
(2016) 03 GAU CK 0020
In the Gauhati High Court
Case No : W.P.(C) No. 3740 of 2006

Bijon Chakraborty

APPELLANT

Vs

State of Assam and others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Citation : (2016) 4 GauLJ 116 : (2016) 2 GauLT 730

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : N. Dhar, B.K. Sen and P. Dutta, Advocates, for the Appellant; R. Gogoi and U.K. Nair, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Manojit Bhuyan, J. (Oral) - Heard Mr. N. Dhar, learned Counsel for the petitioner as well as Ms. R. Gogoi, learned Counsel representing the respondent Nos. 1 and 2 and Mr. U.K. Nair, learned Counsel represents the respondent Nos. 3 and 4.

2. The Petitioner i.e. Sri Bijon Chakraborty, an Ex-Serviceman, was appointed as Office Peon-cum-Driver in the Adhoc Court of the Additional Sessions Judge, Karimganj. The said appointment was made purely on adhoc basis against the post created by the Government. The order of appointment is dated 30.05.2001. The petitioner continued to serve in that capacity for more than five years. In the course of his service, he was afflicted with Pelvic Inflammatory Disease (PID) and was unable to attend office from 15.05.2006. According to the petitioner, the nature of the disease prevented him altogether to move out of his house and/or to attend to his duty. On 05.06.2006, an order was passed under the hand of the District and Sessions Judge, Karimganj discharging the petitioner from service with immediate effect on grounds of unauthorised absence and dissatisfactory service. The said order was passed on the basis of the report furnished by the Adhoc Additional District and Sessions Judge, Karimganj. Thereafter, a representation was made on 07.06.2006 before the District and Sessions Judge, Karimganj indicating his absence due to medical ailment. It was also indicated

that although Casual Leave for the first three days w.e.f. 15.05.2006 to 17.06.2006 had been approved, however, on and from 18.05.2006 he could not attend to his duty due to deterioration of his physical condition. However, in so far as informing the office is concerned, he had asked one of his colleague Sri Madhav Roy to inform the office. In the said representation it was indicated that absence from duty was not intentional, which would find support from the Medical Certificate enclosed to the said representation. A prayer was made for allowing re-employment in the post of Office Peon-cum-Driver.

3. What had happened to the representation dated 07.06.2006 is not known to the petitioner but certainly it remained unanswered.

4. Challenging the order of discharge dated 05.06.2006, Mr. Dhar submits that the impugned order does not reflect any element of deliberate intention on the part of the petitioner to remain absent unauthorisedly. Also, the very expression used in the impugned order i.e. "Dissatisfactory Service" itself goes to show that the order was stigmatic. The further contention raised by Mr. Dhar is that having regard to the Office Memorandum dated 21.02.1966 of the Government of Assam, the petitioner could not have been summarily discharged, inasmuch as, he has been in service for more than five years although not made permanent during that period. It is contended that his appointment was not made against any post created for experimental schemes or for the purpose of handling any work of purely temporary or periodic character so as to entitle the respondent authority to summarily discharge the petitioner from service. By making reference to the said Office Memorandum, Mr. Dhar submits that even though disciplinary proceedings are not required to be drawn up in a case where the appointment is expressly stated to be on temporary basis, however, the same is not applicable in the instant case as because the petitioner was discharged from service not without stigma.

5. In support of the aforesaid contentions, Mr. Dhar relies upon the case of *Krushnakant B. Parmar v. Union of India*, reported in (2012) 3 SCC 178 to say even though absence from duty without any application or prior permission may amount to unauthorised absence, but it would not always mean wilful. There may be situation where an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of Government servant. Reliance is also placed in the case of *Chandra Prakash Shahi v. State of U.P. and Others*, reported in (2000) 5 SCC 152 to say that even though an order is innocuously worded, the Court can always lift the veil to look at the real face of the order and to find out whether it is innocent as worded.

