



GAHC010029302022

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

Case No. : WP(C)/1105/2022

MRIGEN HALOI
S/O- SHRI LAKSHMI HALOI, R/O- VILL. AND P.O. MUGKUCHI, DIST.-
NALBARI, ASSAM, PIN- 781334.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, AGRICULTURE DEPARTMENT, DISPUR, GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
AGRICULTURE DEPARTMENT AND APC
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
AGRICULTURE DEPARTMENT
DISPUR
GUWAHATI-781006.

4:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
AGRICULTURE DEPARTMENT
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. K N CHOUDHURY
Advocate for the Respondent : SC, AGRI. DEPARTMENT

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

JUDGMENT & ORDER (CAV)



Date : 22-09-2023

Heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. J. Patowary, learned counsel for the writ petitioner. Also heard Mr. Nalin Kohli, learned Addl. Advocate General, Assam appearing for the respondents.

2. By filing this writ petition, the petitioner has challenged the order dated 31-12-2021 issued by the respondent authority discharging him from service. The writ petitioner has also called into question the legality and validity of the impugned order dated 31-12-2021 on the ground that the order is stigmatic and punitive in nature. Notwithstanding the same the order of discharge has been issued without following the due procedure prescribed under Article 311(2) of the Constitution of India or giving him an opportunity of being heard in the matter.

3. The facts of the case, in a nutshell, are that the petitioner herein had obtained his degree, *i.e.* B.Sc. (Agriculture) from the Assam Agriculture University, Jorhat. Having obtained his degree, the petitioner was looking for suitable employment. On 05-04-2013, the Assam Public Service Commission (APSC) had issued an advertisement notice inviting applications for filling up as many as 80 posts of Agricultural Development Officer (for short ADO). In response to the said advertisement, the writ petitioner had submitted his candidature. Accordingly, the petitioner had participated in the written test as well as the *viva-voce* examination. Eventually, the name of the petitioner found place in the final merit list of selected candidates published by the APSC. Having secured 78 marks in total, the petitioner was shown to have been selected for appointment in the post of ADO at Sl. No. 65 of the merit list. On 26-02-2016 the Addl. Chief Secretary to the Govt. of Assam,



In-Charge of Agriculture Department, Dispur had issued a notification, notifying the appointment of 80 ADOs including the writ petitioner herein in the scale of pay-band-IV, *i.e.* Rs. 12000-40000+ Rs. 54,000/- (Grade Pay) per month including other allowances, as applicable under the rules. As per the notification dated 26-02-2016, the appointments of the ADOs were made temporarily and were subject to discharge without notice and without assigning any reason thereof. Accordingly, the petitioner had reported for duty before the Director of Agriculture, Assam on 29-02-2016 and submitted his joining report. Thereafter, the petitioner had undergone and completed the induction training programme, on completion of which, he was assigned posting as ADO, Bengtol Circle, Chirang vide notification dated 17-03-2016. While the petitioner was discharging his duties as ADO, Bengtol Circle, one unsuccessful candidate named Sri Bedanta Bikash Das had lodged an FIR before the Officer-in-Charge of the Bhangagarh Police Station on 17-08-2017 alleging serious irregularities and malpractices in the selection process of candidates for the posts of ADO. In the FIR dated 17-08-2017, it has been mentioned that the then Chairman of the APSC, *viz.* Sri Rakesh Kumar Paul and his agent Musarraff Hussain had demanded a sum of Rs. 15,00,000/- from him out of which, he had paid an advance amount of Rs. 50,000/-. According to the informant he had passed the written examination as well as the *viva-voce* test but did not get selected. On the contrary, the APSC had taken bribe of Rs. 15,00,000/- from several other candidates and included the names of those candidates in the final select list. The writ petitioner herein has been named in the FIR dated 17-08-2017 as one of the beneficiaries of the "cash for job scam". Based on the FIR dated 17-08-2017, Bhangagarh P.S. Case No. 159/2017 was registered



under Section 120(B)/420/468 of the IPC, read with Section 7/13(1)(a)(d)(III)/13(2) of the Prevention of Corruption Act, 1988 and investigation was started in the matter.

