



GAHC010201722021

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

Case No. : WP(C)/308/2022

SURESH RAJBHAR
S/O. JAGANNATH RAJBHAR, R/O. RAILWAY QUARTER NO.234/D, NORTH
EAST WEST COLONY, NEW BONGAIGAON, P.S. BONGAIGAON, PIN-783381,
DIST. BONAGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FINANCE DEPARTMENT, ASSAM SACHIVALAYA, DISPUR
GUWAHATI 781006

2:THE LEGAL REMEMBRANCE AND SECRETARY TO THE GOVT. OF
ASSAM

JUDICIAL DEPARTMENT
ASSAM SACHIVALAYA
DISPUR GUWAHATI 781006

3:THE DISTRICT AND SESSION JUDGE

CHIRANG
KAJALGAON.

4:THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI 78100

Advocate for the Petitioner : MR. D K KOTOKY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : 24.08.2023

Date of judgment : 24.08.2023

JUDGMENT & ORDER

Heard Shri DK Kotoky, learned counsel for the petitioner. Also heard Shri TJ Mahanta, learned Senior Counsel for the Gauhati High Court; Shri D. Nath, learned Senior Government Advocate, Assam for the Judicial Department and Shri R. Borpujari, learned Standing Counsel for the Finance Department.

2. Considering the issue involved which relates to non-payment of salaries to the petitioner, who is a Sweeper in the establishment of the District & Sessions Judge, Chirang since the date of his appointment in the year 2016 and also considering that the contesting respondents have filed their affidavit-in-opposition, the instant writ petition is taken up for disposal at the admission stage. However, before going to the issue directly, it would be convenient to narrate the facts of the case briefly.

3. The establishment of the District & Sessions Judge in the district of Chirang was created in the year 2007. Vide the communication issued by the Judicial Department, Government of Assam dated 31.03.2007, the sanction of the Governor of Assam for creation of 158 number of posts in the newly created districts including that of Chirang was notified in which there were three numbers of posts of Sweeper, both in the establishment of the District & Sessions Judge as well as in the establishment of the Chief Judicial Magistrate. The Committee for Centralized Recruitment of Officers and Staffs of Subordinate Judiciary and all Benches of the High Court had taken a decision which was conveyed to all District Judges including that of the Chirang district, vide communication dated 05.10.2012 for filling up vacancies including the post of Sweeper. Pursuant thereto, the District & Sessions Judge, Chirang had initiated the

recruitment process, vide a communication dated 12.08.2015 issued to the DIPR, Assam for publication of the advertisement in the Newspaper. The advertisement also included one post of Sweeper in the same pay-scales as a Peon (Office) and Chowkidar. The petitioner had participated in the said selection process for the post of Sweeper. In the meantime, the Judicial Department, Government of Assam had issued a communication dated 04.11.2015 conveying the sanction of the Governor of Assam to the permanent retention of 158 number of posts which includes three number of posts of Sweeper in each of the Courts of Udalguri, Chirang and Baksa. The said notification had also referred to the two Office Memoranda of the Finance Department dated 03.07.2015 and 04.09.2015.

4. With regard to the aforesaid recruitment process, the petitioner was issued a call letter dated 02.11.2015 to appear for the Viva-Voce, which was scheduled on 09.12.2015. In the said selection process, the petitioner was selected for the post of Sweeper and consequently, was duly appointed vide appointment letter dated 15.07.2016. The aforesaid appointment letter had clearly reflected that such appointment was against a post sanctioned by the Government on 31.03.2007. It is the case of the petitioner that pursuant to such appointment order, he has joined the service as a Sweeper and has been discharging his duties diligently. However, the grievance of the petitioner is non receipt of the monthly salaries.

5. Shri Kotoky, learned counsel for the petitioner has submitted that it appears that the salaries have not been paid in view of an Office Memorandum dated 30.03.2012, as per which, the sweeping and cleaning services were required to be outsourced. He submits that the said Office Memorandum issued by the Finance Department would not be applicable in the instant case as the post of Sweeper in which the petitioner was appointed at Chirang has been permanently retained and till date, no decision has been taken to outsource the work of Sweeper in the Court. The learned counsel for the petitioner has also submitted that under Article 235 of the Constitution of India, the High Court exercises control over service related matters not only on Judicial

Officers but also of Ministerial Staffs and Subordinate Courts Staff and therefore, any action by the Administration would amount to intrusion with the powers of the High Court.

