
(2013) 12 GAU CK 0025
In the Gauhati High Court
Case No : W.P. (C) No. 4759 of 2012

Dhrubajyoti Talukdar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2014) 1 GLD 623

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Biplab Kumar Sharma, J.—This writ petition was filed by the petitioner challenging the enquiry proceeding that was initiated against him vide memorandum of charge-sheet dated 24.05.2012. During the pendency of the writ petition, the said proceeding has come to an end and the petitioner has been imposed with the penalty of dismissal from service vide order dated 20.11.2012 (Annexure-3 to the affidavit in opposition). The petitioner was first appointed as Assistant Professor of Zoology in Barama College in the year 2007. While he was serving as such in a non-sanctioned post, he was offered Senior Research Fellowship (Fishery) by the Central Inland Fishery Research Institute (ICAR), Kolkata, vide Annexure-B memorandum dated 23.10.2010. As per the terms of the said fellowship, his place of posting was at Regional Centre of Central inland Fisheries Research Institute, Guwahati. The fellowship was up to 31.03.2011 with consolidated fellowship of Rs. 12,000/- per month plus HRA.

2. According to the petitioner, he was allowed to join the project vide Annexure-A certificate dated 25.09.2010 purportedly issued by the Principal of the College. As per the certificate, the Principal of the college had allowed him to join the fellowship.

3. By Annexure-C communication dated 4.01.2011, the petitioner was asked to show-cause in respect of his absence from duty for 17 days out of 25 working

days in the month of December, 2010. It was also intimated that the petitioner remained absent till the date of issuance of the communication. In reply to the said show-cause notice, the petitioner vide his letter dated Nil intimated that he could not attend duty for certain days in the month of December, 2010 for unavoidable circumstances. It was also intimated that in the meantime he was selected for the fellowship and that he should be allowed to continue with the fellowship.

4. The aforesaid show-cause notice was followed by another show-cause notice dated 12.02.2011 (Annexure-E), by which the petitioner was intimated that he was not allowed to pursue the project by the Governing Body of the College and that he had joined the fellowship without any permission from the College authority. In response to the said show-cause notice, the petitioner vide his Annexure-F letter dated Nil while not denying the allegation, however, contended that he is a follower of Swami Vivekananda and Lord Krishna and that he believed in work culture.

5. By Annexure-G communication dated 15.07.2011, the petitioner was once again apprised of his unauthorised absence and he was requested to acknowledge the same making a grievance against which the petitioner had approached this Court by filing a writ petition being W.P. (C) No. 3660/2011, which was entertained vide order dated 22.07.2011. The impugned letter dated 15.07.2011, having been stayed, no progress could be made on the basis of the said letter. Eventually the letter was withdrawn and consequently the writ petition was also disposed of.

6. After the aforesaid developments, the petitioner was issued with the Annexure-J charge-sheet dated 24.05.2012 levelling as many as four charges relating to unauthorised absence; joining the fellowship under ICAR without the required permission of the college authority and by producing the forged certificate referred to above; misconduct by not attending classes and remaining absent unauthorisedly all through out with false undertaking to attend classes as well as installing finger impression in the Bio-Matrix Machine after the interim order of this Court and misbehaving with the Principal-in-Charge of the College amounting to insubordination and misconduct.

7. In response to the charge-sheet, the petitioner by his reply dated 9.06.2012 (Annexure-K) while virtually admitting the charge of unauthorised absence, however, contended that he was absent for some period due to attending Research Fellowship, for which he had obtained written permission from the earlier Principal. He also admitted that for certain period he did not put his signature in the Attendance Register in view of pendency of the earlier writ petition. As regards the allegation of the certificate being fake, his reply was that he cannot be faulted with if the records do not indicate issuance of the said certificate by the earlier Principal.

8. After forming the opinion to conduct an enquiry on the basis of the materials

on record, the petitioner was issued with notice of enquiry on number of occasions, but he did not respond to the proceeding. However, it is on record that on a particular date he had appeared before the Enquiry Committee and after remaining present before the Enquiry Committee for a while, left the place. There was similar repetition on the second occasion also. Although the Enquiry Committee had informed him that the enquiry would proceed ex-parte in his absence, the petitioner did not pay any heed to the said warning. Situated thus, the Enquiry Committee had no other option then to proceed ex-parte against the petitioner. Based on the Enquiry Report, the Governing Body of the College adopted resolution towards dismissal of the petitioner from service and accordingly the same was conveyed to him vide the Annexure-3 letter dated 20.11.2012 annexed to the counter-affidavit.

9. Mr. D.M. Thakuria, learned counsel for the petitioner has vehemently argued that the petitioner's absence from the college being beyond his control and he being a victim of the circumstances, the same is required to be condoned. He submits that the enquiry proceeding having been conducted in a perfunctory manner, the same is not sustainable in law.

10. Countering the above argument, Mr. B. Choudhury, learned counsel representing the College authority, submits that all reasonable opportunities having been provided to the petitioner to participate in the enquiry, if he had chosen not to avail the same, the petitioner will have to thank himself. He submits that the petitioner having admitted the charge of unauthorised absence, on that ground alone, the order of dismissal from service is required to be upheld.