4. During the course of investigation in connection with Bhangagarh P.S. Case No. 159/2017, the writ petitioner was arrested on 10-05-2019 and sent to judicial custody. However, by order dated 26-07-2019 passed by the learned Special Judge, Assam in Bail Petition No. 9930/2019, the petitioner was released on bail. Notwithstanding his release on bail, since the petitioner had spent more than 48 hours in judicial custody, by the notification dated 15-06-2019 issued by the respondent No. 3, he was placed under suspension by invoking the powers under Rule 6(2) of the Assam Service (Discipline and Appeal) Rules, 1964 (in short "the Rules of 1964"). As such, the petitioner had submitted a representation before the authorities seeking his reinstatement in service. However, since no action was taken on the said representation, the petitioner had approached this Court by filing W.P.(C) No. 8229/2019 praying for a writ of mandamus directing his reinstatement in service. After hearing the parties, the learned Single Judge had passed judgment and order dated 28-11-2019 disposing of the W.P.(C) No. 8229/2019 with a direction upon the respondents to reinstate the petitioner in service by giving liberty to the departmental authorities to initiate disciplinary proceeding against him. The judgment and order dated 28-09-2019 was taken in an appeal by the State before the Division Bench in W.A. No. 28/2021, which appeal was dismissed by the order dated 30-07-2021.

5. Notwithstanding the order passed by this Court, the petitioner was not reinstated in service. Instead, on 24-05-2021, a show-cause notice was served upon the petitioner asking him to show cause as to why, any of the penalties prescribed under Rule 7 of the



Rules of 1964 should not be imposed upon him on the following charges:-

“That while you were working as ADO, Bengtol, Chirang, BTAD, Assam, you were arrested by the Addl. Supdt. of Police, HQ, Morigaon on 09-05-2019 in connection with Bhangagarh P.S. Case No. 159/2017 U/S 120(B)/420/468/IPC R/W Sec. 7/13(1)(a)(d)(iii)/13/2 of the Prevention of Corruption Act based on the FIR lodged by Sri Bedanta Bikash Das, Sonitpur, Assam in connection with APSC Cash for Job Scam on 17-08-2017 and remained in Police custody beyond 48 hours.”

In the show-cause notice dated 24-05-2021, the petitioner was shown to be under suspension.

6. The petitioner submitted his reply to the show-cause notice on 01-09-2021, thereby denying and disputing the allegations brought against him. While a decision on the show-cause reply submitted by the petitioner was pending before the authorities, the impugned notification dated 31-12-2021 was issued in exercise of powers under Rule 21 of the Assam Agriculture Service Rules, 1980 (in short “the Rules of 1980”), discharging the petitioner from service. Aggrieved thereby, the present writ petition has been filed.

7. As has been noticed above, notwithstanding the judgment and order dated 28-11-2019 passed in W.P.(C) No. 8229/2019 and the dismissal of the writ appeal by the Division Bench, the petitioner was not reinstated by revoking the order of suspension. In the meantime, charge-sheet was also submitted by the police on 09-10-2020 before the Special Judge, Assam in connection with Bhangagarh P.S. Case No. 159/2021 implicating the petitioner as an accused person. Based on the aforesaid charge-sheet, charges had been framed against the petitioner and the matter is now pending trial. It is in such factual backdrop that the writ petitioner has approached this Court by filing the present writ petition, *inter alia*, contending that the order dated 31-12-2021 is not an order of



discharge 'simpliciter' but it is an order of dismissal from service. Therefore, the same could not have been issued in exercise of powers under Rule 21 of the Rules of 1980. It is also the case of the petitioner that the notification dated 31-12-2021 was stigmatic in nature and was essentially an order of removal from service. Therefore, the same ought not to have been issued without giving an opportunity to the petitioner to establish his innocence by following the procedure contemplated under Article 311(2) of the Constitution of India.