6. In this regard, Shri Kotoky, learned counsel for the petitioner has relied upon a decision passed by the Hon'ble Division Bench of this Court reported in **2007 3 GLR 243 [Bipul Kumar Vs. State of Assam and Ors.]**.

7. *Per contra*, Shri Nath, learned Senior Government Advocate, Assam representing the Judicial Department has submitted that the Office Memorandum dated 30.03.2012 of the Finance Department is presently holding the field and in paragraph 8 thereof, it has been specifically held that the work of Sweeper is required to be outsourced and therefore, the present recruitment process could not have been held. He further submits that though a subsequent Office Memorandum was issued on 06.06.2015 exempting the High Court and Subordinate Court from certain conditions, such exemption is only with regard to Clause – 3 and Clause – 7 and has not diluted the requirement of Clause – 8. He accordingly submits that the petitioner is not entitled to any relief. He also submits that the recruitment exercise as such, could not have been initiated after publication of the Office Memorandum dated 30.03.2012 and therefore, the post of Sweeper could not have been filled up. He has also referred to a communication dated 25.01.2017 issued by the Judicial Department whereby clarification has been sought for from the learned District & Sessions Judge, Chirang with regard to the mode of appointment of the petitioner.

8. Shri Borpujari, learned Standing Counsel, Finance Department has submitted that though there is no doubt that permanent retention of the post was made vide communication dated 04.11.2015, in view of the embargo made by the Office Memorandum dated 30.03.2012, the present recruitment process could not have been made. He submits that in the retention order dated 04.11.2015 though there is reference to two OMs dated 03.07.2015 and 04.09.2015, those OMs are not relevant

and the most relevant Office Memorandum dated 30.03.2012 has not been affected. He submits that to invoke the doctrine of promissory estoppels, there has to be a clear promise and in this case there is no such promise by the Finance Department.

9. Reliance has been made by Shri Borpujari, learned Standing Counsel, Finance Department to an order dated 27.05.2011 passed by this Court in WP(C)/3087/2010. In the said case, it is submitted that in a situation where there were difference of opinion of two Departments, the matter was remanded to the Chief Secretary of the State for resolution of the dispute.

10. Shri Borpujari, learned Standing Counsel has also referred to the Assam FRBM Act and submits that creation of new post without the sanction of the SIU is not permitted.

11. Shri Mahanta, learned Senior Counsel for the High Court has however not supported the defence of the Finance Department as well as the Judicial Department. He submits that the petitioner was inducted in the service of a Sweeper by a validly conducted recruitment process. He contends that firstly, the post in question which was created in the year 2007 has been permanently retained which was conveyed vide communication dated 04.11.2015. He submits that in view of such retention, the scope of outsourcing the job of Sweeper in that district could not have arisen. The learned Senior Counsel further submits that the Office Memorandum dated 30.03.2012 would have no application in those districts where the post of Sweeper has been permanently retained and he additionally submits that as no steps been taken till now for outsourcing the job of Sweeper in that district, the claim made by the petitioner appears to be reasonable.

12. This Court has duly considered the rival submissions made by the learned counsel for the parties. The issue involved appears to have arisen from the Office Memorandum dated 30.03.2012. Whereas the petitioner has contended that going ahead with the recruitment in spite of such Office Memorandum is clearly indicative of

the fact that the Office Memorandum was not applicable, the version of the Judicial Department as well as the Finance Department is that the recruitment process would not have been gone ahead so far as the post of Sweeper is concerned in view of the clear policy decision notifying that the post of Sweeper was to be outsourced.

