

(2018) 01 GAU CK 0040
In the Gauhati High Court
Case No : 1237 of 2011

DR. HIRI KUMAR SAHOO

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 02-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0040

Hon'ble Judges : Achintya Malla Bujor Barua

Bench : Single Bench

Advocate : B CHETIA, Y.S. Mannan, N. Sarma

Final Decision : Disposed

Judgement

1. Heard Mr. Y.S. Mannan, learned counsel for the petitioner. Also heard Mr. N. Sarma, learned standing counsel for the Education Department.

2. The petitioner served as the DEEO in the Sivasagar district during the period from 17.04.1990 to 15.12.1992. During the said period, there

were certain illegal appointments being made in the Sivasagar district. As a consequence, the petitioner was served with a show-cause notice dated

15.09.1999, under Rule 9 of the Assam Services (Discipline and Appeal Rules) 1964 requiring him to show-cause as to why he should not be

inflicted with any of the penalties prescribed in Rule 7 of the said Rules. The allegation made against the petitioner was that the petitioner was

responsible for making 240 numbers of illegal appointments to the post of ME/ M.V. School teachers in violation of the Rules. Consequent to such

show-cause notice, the petitioner had given his reply and thereafter in the enquiry report submitted, the petitioner was exonerated all the allegations

made against him. Accordingly, by an order of 01.01.2005 of the then

Commissioner & Secretary to the Govt. of Assam in the Education

Department, the disciplinary proceeding drawn up against the petitioner was dropped.

3. But nevertheless, the petitioner was issued with a further show-cause notice dated 07.05.2008 on the allegation that while he was working as

the DEEO, Sivasagar, he had appointed 319 number of school teachers against the regular sanctioned post for a period of three months and that

such appointments were made without any selection and were also contrary to the provision of the rules in force. Upon receiving his reply against

the said showcause notice, an enquiry was held under Rule 9(6) of the Assam Services (Discipline & Appeal) Rules 1964 and consequently, an

enquiry report dated 13.01.2009 was submitted by A.B. Md. Eunus, who was the then Secretary in the Education (Elementary) Department of the

Govt. of Assam. But what is noticed is that subsequently by an order dated 20.02.2010, the same person A.B. Md. Eunus had passed an order of

penalty whereby, a part of the pension of the petitioner amounting to Rs.500/- per-month was withdrawn. The said order of penalty dated

20.02.2010 has been assailed in this writ petition.

4. Without going into the merit of the said order of penalty dated 20.02.2010 on any other ground, it is noticed that the order is not sustainable

inasmuch as the aforesaid A.B. Md. Eunus, who was the enquiry authority as the Secretary to the Govt. of Assam in the Education (Elementary)

department had also taken upon himself to be the disciplinary authority for passing the order of penalty dated 20.02.2010. The said act on the part

of A.B. Md. Eunus is contrary to the provision of Rule 9(9) of the Assam Services (Discipline and Appeal Rules) 1964.

5. Rule 9(9) of the Assam Services (Discipline and Appeal) Rules, 1964 is as follows:-

9(9) the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the Inquiry and record its finding on each charge.

It is apparently clear from the provision of Rule 9(9) that it is not permissible for the enquiry officer to also be the disciplinary authority for the

purpose of passing an order of penalty.

6. In view of such infraction of Rule 9(9) of the Assam Services (Discipline and Appeal Rules) 1964, the order of penalty dated 20.02.2010 is

hereby set aside. However, liberty is granted to the state respondent authorities to pass an appropriate order by a disciplinary authority, who is presently competent to act as such based on the aforesaid enquiry report. The aforesaid exercise shall be done within a period of three months from the date of receipt of certified copy of this order. Writ petition stands disposed of.