8. The respondents have contested the petitioner's case, *inter alia*, questioning the maintainability of the writ petition on the ground that the case is squarely covered by a decision of a coordinate Bench rendered in the case of ***Geetali Doley & Ors. Vs. The State of Assam & Ors.*** reported in ***2020 (3) GLT 800***, wherein the same issues arising in the present proceeding fell for consideration by the learned Single Judge which were answered in favour of the State by a reasoned order. It is also the stand of the State that the petitioner's appointment having been secured through an illegal mode and by practicing fraud, the same was *void ab-initio*. According to the respondents, on the date of issuance of the impugned order dated 31-12-2021, the petitioner's service was not confirmed and he was still on probation. Therefore, taking note of the materials that came to light on the basis of investigation conducted by the Assam Police revealing a "colossal fraud" in the recruitment process conducted by the then Chairman of the APSC Sri Rakesh Kumar Paul in respect of various posts including the post of ADO and the materials brought on record against the petitioner in the fourth supplementary charge-sheet dated 04-07-2019 filed by the Police wherein, the petitioner has been shown as

accused No. 8 (A-8) there was sufficient ground for the respondents to discharge the petitioner from service by invoking Rule 21 of the Rules of 1980.

9. Assailing the impugned order of discharge dated 31-12-2021, Mr. K.N. Choudhury, learned Sr. counsel for the writ petitioner has argued that a police report would not be sufficient material for the respondents to discharge the petitioner from service without holding any enquiry within the meaning of Article 311(2) of the Constitution of India, more so, since the State has not initiated any action against the informant who has himself claimed to have paid a sum of Rs. 50,000/- as bribe to the APSC officials for securing the job of ADO. It is also the submission of Mr. Choudhury that the respondents, having initiated a disciplinary proceeding against the petitioner by serving a show-cause notice, ought to have completed the process. According to Mr. Choudhury, the disciplinary authority could not have abandoned the disciplinary enquiry midway and discharged the petitioner from service merely by invoking Rule 21 of the Rules of 1980, as such a recourse would be wholly arbitrary and de hors the law. In support of his above argument, the learned senior counsel has relied upon the following decisions:-

- (a) AIR 1958 SC 36 Parshotam Lal Dhingra Vs. UoI
- (b) (1974) 2 SCC 831 Shamsher Singh Vs. State of Punjab
- (c) (1980) 2 SCC 593 Gujrat Steel Tubes Ltd. Vs. Gujrat Steel Tubes Mazdoor Sabha
- (d) (1984) 2 SCC 369 Anoop Jaiswal Vs. Govt. of India & Anr.
- (e) (1999) 3 SCC 60 Dipti Prakash Banerjee Vs. S.N. Bose National Centre for Basic Sciences, Calcutta
- (f) (1985) 1 SCC 56 Nepal Singh Vs. State of U.P.
- (g) (1999) 2 SCC 21 Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd. & Anr.



10. By relying upon the law laid down in the case of ***UoI Vs. Mahaveer C. Singhvi*** reported in ***(2010) 8 SCC 220*** as well as the decision in the case of ***SBI Vs. Palak Modi*** reported in ***(2013) 3 SCC 607***, Mr. Choudhury has forcefully argued that since there is a live connection between the alleged misconduct and the order of discharge of the petitioner, the order of discharge was evidently punitive in the nature and therefore, the same ought to have been preceded by a proper disciplinary proceeding. By relying upon and referring to the decision of the Supreme Court rendered in the case of ***Gujrat Steel Tubes (Supra)***, Mr. Choudhury has argued that the court should find out from examination of the materials placed before it as to whether, the order of discharge was, in reality, a order of termination on the ground of alleged misconduct.

