



GAHC010078722020

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

Case No. : WP(C)/2458/2020

SASHI BHUSAN BARMAN
S/O- LATE MUKTA RAM BARMAN, VILL- KAHILIPARA, GUWAHATI, P.S
DISPUR, ADAGODOWN, P.O- KAHILIPARA, DIST- KAMRUP(M), PIN- 781019

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
EDUCATION SECONDARY DEPTT, ASSAM, DISPUR, GUWAHATI- 781006

2:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA
GUWAHATI- 78101

Advocate for the Petitioner : MR. A DEKA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 30-07-2021

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Deka, learned counsel for the petitioner and Mr. SMT Chisti, learned counsel for the respondents No. 1 and 2 being the authorities in the Secondary Education Department of the Government of Assam.



2. The petitioner is serving as a Progress Assistant in the Selection Branch of the Office of the Director of Secondary Education, Assam. By an order dated 05.12.2017, the petitioner was placed under suspension on the ground that several complaints were received from the teachers that while the process for promotion to the posts of Headmaster was being undertaken, the petitioner by virtue of the office he was holding, had involved in some anomalies in the selection. A preliminary enquiry was conducted and the enquiry report also revealed that some grave anomalies were committed by the petitioner during the process of selection for the posts of Headmaster/Superintendent and Assistant Headmaster/Assistants Superintendent.

3. In the process, a show cause notice dated 16.05.2018 under Rule-9 of the Assam Services (Discipline and Appeal) Rules, 1964 (in short Rules of 1964) read with Article 311 of the Constitution of India was served on the petitioner asking him to show cause as to why any of the penalties prescribed under Clauses (i) to (iii) of Rule 7 of the Rules of 1964 should not be imposed upon him.

4. The charges contained in the show cause notice dated 16.05.2018 under Rule 9 of the Rules of 1964 is extracted as below:-

1. *That while you were working in the SSB Branch and you were custodian of all records pertaining to interview/ selection/ recommendation and approval for appointment for the post of Headmaster/ Superintendent and Assistant Headmaster/ Assistant Superintendent, various representation were received from several teachers who had appeared for selection before the State Selection Board alleging about some anomalies in the process of selection. After preliminary enquiry conducted by a team of Senior officers it has come to light that the anomalies alleged to have been occurred during the process for selection for the post of Headmaster/ Superintendent and Assistant Headmaster/ Assistant Superintendent.*

It is been suspected for the prima facie that anomalies appears to have been done by you, since you were the custodian of all records.

2. *That while you were Dealing Assistant in the SSB Branch you did not put up the relevant court orders etc. in connection with the Hon'ble High Court order dated 09-09-2016 passed in WP(C) No. 5388/2016 wherein there was a specific direction from the Hon'ble High Court not to filled up the post of Headmaster of Dekhania Ratanpur Navajyoti High School, Dist- Nalbari. Despite of the Court orders the Director of Secondary Education, Assam had to issue promotion order in favor of Sri Banamali Ch. Kalita. Had the matter been brought to the concerned authorities in due time, the promotion order could not have been issued. The matter leads to filing of contempt cases. This shows gross negligence of duty on your part.*

5. The statements of allegation accompanying the show cause notice dated 16.05.2018 under Rule 9 of Rules of 1964 is also extracted as below:-

1. *That while you were working in the SSB Branch and you were custodian of all records pertaining to interview/ selection/ recommendation and approval for appointment for the post of Headmaster/ Superintendent and Assistant Headmaster/ Assistant Superintendent, various representation were received from several teachers who had appeared for selection before the State Selection Board alleging about some anomalies in the process of selection. After preliminary enquiry conducted by a team of Senior officers it has come to light that the anomalies alleged to have been occurred during the process for selection for the post of Headmaster/ Superintendent and Assistant Headmaster/ Assistant Superintendent.*

It is been suspected for the prima facie that anomalies appears to have been done by you, since you were the custodian of all records.

2. *That while you were Dealing Assistant in the SSB Branch you did not put up the relevant court orders etc. in connection with the Hon'ble High Court order dated 09-09-2016 passed in WP(C) No. 5388/2016 wherein there was a specific direction from the Hon'ble High Court not to filled up the post of Headmaster of Dekhania Ratanpur Navajyoti High School, Dist- Nalbari. Despite of the Court orders the Director of Secondary Education, Assam had to issue promotion order in favor of Sri Banamali Ch. Kalita. Had the matter been brought to the concerned authorities in due time, the promotion*



order could not have been issued. The matter leads to filing of contempt cases. This shows gross negligence of duty on your part.

6. The petitioner submitted his reply dated 21.07.2018 against the show cause notice dated 16.05.2018. In the meantime, by another order dated 07.06.2019 of the Director of Secondary Education, Assam, the petitioner was reinstated in his service by withdrawing the order of suspension.