11. Both Mr. N. Sharma, learned Standing Counsel, Education Department and Mr. S. Khaund, learned Standing Counsel, BTC have adopted the argument of Mr. B. Choudhury learned counsel, representing the College Authority. They submit that the facts narrated above would speak for themselves and that it is not a case of taking any other view other than the view taken by the Governing Body of the College.

12. For a ready reference, the charges levelled against the petitioner are quoted below:--

1. That you remained absent in your service of Assistant Professor, Department of Zoology (Non-Provincialised Science Stream), Barama College unauthorised as no permission has been obtained from the Governing Body of the college. You remained absent for the period of 17 days out of 25 working days in the month of December, 2010 as per the record of the morning shift attendance register. You remained absent for the whole month of December, 2010 as per the record of evening shift attendance register except one day, that day too, you remained absent as per the record of the morning shift. In the month of January, 2011, you remained totally absent unauthorised. In the month of February, 2011, you were absent all along except the day of 28th February. In the month of March, 2011, though there were a couple of signatures in the morning shift register, you

remained absent for the whole month except two days as per the record of the evening shift register. Likewise, you were found absent unauthorised for the whole months of April and May, 2011 as per the record of evening shift attendance except a few signatures found in the morning shift record. Not only that, you were found absent all along except a few days appearance in the college for a couple of minutes in the morning shift starting from the months of November/December, 2010 to the month of May, 2012 is quite unbecoming for an Assistant Professor of the Department of Zoology (under non-provincialised science stream) of Barama College and which are gross misconduct, insubordination and negligence of duty in the event of proving the same against you.

2. That you have joined in the course of Fellowship under ICAR at Central Inland Fisheries Research Institute without permission from the college authority and further you submitted a fraudulent letter containing permission dated 25.9.2010 of the former Principal of Barama College. So far joining in the project, you were drawing salaries from both the college for the period of your unauthorised absence and from the Central Inland Fisheries Research Institute by making fraud and which is unbecoming in part of an Assistant Professor of the Department of Zoology (Non-Provincialised Science Stream) of Barama College and gross misconduct in the event of proving the same against you.

3. That you have misconducted by not attending classes and by remaining absent unauthorised throughout even after giving undertaking to the college authority to attend the classes as well as in stalling your finger impression in the Bio-Matrix Machine after the interim order of the Honourable Gauhati High Court which is sheer disobedience and misconduct as an Assistant Professor of Zoology Department (Non-Provincialised Science Stream) of Barama College.

4. That after the interim order issued by the honourable Gauhati High Court, you had gone to the college at 22nd August, 2011 and misbehaved the Principal-in-Charge using harsh words in presence of his subordinate employees while demanding a copy of the selection list of the contractual teachers of the college that did not come under his purview. This is an act of severe misconduct and insubordination in part of an Assistant Professor of Zoology Department (Non-Provincialised Stream) of Barama College.

13. As to what was the reply of the petitioner has been noted above. In paragraphs of the reply, he admitted that he was absent for certain periods. But he had shown excuse for the same by contending that he had joined the Research Fellowship. If he was an employee of the respondent college, he could not have availed of the fellowship without the written permission of the Governing Body of the college. A mere certificate, even if believed to be true, issued by the Principal of the college, could not have conferred any right on him to undertake another engagement simultaneously. That apart, the petitioner himself admitted in the reply that he did not put signature in the Attendance Register regularly as he had filed the writ petition being W.P. (C) No. 3660/2011,

challenging the letter dated 15.07.2011 referred to above. If he was aggrieved by the particular letter of the college authority, he was within his right to challenge the same, but the same did not cloth him with any right not to attend classes. In the reply, another plea taken by him was that the subsequent period after filing of the said writ petition could not have been treated as unauthorised absence. Such a plea on the part of the petitioner, a lecturer of a college is not acceptable.

14. Prior to the issuance of the charge-sheet, the petitioner was repeatedly informed of his conduct of unauthorised absence and he was requested to attend classes, but he did not pay any heed to the said request. On perusal of the enquiry report, it is found that the Enquiry Committee took into account all the relevant aspects of the matter and on the basis of the oral and documentary evidence, found all the charges established against the petitioner. Unauthorised absence on the part of the petitioner, coupled with his misbehaviour to the Principal of the college are very serious charges and cannot be viewed leniently. The Enquiry Committee found on the basis of the corroborative evidence on record that all the charges levelled against the petitioner stood established in the enquiry. Thereafter, the Governing Body of the college upon a detail discussion on the entire materials on record, decided to impose the penalty of dismissal from service. I see no reason to interfere with the same.

15. Mr. Thakuria, learned counsel for the petitioner, submits that in case of dismissal from service, the petitioner may not be entitled to get any future employment.

16. Considering the matter in its entirety, it is hereby provided that the dismissal of the petitioner from the non-sanctioned post will not stand on his way for absorption and or appointment elsewhere and accordingly the impugned order of dismissal shall be read as order of removal from service. Writ petition is disposed of accordingly.