11. By placing reliance in the case of ***Inderpreet Singh Kahlon Vs. State of Punjab*** reported in ***(2006) 11 SCC 356*** the learned Sr. counsel for the writ petitioner has further argued that the tests laid down in the said decision for terminating the service of an appointee, who had put in three years of service, has not been satisfied in the present case. Mr. Choudhury has further argued that the statements made to the police and the information contained in the case diary/ charge-sheet can be relied upon only if the same turns out to be relevant under the Indian Evidence Act, 1872 [referred to ***(1981) 2 SCC 493 Khatri Vs. The State of Bihar***] and not otherwise. Since the charge-sheet submitted by the police only contained a preliminary report, the same, according to Mr. Choudhury, could not have been the basis for the authorities to discharge the petitioner from service.



12. Finally, Mr. Choudhury has argued that the decision rendered in the case of **Geetali Doley (Supra)** is distinguishable on facts and therefore, would not have any application in the facts of the present case.

13. In the written arguments submitted on behalf of the writ petitioner, it has been mentioned that although as many as 36 ADOs have been charge-sheeted in connection with Special Case No. 5/21 corresponding to Bhangagarh P.S. Case No. 159/2017, save and except, the petitioner, the remaining 35 ADOs are still continuing in service inasmuch as none of them have been discharged from service till today. As such, submits Mr. Choudhury, the present is a clear case where the writ petitioner has been meted out completely discriminatory treatment.

14. It has further been contended that the co-accused No. 12 Smti. Jyoti Rekha Das was also arrested for accepting bribe in connection with Special Case No. 5/2021 while serving as ADO in Darrang and she was placed under suspension. However, the respondent authorities have reinstated Smti. Jyoti Rekha Das by ignoring the pending corruption case against her thereby, clearly demonstrating a discriminatory attitude of the authorities towards the writ petitioner.

15. Responding to the above argument, Mr. Nalin Kohli, learned Addl. Advocate General, Assam submits that the *modus operandi* adopted in the recruitment process including that for the post of ADOs, as unfolded through the police investigation in all the cases of "cash for job scam", have been found to be one and the same. Contending that the very entry into service of the writ petitioner having been tainted through a fraudulent practice, in view of the law laid down in the case of **Geetali Doley (Supra)**, there was



no requirement for the authorities to hold a departmental enquiry before discharging the petitioner from service.

16. Insofar as the arguments regarding parity in treatment with the other 35 ADOs made by the petitioner, Mr. Kohli has argued that there is no pleading in support of such arguments inasmuch as the said argument has been raised only at the stage of submission of a written arguments thereby causing serious prejudice to the interest of the State. By referring to the decision of the Supreme Court rendered in the case of ***Bachhaj Nahar Vs. Nilima Mandal*** reported in ***(2008) 17 SCC 491***, Mr. Kohli has argued that the Court cannot make out a case which is not pleaded and should confine its decision to the questions raised in the pleadings. Relief not claimed cannot be granted by the court.

17. By referring to a decision of the Supreme Court rendered in the case of ***Pandit MSM Sharma Vs. Shri Sri Krishna Sinha & Ors.*** reported in ***AIR 1959 SC 395***, the learned Addl. Advocate General, Assam has argued that question of facts cannot be raised at a belated stage, if not already pleaded in the petition. Contending that the writ petitioner herein is a FIR named accused and since the other accused persons had not been arrested in connection with Bhangagarh P.S. Case No. 159/2017, the petitioner cannot claim parity with those 35 ADOs. He further submits that the arrest of Smti. Jyoti Rekha Das is in connection with a different proceeding which has no relevance to the present case.

18. Mr. Kohli has further argued that police investigation has revealed that the petitioner was similarly situated as other beneficiaries of the APSC "cash for job scam" who were discharged from service and the orders of discharge were upheld by the court

by the judgment and order dated 18-03-2020. He submits that on a forensic analysis of the answer sheet of the petitioner, it was found that there were various alteration/manipulation in the marks awarded to him. He submits that the charge-sheet contains sufficient materials against the petitioner, as a result of which, charge has been framed against him. Therefore, the impugned order of discharge cannot be said to be without a valid basis. Contending that the impugned order of discharge is not stigmatic but is an "order simpliciter" discharging the petitioner from service, Mr. Kohli submits that in view of the law laid down in the case of **Geetali Doley (Supra)** there is no scope for this Court to interfere in the matter, more so, since the petitioner himself has admitted that he had paid a sum of Rs. 10,00,000/- as bribe for securing his appointment as ADO.

