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**(2006) 01 GAU CK 0091**  
**In the Gauhati High Court**

Gopal Chandra Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 04-01-2006

**Acts Referred:**

**Citation :** (2009) 4 GLR 390

**Hon'ble Judges :** Iqbal Ahmed Ansari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

I.A. Ansari, J.—Heard Mr. K.C. Keyal, learned Counsel for the petitioner, and. Mr. B.C. Choudhury, learned Govt. Advocate, appearing on behalf of respondent Nos. 1 and 2. Also heard Mr. S.K. Ghosh, learned Counsel, appearing on behalf of the respondents Nos. 3 and 4.

2. The petitioner herein, namely, Gopal Chandra Das, while serving as an accountant in the office of the Municipal Board, Dhubri, ("the Board"), applied, on 22.1.2003, to the Board for extension of his service beyond the age of 58 years, for, he was to, otherwise, retire, on superannuation, on 1.6.2004. At that point of time, as the Board stood dissolved, the Extension Officer, Municipal Board, Dhubri, considered the petitioner's representation and passed an order, on 29.1.2004, extending the service of the petitioner for two years. When the Board came to be constituted, the Board adopted a resolution on 25.2.2004, providing, inter alia, for re-consideration by the Chairman of the Board of the grant of extension of the period of service of the petitioner. Acting upon the authority so conferred on him by. the resolution, dated 25.2.2004, aforementioned, respondent No. 4, namely, Chairperson, Municipal Board, Dhubri, passed an order, on 29.5.2004, terminating the petitioner's service, on superannuation, with effect from 1.6.2004. Aggrieved by this order, the petitioner has impugned the same in the present writ petition.

3. At the time of admission hearing of this writ petition, the principal grievance

expressed, on behalf of the petitioner, is that extension of his service has been rescinded without giving him any opportunity of showing cause or hearing. It is this grievance of the writ petitioner, which needs to be carefully examined.

4. While considering the above aspect of the matter, what needs to be noted is that it is, admittedly, Rule 2(v)(a)(i) of the Rules for Appointment to service under the Municipal Board and Town Committee, which governs extension of service of an employee of the Board. This Rule reads as follows:

Rule 2(v).

(a) Subject to the following conditions the date of compulsory retirement of the employee of the Municipal Board/Town Committee in the date of which he/she attains the age of 58 years..

(i) An employee of a Municipal Board/Town Committee who wants to continue in service of the Board/Committee beyond 58 years of age will make an application to the Chairman of the Municipal. Board/Town Committee to that effect three month prior to his/her attaining the age of 58 years together with a fitness certificate from the Civil Surgeon of the District Concerned. The Chairman of the Board/Committee will than place the application together with the fitness certificate before a meeting of the Board/Committee who will decide whether to allow the particular employee to continue in service till he/she attains 60 years of age on the basis of the employees" efficiency and physical fitness.

(ii) No employee of the Municipal Board/Town Committee will be entitled to the benefit of the increased age of compulsory retirement unless he/she been permitted by the Municipal Board/Town Committee permits an employee to continue in service after the age of 58 years. Before the Municipal Board/Town Committee permits an employee to continue in service after the age of 58 years, it should satisfy that the employee concerned is efficient and physically fit for further service under the Board/Committee.

5. From a careful reading of the above rule, what transpires is that an application for extension of service can be made by an employee of a Municipal Board three months prior to the date of his attaining the age of 58 years. This, in turn, means that no employee can apply for extension of his service prior to the period of three months of the date on which he would retire from service on superannuation. This shows that the grant of extension would be as a measure of exception and such extension will arise only during the period of three months prior to the date of retirement or superannuation of the employee concerned

6. In the present case, the petitioner was to admittedly retire from service on 1.6.2004. The petitioner could have, therefore, applied for extension of his service on or after 1st April, 2004. However, the petitioner had applied for extension of his service as early as on 22.1.2004. Hence, neither the Board nor the Executive Officer was competent to consider such an application and grant extension of service. This apart, the Rules stipulate that along with the

application for extension of service, a fitness certificate from the Civil Surgeon of the district concerned has to be furnished by the applicant. The post of the Civil Surgeon has, now, been replaced by the post of Joint Director of Health Services. Since the petitioner had been working as an employee in the Municipal Board, Dhubri, a fitness certificate from the Joint Director of Health Services, Dhubri, ought to have been enclosed along with the application for extension made by the petitioner. The petitioner, did not, admittedly, comply with this requirement too.

7. Thus, the granting of extension of service of the petitioner was in clear violation of the relevant rules. In the circumstances, such as the present one, the termination of the petitioner's extension of service in the manner as has been done by the respondents cannot be said to be illegal, unfair and unjust, for, even if the petitioner were given a notice of show cause, in this regard, the petitioner would not have been able to justify the extension of his service.

8. Adherence to the golden principles of natural justice is not an idle formality, but a purposive exercise. In order to make such exercise meaningful and effective, imperative it is for a writ court that before it interferes with any administrative order on the ground of denial of the principles of natural justice, it satisfies itself that had the principles of natural justice been followed, the action of the administrator or the result of the administrative action could have been otherwise. To put it differently, even when compliance of the principles of natural justice would have yielded the same result, which the administrative decision reflects, it will not be necessary for the Writ court to interfere with such administrative decision on the ground that principles of natural justice have not been followed, for, despite such an inference, the result will, eventually, be the same. Thus, when a person is removed Without giving him any opportunity of showing cause or hearing and he challenges his removal by way of a writ petition on the ground of denial of the principles of natural justice, the court shall not interfere with the termination of service if it is satisfied that even after giving notice to show cause or hearing, the result would have been termination of service of the aggrieved person concerned. This developed principle of law needs to be adhered to in the present writ petition. It is, therefore, not desirable that this Court mechanically sets aside and quashes the impugned order merely on the ground that no notice to show cause had been issued to, or served upon, the petitioner before his service was terminated, when even after giving notice, the petitioner would not be able to justify extension of his service, for, to a pointed query made by this Court, the learned Counsel for the petitioner could not dispute that the impugned order granting extension of service to the petitioner was premature and contrary to the provisions of the rule relevant thereto.

9. Situated thus, it is clear that the writ petitioner has not been able to make out any case for interference by this Court in exercise of its writ jurisdiction.

10. In view of the above, the writ petition is not admitted and the same shall accordingly stand dismissed.

11. No order as to costs.