



GAHC010224742021

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

Case No. : WP(C)/7358/2021

RAMANI DAS
S/O. SRI ATUL CH. DAS, VILL. PASCHIM RIHABARI, P.O. BAGHMARA
BAZAR, P.S. SIMLA, DIST. BAKSA, ASSAM-781328.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-06.

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-06.

3:THE L.R. CUM SECRETARY
TO THE GOVT. OF ASSAM
JUDICIAL DEPTT.
DISPUR
GUWAHATI-06.

4:THE GAUHATI HIGH COURT

REP. BY THE REGISTRAR (ADMINISTRATION)
GAUHATI HIGH COURT
GUWAHATI-01.

5:THE CHIEF JUDICIAL MAGISTRATE

ABKSA
MUSHALPUR
DIST. BAKSA
ASSAM-781372.



6:THE ACCOUNTANT GENERAL (A AND E)

BELTOLA
MAIDAMGAON
GUWAHATI-29

Advocate for the Petitioner : MR. R MAZUMDAR
Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/1488/2023

RAMANI DAS
S/O- ATUL CH. DAS

VILL- PASCHIM RIHABARI

P.O.- BAGHMARA BAZAR
P.S.- SIMLA

DIST- BAKSA
ASSAM
PIN- 781328.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM

DISPUR
GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT

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GUWAHATI- 6.

3:THE L.R.-CUM- SECRETARY TO THE GOVT. OF ASSAM
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4:THE GAUHATI HIGH COURT
REPRESENTED BY THE REGISTRAR (ADMINISTRATION)

GAUHATI HIGH COURT



GUWAHATI-1.
5:THE CHIEF JUDICIAL MAGISTRATE
BAKSA
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DIST.- BAKSA

ASSAM- 781372.
6:THE ACCOUNTANT GENERAL (A AND E)

BELTOLA
MAIDAMGAON
GUWAHATI- 29.

Advocate for : MR. R MAZUMDAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri R. Mazumdar

Advocate for respondents : Shri HK Das, Adv.- GHC
Shri K. Gogoi, Addl. Sr. GA
Shri R. Borpujari, SC-Finance
Shri SK Medhi & Shri R. Dhar – SC-AG, Assam

Date of hearing : 24.11.2023 & 29.11.2023

Date of judgment : 29.11.2023

JUDGMENT & ORDER

Heard Shri R. Mazumdar, learned counsel for the petitioner. Also heard Shri K.



Gogoi, learned Additional Senior Government Advocate, Assam for the Judicial Department; Shri HK Das, learned Standing Counsel for the Gauhati High Court; Shri R. Dhar, learned counsel and Ms. S. Barik, learned counsel on behalf of Shri SK Medhi, learned Standing Counsel, AG, Assam and Shri R. Borpujari, learned Standing Counsel for the Finance Department.

2. Considering the issues involved which relate to non-payment of salaries to the petitioner as well as his "temporary release" from service as a Sweeper in the establishment of the Chief Judicial Magistrate, Baksa and also considering that the contesting respondents have filed their affidavit-in-opposition, the writ petitions are taken up for disposal at the admission stage. However, before going to the issues directly, it would be convenient to narrate the facts involved briefly.

3. The establishment of the Chief Judicial Magistrate, Baksa 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 Baksa was notified in which there was one post of Sweeper in the establishment of the Chief Judicial Magistrate, Baksa. The said notification stated that those were issued in terms of two Office Memoranda of the Finance Department dated 03.07.2015 and 04.09.2015. 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. Accordingly, a recruitment process was initiated in which the petitioner had participated for the post of Sweeper and the petitioner was issued a call letter dated 01.12.2018 to appear for the Viva-Voce, which was scheduled on 05.01.2019. In the said selection process, the petitioner was selected for the post of Sweeper which was notified vide order dated 26.03.2019. Consequently, the petitioner was duly appointed vide appointment letter dated 27.03.2019. It is the case of the petitioner that pursuant to such appointment order, he has joined the service on 01.04.2019 as a Sweeper and has been discharging his duties diligently. However, the initial grievance of the petitioner is non receipt of the monthly salaries from September, 2021.

5. The petitioner accordingly had approached this Court by filing the first writ petition being WP(C)/7358/2021 for a direction for release of the arrear and current salaries from September, 2021. However, on 13.09.2022, an order was issued by the learned CJM, Baksa temporarily releasing the petitioner from service. Accordingly, the petitioner has filed the second writ petition being WP(C)/1488/2023.

6. Shri Mazumdar, 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 Baksa has been permanently retained and till date, no decision has been taken to outsource the work of Sweeper in the Court. It is 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.

7. *Per contra*, Shri K. Gogoi, learned Additional 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. It is also submitted 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.

8. The learned counsel for the respondents further submit 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. It is submitted 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.

9. Reliance has been made by learned counsel for the respondents 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 HK Das, learned 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 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.

11. 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 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.

12. 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 CJM, Baksa. The advertisement has been



done keeping in view 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 sanction 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 27.03.2019. Though it was argued on behalf of the Department 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 and after duly conducted selection, the petitioner has been appointed.

13. 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.

14. 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. ...”

15. 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.

16. This Court has also earlier dealt with a similar case pertaining to stoppage of salaries to a Sweeper in the establishment of the District & Sessions Judge, Chirang in WP(C)/308/2022 which was allowed vide order dated 24.08.2023.

17. Since, this Court has already formed an opinion regarding entitlement of the salaries, the discontinuation of the petitioner from service vide order dated 13.09.2022 also requires to be interfered with.

18. In view of the above, both these writ petitions accordingly stand allowed by directing both the Administrative (Judicial) and the Finance Department to take immediate steps for release of the salaries due to the petitioner for the period he had rendered service. Further, the order dated 13.09.2022 of temporary release of the petitioner from service is set aside and consequently, the petitioner is directed to be reinstated forthwith. The due salaries are to be released immediately and within an outer limit of 45(forty five) days from today. It is however made clear that such salaries would only be for the period when the petitioner was in service.

19. These writ petitions are accordingly allowed.

20. No order, as to cost.

JUDGE

Comparing Assistant