19. I have considered the submission made at the bar and have also gone through the materials available on record. At the very outset it would be pertinent to mention herein that Rule 21 of the Rules of 1980 contains provisions which empowers the authorities to discharge the service of a temporary or officiating member of the service on the grounds laid down therein. Rule 21 is quoted here-in-below for ready reference:-

"21. Discharge or reversion.

A temporary or officiating member shall be liable to be discharged or reverted to the lower cadre of the service or to his original service of –

- (1) he fails to make sufficient use of the opportunities given during any training as may be prescribed by the Government from time to time or fails to render satisfactory service during his tenure of service in the cadre;*
- (2) it is found on a subsequent verification that he was initially not qualified for the appointment or that he had furnished any incorrect information with regard to his appointment."*

20. There is no doubt or dispute about the fact that the petitioner's service, as an ADO,



was yet to be confirmed and on the date of his discharge from service, on which date, he was still on probation. The impugned order of discharge from service dated 31-12-2021 reads as follows:-

“No. AGA 235/2019/89: The Governor of Assam in exercise of powers inter alia under Rule 21 of the Assam Agricultural Service Rules, 1980 is pleased to discharge Shri Mrigen Haloi, ADO, Bengtol, Chirang (temporary as well as probationer) from the Service of the State Government with immediate effect.

*By order and in the name of
the Governor of Assam*

21. From the order dated 31-12-2021, it cannot be said that the said order is stigmatic in nature. On the contrary, what can be seen is that it is a simple order of discharge from service.

22. Sub-Rule 2 of Rule 21 of the Rules of 1980 permits the authorities to discharge an employee, if it is found out on subsequent verification that he was initially not qualified for the appointment or that he had furnished incorrect information with regard to its appointment. While applying for a Govt. job every candidate is required to fill up an application with an undertaking that all information furnished by him/ her is correct. The undertaking so furnished by the candidates would also include in its fold, the undertaking not to use any unfair means for securing the appointment. Therefore, this Court is of the opinion that Rule 21(2) is wide enough to include within its sweep, any activity which would amount to furnishing incorrect information by the candidate at the time of securing his/ her appointment. Moreover, it is settled law that fraud vitiates everything. Therefore, at any subsequent stage, if it is found out that any candidate had secured his appointment by fraudulent means, Rule 21 of the Rules of 1980 can certainly be



employed to discharge such an employee from service if he/ she is still serving on officiating basis or is in probation period.

23. Having held as above, the first hurdle that the writ petitioner would have to meet in the present proceeding is to convince this Court with the ratio laid down in the case of ***Geetali Doley (Supra)*** would not have any bearing in his case. It is only when the petitioner succeeds in demonstrating the same that the question for this Court to make an independent assessment of the facts and circumstances of the case so as to arrive at a different conclusion in the matter would arise.

24. In the case of ***Geetali Doley (Supra)***, the learned Single Judge had the occasion to deal with a series of writ petitions wherein the alleged beneficiaries of "cash for job scam" in the APSC during the relevant period had approached this Court assailing similar orders of discharge from service. Out of the 49 writ petitions that had come up for consideration before the Court, there were appointees to the Assam Civil Service, Assam Police Service, Assam Transport Service and in Assam Labour Service. In those cases also, based on a FIR lodged by one of the candidate alleging that there was a demand of Rs. 10,00,000/- from the APSC functionary as bribe for appointment as Dental Surgeon, Dibrugarh P.S. Case No. 936/2016 was registered and the matter was taken up for investigation by the police. The same Chairman of the APSC, viz. Sri Rakesh Paul, along with other associates and two of his brothers were the prime accused in the aforesaid case as well. The investigations revealed that in those cases also, the answer scripts of the selected candidates were re-written and were replaced and the original answer scripts were replaced by duplicate/ fake answer scripts. Forensic examination of the scripts also



