



GAHC010220682023

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

Case No. : WP(C)/5766/2023

KALPANA MAZUMDAR
W/O- LATE PURANDAR DEKA,
R/O- NEAR KAILASH MANDIR, 2 NO. KHARGHULI,
BONDA, NARENGI, GUWAHATI- 781026.

VERSUS

THE ASSAM KHADI AND VILLAGE INDUSTRIES BOARD AND 6 ORS
REPRESENTED BY ITS CHAIRMAN,
CHANDMARI, KAMRUP(M),
ASSAM, PIN- 781003.

2:THE CHIEF EXECUTIVE OFFICER
ASSAM KHADI AND VILLAGE INDUSTRIES BOARD
CHANDMARI
KAMRUP(M)
ASSAM

PIN- 781003.

3:THE REGISTRAR
ASSAM KHADI AND VILLAGE INDUSTRIES BOARD
CHANDMARI
GUWAHATI- 781003.

4:THE DISTRICT OFFICER AND IN CHARGE MARKETING
ASSAM KHADI AND VILLAGE INDUSTRIES BOARD
GUWAHATI
ASSAM
PIN- 781003.

5:THE SUPERINTENDENT



CUM IN CHARGE ESTABLISHMENT BRANCH
ASSAM KHADI AND VILLAGE INDUSTRIES BOARD
GUWAHATI
ASSAM
PIN- 781003.

6:HEM KANTA MEDHI
ENQUIRY OFFICER
ASSAM KHADI AND VILLAGE INDUSTRIES BOARD

GUWAHATI
ASSAM
PIN- 781003.

7:SWAPNA RANI DEKA
ENQUIRY OFFICER
ASSAM KHADI AND VILLAGE INDUSTRIES BOARD

GUWAHATI
ASSAM
PIN- 781003

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : SC, ASSAM KHADI AND VILLAGE INDUSTRIES BOARD

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing & Judgment : 13.10.2023

JUDGMENT & ORDER

Heard Shri R. Mazumdar, learned counsel for the petitioner. Also heard Shri PK Munir, learned Standing Counsel, Assam Khadi and Village Industries Board, who submits that instructions along with records have been received.

2. Considering the subject matter and the instructions along with records, this writ petition is taken up for disposal at the motion stage.



3. The petitioner is working as LDA under the respondent authorities and was facing a departmental proceeding on certain charges of submission of fake documents. It is the case of the petitioner that show-cause notice dated 03.08.2023 was issued which was replied to by the petitioner and not being satisfied, an enquiry was directed. Shri Mazumdar, learned counsel has submitted that though two numbers of witnesses were cited in the show-cause, one witness did not turn up and the second witness was made the Presenting Officer by the Enquiry Officer himself. Allegations of not giving any opportunity to the petitioner to adduce any defence witness have also been made. The petitioner has now been directed to submit her reply to the Enquiry Report.

4. Shri Mazumdar, learned counsel for the petitioner has submitted that the procedure laid down in law for conducting a disciplinary proceeding has been grossly violated in the instant case and the Department has failed in its basic responsibility to prove the charges through witnesses in which case, the petitioner would also be required to afford an opportunity to cross examine the same. He further submits that the procedure adopted to make the witness no. 2 as a Presenting Officer is unheard of and even if the same is done, the allegations automatically cannot be held to be established. Shri Mazumdar, learned counsel has also made submissions with regard to not affording of adequate opportunity to safeguard his case.

5. *Per contra*, Shri Munir, learned Standing Counsel, Assam Khadi and Village Industries Board has submitted that the allegations are serious which relates to submissions of fake documents to secure the employment. He further submits that the statement of an Official of SEBA was produced in the enquiry and as per the same, the allegations stood established. Shri Munir, learned Standing Counsel however does not dispute the fact that there were no witness in the

enquiry except for production of the statement of the Official of the SEBA and also the fact that the witness no. 2 was made the Presenting Officer by the Enquiry Officer himself.

6. The rival submissions have been considered.

7. The objective of a departmental proceeding is to give adequate opportunity to a delinquent before any action is taken upon certain allegations against him. The procedure established by law requires appointment of an Enquiry Officer and a Presenting Officer. While the Enquiry Officer would act as a neutral authority, the Presenting Officer would project the case of the management through witnesses, who would also prove the documents, if any. The delinquent is required to be afforded all reasonable opportunities to defend his case which includes an opportunity to cross-examine the witnesses of the Department, to adduce defence witnesses, be furnished with a copy of the Enquiry Report before the same is concurred by the disciplinary authority, in case report is against the delinquent. A delinquent, in an appropriate case would also the right to have the assistance of a defence representative.

8. The facts in the instant case however reveal that though the allegations against the petitioner may be termed as serious, there was no procedure adopted recognized by law to establish the allegation as there were no witnesses. The statement of the Officer of the SEBA, though may be a relevant material, the same has to be proved in the proceedings by giving the delinquent an opportunity which have not been done.

9. The Hon'ble Supreme Court in the case of ***State of Mysore v. Shivabasappa Shivappa*** reported in ***AIR 1963 SC 375*** has made it clear that though a pre-recorded statement may be used in a departmental



proceeding, the person making such statement would have to be produced in the proceeding so that the delinquent gets an adequate opportunity to cross-examine him on the basis of such statement. Even that procedure has not been adopted in the instant case and the Enquiry Report is accordingly prepared. This Court is of the opinion that the procedure adopted after issuance of the show-cause notice dated 03.08.2023 is not recognized by law and accordingly the proceeding from that stage is interfered with and set aside. Consequently, the Enquiry Report is held to be *non est* in law.

10. The writ petition accordingly stands allowed.

11. However, considering the nature of the allegations, the Department will be at liberty to proceed from the stage of holding an enquiry strictly in accordance with law.

JUDGE

Comparing Assistant