding which is without any jurisdiction.

6. The learned counsel for the petitioner has also relied upon a case of this Court in WP(C)/3838/2022 [**Dr. Prabhas Chandra Sarma Vs. State of Assam & Ors.**] which was disposed of on 02.05.2023. In the said case, this Court, by relying upon the case of **Dinesh Chandra Sangma** (Supra) had granted the relief to the petitioner whose case was similarly situated.

7. *Per contra*, Shri Borah, the learned Standing Counsel, Health & Family Welfare Department has submitted that there are cogent reasons for not accepting the Voluntary Retirement. By referring to the affidavit-in-opposition filed in WP(C)/8004/2019 on 24.03.2021, the learned Standing Counsel has submitted that the views of the Legal Remembrancer was taken whereafter, the Disciplinary Proceeding was initiated against the petitioner. The learned Standing Counsel has also submitted that there are dearth of Govt. doctors and therefore it was against the interest of public service that such application was to be accepted. In this connection, the learned counsel for the Department has relied upon the case of **State of Uttar Pradesh & Ors. Vs. Achal Singh** reported in **(2018) 17 SCC 578**. It is submitted that in the aforesaid case, a distinction was carved out from the earlier views of the Court in the case of

Dinesh Chandra Sangma (supra).

8. The rival contentions have been duly considered and the materials placed before this Court have been carefully examined.

9. The issue which requires determination can be related to the application submitted by the petitioner for Voluntary Retirement. It is admitted that such application was submitted on 28.12.2017 and therefore under the provisions of F.R. 56 (c), the prescription of 3 (three) months would be over on or about 28.03.2018.

10. It is also not disputed that prior to the Show Cause Notice dated 27.02.2019, there was no communication whatsoever regarding the acceptance or rejection of the application for Voluntary Retirement. The Show Cause Notice is as per an opinion of the Legal Remembrancer which has been mentioned in paragraph 6 of the affidavit-in-opposition filed on 24.03.2021. For ready reference, the aforesaid paragraph along with the opinion is extracted herein below.

“6. That regarding the VRS application submitted by the Petitioner, it is stated that the Petitioner submitted VRS application vide letter dated 28.12.2017. After receipt of the application submitted by the Petitioner, the Health & Family Welfare Department sought the advice of Legal Remembrancer, Assam in the matter of acceptance of voluntary resignation of Dr. Amal Kr. Laha, Associate Professor, Department of Anaesthesiology, Fakhruddin Ali Ahmed Medical College & Hospital (i.e. the Petitioner). The Legal Remembrancer, Assam had advised as follows:-

“Health & FW (B) Deptt. U/O

Endorsement at prepage.

Any application for VRS is to be considered on merit and either accepted or rejected, keeping in view of the public interest as well. Department is not bound to grant Voluntary Retirement to anyone.

Department may commence DP against the person concerned for unauthorized absence from duty.

Sd/-

(02/01/2019)

Legal Remembrancer, Assam”

11. This Court had noticed that apart from the admitted position that there was no communication towards rejection of the application for Voluntary Retirement, the opinion of the learned LR, Assam is itself dated 02.01.2019 which is much beyond the prescribed period given in F.R. 56 (c). Without even going to the merits / legality of such opinion, this Court is of the considered view that the ratio laid down by the Hon’ble Supreme Court in the case of **Dinesh Chandra Sangma** (supra) would be squarely applicable. This Court finds force in the contention advanced on behalf of the petitioner that the subsequent initiation of the Disciplinary Proceeding vide Show Cause Notice dated 27.02.2019 is *non-est* in law as the same is without jurisdiction. This Court is of the opinion that there is no employer employee relationship existing after the expiry of 3 (three) months from the date of submission of the application of the VR which was on 28.12.2017. Subsequently, the order of dismissal of the petitioner from service on 10.03.2023 is also declared to be *non-est* in law as it is an outcome of a proceeding which was initiated without any jurisdiction.

12. As regards the case law relied upon by the learned Standing Counsel of the Department, this Court has noticed that the facts are distinguishable from the facts which was considered by the Hon'ble Supreme Court in the case of ***Dinesh Chandra Sangma*** (supra). Further, the ratio laid down in the case of ***Dinesh Chandra Sangma*** (supra) is squarely applicable to the facts and circumstances of the case.

13. This Court has also considered the submission of Shri Borah, the learned Standing Counsel that the rejection is based on cogent reasons as there was dearth of Govt. doctors. Though factually the said submission may be correct, what was required was passing and communicating an order of rejection to the petitioner within the prescribed period of 3 (three) months as envisaged in F.R 56 (c) which admittedly was not done.

14. Accordingly, the initiation of the Disciplinary Proceeding vide the Show Cause Notice dated 27.02.2019 and the order of dismissal from service dated 10.03.2023 are set aside. The Department is directed to treat the petitioner to have retired from service from or about 28.03.2018 and accordingly take steps for finalizing all the benefits which have accrued to the petitioner on such retirement.

15. Both the writ petitions are allowed with the directions given above.

JUDGE

Comparing Assistant