revealed that the answer scripts were not printed in the Govt. Press and the handwriting of marks was of the main accused Sri Rakesh Paul. There was no signature of the invigilator in those answer scripts. On the basis of such fraudulent transactions, a number of candidates were offered orders of appointments. Subsequently, on the fraud coming to light, as many as 62 candidates, while they were in probation period, were discharged from service by the authorities. Consequently, as many as 52 candidates who were, discharged from service had approached this Court by filing 49 writ petitions, which were disposed of by the learned Single Judge by the common judgment and order dated 18-03-2020 in the case of ***Geetali Doley & Ors. Vs. The State of Assam & Ors. [2020 (3) GLT 800]***.

25. A careful reading of the judgment rendered in the case of ***Geetali Doley (Supra)*** goes to show that in those cases also, the respondents had invoked similar provisions in the relevant rules, permitting discharge of probationers without holding any enquiry. Assailing the orders of discharge from service, the learned counsel for the writ petitioners had advanced similar arguments, as in the present case. It was argued that the impugned orders of discharge were based on alleged misconduct and there is a live connection or nexus between the allegation of misconduct and discharge. Hence, the orders of discharge were unsustainable on the ground of contravention of Article 311(2) of the Constitution; the investigation carried out by the Dibrugarh Police and the report available therein being the very foundation of the order of discharge, the petitioners could not have been condemned merely on the basis of police investigation as the same would lead to travesty of justice; the involvement of the petitioners were merely a matter of

presumption and the same is yet to be established in accordance with law; the orders of discharge were without any cogent ground; discharge of a probationer cannot be on mere *ipsi-dixit* of the authority; the orders of discharge were punitive in nature and also stigmatic; confession made to the police officers by the accused persons while in custody or before they were made accused could not be proved against them; since the action of the respondents was devastating, having an irreversible effect on the candidates the impugned orders could not have been issued in violation of principles of natural justice. In support of the aforesaid arguments advanced by different learned counsel appearing for the petitioners, the decisions as relied upon by Mr. K.N. Choudhury were also cited.

26. Rejecting the contentions advanced on behalf of the writ petitioners, the learned Single Judge had held as follows:-

46. Clearly, the allegations of irregularities on the part of the petitioners are not allegations of any irregularities, negligence, inefficiency and misconduct taking place during discharge of their duties post-recruitment or after having been appointed to public offices. The allegations against the petitioners in indulging in gross irregularities and fraud, involving payment of illegal gratifications, for securing appointments to public offices are apparently of pre-recruitment period, that is, before they were appointed to public offices. In the understanding of this Court the element of misconduct, which reverberates in the submissions made on behalf of the petitioners, is attributable only in respect of a period subsequent to a valid initial appointment. Not a single citation could be placed on behalf of the petitioners for the proposition that irregularities committed during the recruitment process and/or before appointments had been made and/or before a person is born into a cadre/service, would constitute misconduct. A vain attempt was made when reliance was placed in paragraph 37 of Palak Modi to say that the use of unfair means in the evaluation test/confirmation test would certainly constitute misconduct. Reliance so placed vis-à-vis the facts and circumstances in the present cases, is altogether out of context. In Palak Modi the private respondents therein had already been appointed as Probationary Officers way back on 05.05.2006. In