13. To resolve the controversy, one has to see the background and the facts and circumstances before such recruitment process was initiated vide the advertisement issued by the learned District & Sessions Judge, Chirang through the DIPR. The advertisement has been done keeping in view the direction of the Committee for Centralized Recruitment of Officers and Staffs of the Gauhati High Court and Subordinate Court and also the fact that the post which was created as communicated vide letter dated 31.03.2007 was permanently retained as communicated vide letter dated 04.11.2015. The sanctioned of the Governor of Assam to such permanent retention clearly mentions about the post of Sweeper involved in the present recruitment process and such permanent retention has been done despite existence of the Office Memorandum dated 30.03.2012. The said communication was also marked to the Finance Department and was issued by none other than the Judicial Department itself. The matter would have been wholly different if in spite of such retention, the work of Sweeper was outsourced which however was not done and rather in view of such permanent retention, a recruitment process was duly initiated in which the petitioner was duly selected and accordingly appointed vide the appointment order dated 15.07.2016. Even the said appointment letter mentioned that the post was sanctioned by the Government on 31.03.2007 and as observed above, such sanction was followed by a permanent retention vide communication dated 04.11.2015. Though Shri Borpujari, learned Standing Counsel for the Finance Department has tried to argue that the permanent retention of the post has mentioned two OMs of the Finance Department dated 03.07.2015 and 04.09.2015 which are not connected with the OM dated 30.03.2012 with regard to the aspect of outsourcing, such argument may not be relevant in view of the fact that in spite of the

said Office Memorandum dated 30.03.2012, the letter conveying permanent retention clearly mentioned the post of Sweeper which is the post in which the petitioner has been duly appointed. The matter would also have been different if there was any fault in the recruitment procedure which does not appear at all and rather the recruitment process is preceded by the procedure prescribed in law whereby the advertisement was made through the DIPR and after duly conducted selection, the petitioner has been appointed. The learned District & Sessions Judge has also supported the validity of the appointment.

14. From the aforesaid facts and circumstances, it transpires that while the recruitment of the petitioner to the post of Sweeper was done on the strength of creation of the post in the year 2007 and its permanent retention vide communication dated 04.11.2015, the salaries have been withheld only by taking recourse to the Office Memorandum dated 30.03.2012. This Court has also been apprised that till date the post of Sweeper has not been outsourced in the concerned establishment of the District Judge, Chirang and is still being performed by the petitioner.

15. It is a settled law that two wings of the Government cannot have inconsistent stand. In this connection, one may gainfully refer to the decision of the Hon'ble Supreme Court in the case of ***M/s Vadilal Chemicals Ltd. Vs. State of Andhra Pradesh*** reported in **(2005) 6 SCC 292** wherein it has been laid down as follows:

“23. ... The State, which is represented by the Departments, can only speak with one voice. ...”

16. In the instant case, the recruitment process was initiated pursuant to the communication of permanent retention dated 04.11.2015 issued by the Judicial Department which was also intimated to the Finance Department. Till now, no steps have been taken to implement the policy decision regarding the job of Sweeper as notified vide the Office Memorandum dated 30.03.2012 in the concerned



establishment and unless there is a definite step to implement the said part of the Office Memorandum dated 30.03.2012 in the concerned establishment, the salaries of the petitioner in the scale notified cannot be denied to him. Such observation of this Court is also fortified by the fact that till date, there is no step said to be taken by the Finance Department or the Administrative Department to cancel the permanent retention of the post of Sweeper in the concerned establishment. However, without even going into that aspect of the matter, the present action of denying the salaries to the petitioner whose job is that of a Sweeper is held to be totally unjustified and wholly unfair. A Court / Establishment or for that matter any Establishment cannot run without the services of the Sweeper and without taking that aspect into consideration, a wholly insensitive approach has been taken by the authorities which this Court deprecates.

17. In view of the above, this writ petition accordingly stands allowed by directing both the Administrative (Judicial) and the Finance Department to take immediate steps for release of the salaries, both arrears and current to the petitioner. Since the petitioner is deprived from his salaries for the last 7 years, it is directed that the aforesaid direction for release of the salaries as well as arrears is to be complied with immediately and within an outer limit of 45(forty five) days from today.

18. The writ petition is accordingly allowed.

19. No order, as to cost.

JUDGE

Comparing Assistant