
(2021) 02 GAU CK 0055
In the Gauhati High Court
Case No : Writ Appeal No. 64 Of 2021

Diganta Barman

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Citation : (2021) 02 GAU CK 0055

Hon'ble Judges : Sudhanshu Dhulia, CJ; Manash Ranjan Pathak, J

Bench : Division Bench

Advocate : M.J. Quadir, D. Saikia, B. Gogoi

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, CJ

1. Heard Mr. M.J. Quadir, learned counsel for the writ appellant/writ petitioner. Also heard Mr. D. Saikia, learned senior standing counsel,

Government of Assam for all the respondents, assisted by Mr. B. Gogoi, Advocate.

2. The writ appellant/writ petitioner before this Court has challenged the order dated 03.02.2021 passed by the learned Single Judge in Writ Petition

No.8069/2018 dismissing the writ petition.

3. The brief facts of the case are that the writ appellant/writ petitioner was employed by the Department AUYSH, which runs as a Society, under the

Department of Health and Family Welfare, Government of Assam. Vide order dated 10.09.2015, the writ appellant/writ petitioner was appointed as a

Consultant (HIMS) on contractual basis for a period of one year with effect from the date of his joining. He joined the said post on 01.10.2015, which

was further extended with effect from 01.10.2016 to 30.09.2017 vide order dated 26.12.2016. After the expiry of second contract, the writ

appellant/writ petitioner's service was extended by order dated 12.12.2017 to another period of one year with effect from 01.10.2017 to

30.09.2018. But thereafter the writ appellant/writ petitioner's contractual term was not extended and this was because of his poor performance.

The stipulated conditions in the Clause 5 and 8 of the contract are as under:-

5. The services of the 1st Party shall stand automatically terminated at the expiry of contract period, without any notice or notice pay

and without any liability on part of the Society to pay any retrenchment or other compensation or other amounts to the party.

8. Either of the parties hereto have the right to terminate this Agreement without assigning any reasons; provided that a written notice of

one month is given to the other party. Both the parties may, in lieu of the written notice, give the other party a sum equivalent to the amount

of his salary for one month.

4. On perusal of records, which have been placed before us, we find that the writ appellant/writ petitioner was not performing his duties to the

satisfaction of the employer. It appears that the writ appellant/writ petitioner did not improve his performance as he was thereafter again assessed

poor performance which is 3.5 out of 10 and since the performance was below average, his contractual service was not renewed thereafter.

Aggrieved, he filed the writ petition which was dismissed by the learned Single Judge who did not find favour with the case of the writ appellant/writ

petitioner.

5. In the writ appeal, the learned counsel for the writ appellant/writ petitioner has pointed that principles of natural justice have been violated and he

has relied upon the decision of the Apex Court in the case of Dev Dutt "versus- Union of India and Others, reported in (2008) 8 SCC 725. In the

case of Dev Utt (supra), the Hon'ble Apex Court had laid down that the downgraded entry of an employee are liable to be communicated to him

so that he can improve his performance. The said case, however, is not applicable in the facts and circumstances of the present case as the writ

appellant/writ petitioner was not in regular employment at the relevant time with the department. In fact, the admitted case is that there was no regular

record of his service which is maintained for a regular employee.

6. Be that as it may, the fact of the matter is that a year prior to his

discontinuation or non-renewal of contract he was cautioned to improve his performance as the same was not to the satisfaction of the department. We feel that the department was not bound to do that but it was only fair in their part to have done that. We find there is absolutely no merit in the writ appeal and the same stands dismissed.