due course, the State Bank of India informed that they were due for confirmation in service and, therefore, they are to appear in the test proposed to be conducted on 27.02.2011. The private respondents appeared in the test held on 27.02.2011 but their names did not figure in the result declared on 10.05.2011, primarily on the ground that the Institute of Banking Personnel Selection, which body was entrusted with the task of preparing the examination papers and evaluating the answer-sheets, submitted a Report to the Bank that some candidates including the private respondents were suspected to have used unfair means. Thus, paragraph 37 of Palak Modi, which makes mention that use of unfair means during "evaluation test/confirmation test" would constitute misconduct, was only in respect of test conducted for the purpose of confirmation in service. No law was laid down in Palak Modi that misconduct can also be stretched back to a period prior to entering into service and for illegalities and irregularities committed during the selection process. As misconduct cannot be a pre-recruitment phenomena, the very bedrock of the submissions made on behalf of the petitioners that the impugned action being founded on misconduct, therefore, the principles of natural justice and/or the provisions of Article 311 of the Constitution could not have been dispensed with, in the considered opinion of this Court, does not hold any water.

47. Indeed, there can be no hiding from the fact that the arrest and the materials collected against the petitioners following the FIR dated 27.10.2016, registered as Dibrugarh P.S. Case No.936/2016, had set the ball rolling. The investigation reports of Dibrugarh Police were the foundational facts, the gravity of which was considered by the Government of Assam in the Personnel (A) Department, which eventually resulted in the impugned orders being passed, preceded by consultations with the concerned Departments, obtaining the views of the Judicial Department and with approval of the highest governmental authority. The impugned actions are only in respect of an identifiable group/section of the candidates who had appeared in the Mains Examination. The identifiable group are only those candidates where their duplicate answer-sheets, after substituting with their original answer-sheets, were recovered from the Confidential Examination Branch of APSC as well as from the house of the then Chairman Sri Rakesh Kr. Paul. This identifiable group alone were discharged from service and against whom charge-sheets have been filed. They are the 52 (fifty two) writ petitioners herein and another 8 (eight) candidates who are not before this Court. Allegations are with regard to criminal conspiracies resulting in tampering with the examination process for the benefit of the petitioners herein. Investigations have revealed that the petitioners had indulged in unfair means for getting selected by paying bribe or on extraneous considerations, but certainly not on account of merit. There are

cogent materials on which the respondent authority derived satisfaction that the selection process through which the petitioners came to be selected and eventually appointed was tainted by fraud. Irregularities in the selection and appointment of the petitioners being found at the threshold itself, can it be said that the State action was not bona fide in discharging the petitioners from service and was it not the solemn duty of the State to take the impugned action for maintaining sanctity and in reposing faith in the system and public offices in relation to the affairs of the State Government. Can it be said that it was not open to the State Government to act on the disturbing revelations emanating from the police investigations with regard to grave illegalities being discovered involving the petitioners during the selection process, which illegalities occurred well before they had entered into service. To reiterate, the discharge of the petitioners from service was not on account of any alleged misconduct after appointment but on discovery of fraud at the point of their very entry into service. There is a clear dividing line between a challenge made to an order of discharge on grounds of misconduct during post-recruitment period and a challenge made to an order of discharge on grounds of irregularities and illegalities finding place relatable to a pre-recruitment period. Whereas the former would invariably invite compliance of audi alteram partem rule of natural justice and/or compliance of the protection guaranteed under Article 311 of the Constitution, the later can fall within the category of exceptions to the rule of audi alteram partem, particularly, if there are reliable materials to reach a satisfaction that, in so far as the petitioners are concerned, the examination process and their selection was vitiated. Going back to Parshotam Lal Dhingra and Samsher Singh, it is only when termination is seen to be founded on manifest misconduct, it would be a punishment and will go to violate Article 311 of the Constitution in the absence of any enquiry. However, as observed above, the arguments on misconduct being the foundation, are wholly misplaced and misconceived, inasmuch as, discharge of the petitioners from service are not founded on the phenomena of misconduct, as is understood in service jurisprudence.

27. In the case of **Geetali Doley (Supra)** the learned Single Judge has further observed that even assuming that the petitioners were denied proper opportunity of hearing before the impugned orders of discharge were passed, even then, the petitioners had failed to make out a case both on facts as well as on law during the course of hearing of the writ petitions. Having held as above, the learned Single Judge, by furnishing

elaborate reasonings for the decisions, had dismissed all the writ petitions, thus, upholding the orders of discharge issued to the writ petitioners.