7. It is stated by the petitioner that presently he is suffering from the disease Cancer and he is undergoing a treatment for advance stage of the disease in the Dr. B Barua Cancer Hospital at Guwahati and his medical papers are produced before the Court, which has also been perused by Mr. SMT Chisti, learned counsel for the Secondary Education Department.

8. The present physical condition of the petitioner is such that it would not be possible for him to physically appear before the disciplinary authority for further continuing the proceeding that was initiated against him. In the aforesaid circumstance, a submission is made that the disciplinary proceeding instituted against the petitioner be interfered, so that in his present physical condition, the petitioner is not required to come over and attend the disciplinary proceeding against him.

9. Be that as it may, we have taken a look at the charges and the statements of allegation against the petitioner as contained in the show cause notice dated 16.05.2018. A bare perusal of the charges drawn against the petitioner would reveal that various representations were received from several teachers, who had appeared before the State Selection Board, wherein allegations were raised about some anomalies in the process of selection. A reading of the charges as well as the statements of allegation reveals that the charges and allegations against the petitioner are that he was involved in "*some anomalies in the*

process of selection." What was the actual act done by the petitioner, which resulted in the authorities arriving at the satisfaction that he had committed some anomalies is absent in the charges as well as in the statements of allegation contained in the show cause notice. The charges and the statements of allegation also refer to an order dated 09.09.2016 of this Court in WP(C) No.5388/2016, which speaks of a specific direction from the Court not to fill up the post of Headmaster of Dekhania Ratanpur Navajyoti High School of Nalbari district, but in spite of the Court order, the Director of Secondary Education, Assam had issued the order of promotion in favour of one Bonomali Ch Kalita and the said act of the Director had lead to the filing of a contempt case. But nothing is indicated in the charges or in the statements of allegation as to how the same was relatable to the petitioner so as to sustain a charge or allegation against him. In the absence of any complicity of the petitioner in the form of a specific allegation in the charges or in the statements of allegation, we cannot draw any inference of any misconduct being raised against the petitioner. The charges as well as the statements of allegation do not contain any other or further charges/allegations against the petitioner.

10. On examining the nature and contents of the charges and the statements of allegation against the petitioner, read with the provisions of Rule 9(2) of Rules of 1964, we find that the charges as well as the statement of allegation do not satisfy the requirement of Rule 9(2) of the Rules of 1964. Rule 9(2) of the Rules of 1964 is extracted as below:-

“The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and

he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement of his defence and also to state whether he desires to be heard in person."

11. Rule 9(2) of the Rules of 1964 requires a Disciplinary Authority to frame definite charges on the basis of the allegations on which the enquiry is proposed to be held. Merely stating that there is an allegation of "some anomalies" against the petitioner in the selection process can definitely not be understood to be the framing of a definite charge against the petitioner.

12. The word '*definite*' is defined in the Oxford Dictionary of English to mean something clearly stated or decided and not vague or doubtful and which should be unambiguous. In *P.D Dinakaran (2) –vs- Judges Inquiry Committee and another*, reported in (2011) 8 SCC 474, in paragraph 33, the Supreme Court while dealing with the expression '*definite charges*' was of the view that the expression gives a clear indication that the authority framing the charge must apply his mind to the allegation contained and the accompanying materials for the purpose must lead to the forming of an opinion that the case is made out for framing the charge.

13. In the instant case, when we take note of the show cause notice containing the charges and the statements of allegation, what we notice is that the only satisfaction arrived at by the disciplinary authority, on the basis of some representation submitted by some teachers is that there is an allegation about '*some anomalies*' against the petitioner in the selection process. No satisfaction had been arrived nor any material has been referred or indicated as to what specific act on the part of the petitioner resulted in '*some anomalies*' in the selection process, or as a matter of fact what were the anomalies.



14. From the said point of view, we are to conclude that the requirement of framing definite charges as provided under Rule 9(2) of the Rules of 1964 was not satisfied while framing the charges as well as in the statements of allegation in the show cause notice dated 16.05.2018 against the petitioner which was made under Rule 9 of the Rules of 1964.

15. Considering the aspect as regards the contents of the show cause notice dated 16.05.2018, we are of the view that the show cause notice dated 16.05.2018 under Rule 9 of the Rules of 1964 would not be sustainable in law and it may lead to a futile exercise to further continue with the disciplinary proceeding against the petitioner. It would be more so to require the petitioner to now come forward and attend the disciplinary proceeding considering the present condition of his health.

16. Considering all the aspects of the matter, we interfere with the show cause notice dated 16.05.2018 by which the proceeding was drawn against the petitioner under Rule 9 of the Rules of 1964 and accordingly the disciplinary proceeding is set aside.

17. In terms of the above, the writ petition stands allowed.

JUDGE

Comparing Assistant