6. Mr. U.K. Nair submits that the order of discharge dated 05.06.2006 was issued in strict accordance with law and on the basis of the report of the Adhoc Additional District and Sessions Judge, Karimganj, copy of which has been enclosed as Annexure-1 to the affidavit-in-opposition. It is submitted that the

petitioner was appointed on adhoc basis and for a fixed term. Also, the language of the order of discharge does not portray any element of stigma upon the petitioner. The bona fide of the respondent authorities is also sought to be justified by stating that the respondent authorities were not oblivious of the medical ailment of the petitioner and, in fact, initial three days leave was granted. However, the unauthorised absence on and from 18.05.2006 to 07.06.2006 could not be overlooked during which period the petitioner remained absolutely without any touch with the office concerned.

7. The rival submissions have been noticed. It is true that the order of discharge do not spell out any element showing intention of the petitioner to remain away from duty. In fact, in the representation made by the petitioner immediately thereafter, such a statement was made indicating that the absence from duty was not intentional but on account of his deteriorating physical condition. In so far as the allegation of stigma is concerned, it would be apposite to look at the basis of the order of discharge, being the report of the Adhoc Additional District and Sessions Judge, Karimganj. For a better appreciation, the contents of the report eventually forming the basis of discharge of the petitioner from service is reproduced hereunder:

"From:- Shri B.J. Mahanta.

Adhoc Addl District and Sessions Judge.

Karimganj.

To,

The District and Sessions Judge.

Karimganj.

Sub:- Unauthorised absence of Shri Bijon Chakravarty driver cum peon attached to this court from duty.

Sir,

With reference to the above subject I am to inform you that Shri Bijon Chakravarty appointed as driver cum peon of my court has been absent from duty since 15.05.2006. Though during this period he did send an application through one of the office staff claiming himself to be sick and praying for C.L. for three days which was allowed he has been absent from his duty without any further intimation since 18.05.2006. His unauthorised absence from duty has caused great inconvenience to me and I had to come to my court on my foot during this period despite the fact that an official vehicle has been allotted for that purpose. Earlier too Shri Bijon Chakravarty was often found lacking while discharging his duties as peon also his grunts and whimpers used to make it clear that he was not very keen in discharging his allotted duties and was obeying my direction only feeling compelled to do so. He is not a fit person for the job and as I am to come to office on foot despite having my official vehicle

for that purpose due to his unauthorised absence. I don't need his service any more at the cost of public exchequer.

Accordingly, you are requested to pass necessary order discharging Shri Bijon Chakravarty from his present post and/or appoint him any post of your office/ court if so directed and also to appoint another suitable person in his place for discharging the duties allotted to him and oblige.

Yours faithfully

Sd/-

Adhoc Addl District and Sessions Judge.

Karimganj."

8. What prompted issuance of the order of discharge dated 05.06.2006 is apparent from the report above. A perusal of the same goes to show that due to absence from duty, the Adhoc Additional District and Sessions Judge, Karimganj had to go to the Court on foot although an official vehicle had been allotted for that purpose. As per the report, even on earlier occasions, the petitioner was found lacking in discharging duties and did what he was asked to do only under compulsion. The conclusion derived is that the petitioner is not a fit person for the job as because the Adhoc Additional District and Sessions Judge, Karimganj had to come to office on foot and retaining such person would be at the cost of the public exchequer. As per the report, it was desirable for giving appointment to another suitable person. This is the content and purport of the report.

9. It is not brought on record whether any caution or notice had been issued if the petitioner had failed in discharging his duties. The order of discharge, upon lifting of the veil, does not appear to have been issued in accordance with law but for reasons bordering on the ego of the Adhoc Additional District and Sessions Judge, Karimganj. For temporary difficulties faced by the Adhoc Additional District and Sessions Judge, Karimganj due to the absence of the petitioner, the same has been answered by imposing the extreme penalty of discharge from service.

10. From the materials available on record, it appears that the absence of the petitioner for the period from 18.05.2006 to 07.06.2006 was not intentional and the basic ground for discharging him from service is not a valid ground. Accordingly, the order of discharge dated 05.06.2006 warrants interference, which is accordingly done. As a result, the order of discharge dated 05.06.2006 is set aside. The respondent authorities are directed to take back the petitioner into service as Office Peon-cum-Driver, subject to existence of the Scheme under which the petitioner was appointed. As regards the payment of remuneration/ salary for the period from 05.06.2006 until his re-instatement, no order is passed for payment of back wages/ salary, apparently he not having rendered service during the period.

11. Resultantly, this writ petition stands allowed to the extent indicated above.
No costs.