28. From a careful analysis of the facts involved in the proceedings in the case of ***Geetali Doley (Supra)*** as well as the present proceeding, it is evident that the core issue in both the proceedings hinges on the question as to whether, a beneficiary of a tainted entry in the service could be discharged during the period of probation without holding enquiry under Article 311(2) of the Constitution of India, merely by taking note of the police report? As noted above, the aforesaid question has been categorically answered in the case of ***Geetali Doley (Supra)*** against the appointees on a clear enunciation of the law on the subject.

29. Law is well settled that the decision rendered by a coordinate Bench would be binding on subsequent Benches of equal or lesser strength. In the case of ***Dr. Shah Faesal & Ors. Vs. UoI & Anr.*** reported in ***(2020) 4 SCC 1***, the Supreme Court has categorically held in paragraph 23 as follows:

23. This brings us to the question, as to whether a ruling of a coordinate Bench binds subsequent co-ordinate Benches. It is now a settled principle of law that the decisions rendered by a coordinate Bench is binding on the subsequent Benches of equal or lesser strength. The aforesaid view is reinforced in the National Insurance Company Limited Vs. Pranay Sethi, (2017) 16 SCC 680 wherein this Court held that:

59.1. The two Judge Bench in Santosh Devi [Santosh Devi Vs. National Insurance Co. Ltd., (2012) 6 SCC 421 7] should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been Stated in Sarla Verma [Sarala Verma Vs. DTC, (2009) 6 SCC 121], a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

30. From the above, it is crystal clear that the decision rendered by the learned Single



Judge in the case of ***Geetali Doley (Supra)*** is binding on this Court unless it is shown that the said decision is distinguishable on facts. However, as noted above, this Court is unable to accept the submission of Mr. Choudhury that the decision rendered in the case of ***Geetali Doley (Supra)*** is distinguishable on facts nor does this Court find any valid ground to take a different view in the matter in the facts and circumstances of the case and refer the issues for being decided by a larger Bench.

31. The judgment rendered in the case of ***Geetali Doley (Supra)*** is based on due appreciation of materials available on record as well as on a threadbare discussion of the decisions relied upon by the counsel for both the parties. The learned Single Judge has recorded sufficient and cogent reason for arriving at his conclusion. As such, I find sufficient force in the submission of Mr. Kohli that this case is squarely covered by the decision rendered in the case of ***Geetali Doley (Supra)***.

32. This Court has also been informed that the writ appeals presented against the decision rendered by the learned Single Judge in the case of ***Geetali Doley (Supra)*** are pending before the Division Bench but there is no interim order passed by the Division Bench suspending operation of the judgment and order dated 18-03-2020. Viewed from that angle also I do not find any justifiable ground to interfere with the impugned order.

33. Coming to the plea of parity raised by the petitioner's counsel, it is correct that there is no pleading to support the said plea. The point was also not canvassed during oral arguments made by the learned Sr. counsel for the writ petitioner. Such a plea was raised only in the written argument submitted on behalf of the petitioner after the



arguments on behalf of the writ petitioner was closed. The arguments by the respondents in response to the above plea, taken in their written argument, has been briefly noticed hereinabove. In the absence of a pleaded stand of the petitioner, it would not be permissible for this Court to enter into a deeper enquiry into the matter merely on the basis of submission of the petitioner's counsel by ignoring the explanation furnished by the respondents. Therefore, this Court is not inclined to embark on a process of adjudication of the aforesaid aspect of the matter at this stage.

For the reasons stated hereinabove and in view of the ratio laid down in the case of ***Geetali Doley (Supra)***, this Court is of the unhesitant opinion that there is no scope for this Court to interfere with the impugned order of discharge from service dated 31-12-2021.

For the reasons stated hereinabove, this writ petition is held to be devoid of any merit and the same is accordingly dismissed.

Parties to bear their own cost.

JUDGE

GS

Comparing Assistant