
(2021) 12 GAU CK 0036

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1710 Of 2017

Gunajoy Choudhury

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 20-12-2021

Acts Referred:

Assam Services (Discipline & Appeals) Rules, 1964 — Rule 9
Assam Municipal Act, 1956 — Section 50(2)

Citation : (2021) 12 GAU CK 0036

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : S K Das, U. K. Nair, D. Mazumdar

Final Decision : Disposed Of

Judgement

Heard Mr. U.K. Nair, the learned Senior Counsel assisted by Mr. S. K. Das, the learned counsel for the petitioner. Also heard Mr. D. Mazumdar, the learned Senior Counsel assisted by Ms. M. Bhattacharjee, the learned Government Advocate, Assam representing the respondent No. 4.

1. The petitioner herein who was a Head Assistant under respondent No. 4 i.e. Barpeta Road Municipal Board, by way of this writ petition challenges the order dated 26.08.2016 whereby the petitioner was dismissed from service. He also challenges the order dated 20.02.2017 passed by the appellate authority upholding the order of dismissal.

Contentions raised by the petitioner:

2. The brief case of the petitioner is as under:-

(i) As an offshoot of the earlier bitterness, the Barpeta Road Municipal Board i.e. respondent No. 4 (herein after referred as Board) issued a show cause notice to the petitioner alleging misbehavior with the Chairperson, Vice-Chairperson and Executive Officer inside the office chamber of the Executive Officer of the Board.

According to the petitioner, subsequent to this, he was pressurized to admit the alleged guilt or to face action and under such duress, he submitted his reply on 29.02.2016. According to the petitioner, he has not admitted the guilt but at the same time, he stated that if he had committed any misconduct, that was unintentional and prayed for forgiveness. Subsequently, on 14.03.2016, the petitioner was put under suspension pending drawl of the departmental proceeding.

(ii) According to the petitioner on, 13.05.2016, a charge memo was drawn against him and he was asked to appear personally before the Enquiry Committee on 16.05.2016 at 11:00 AM.

(iii) Such decision for drawl of departmental enquiry and appointment of Enquiry Committee was taken by the Board on 07.03.2016.

(iv) The petitioner contends that he appeared before the Enquiry Committee at 10:30 AM on 16.05.2016 as directed and on the same day itself, he filed an application before the Enquiry Committee to allow him to appoint a defense counsel for his defense during the time of enquiry.

(v) The petitioner further contends that while he was waiting for the response from the Enquiry Committee on his prayer for appointment of counsel as stated hereinabove, suddenly on 05.08.2016, he received a second show cause notice, inter alia asking him, as to why he should not be dismissed from his service as all allegations are proved in the departmental proceeding.

(vi) The petitioner vide his communication dated 08.08.2016 filed his reply inter alia contending that the Enquiry Committee refused to allow him to appear with his lawyer. Also contending that the said enquiry was bias, perverse, motivated and with a premeditated intention. He also contended in the said communication that the entire proceeding stand vitiated as the principle of fair play and natural justice was not followed.

(vii) Subsequent to this, vide the impugned order dated 26.08.2016, the petitioner was dismissed from service of the Board. The said communication dated 26.08.2016 reflects that vide resolution No. 2 passed by the Board held in its meeting on 20.08.2016, the Board had rejected his reply to the second show cause notice dated 08.08.2016.

(viii) Being aggrieved, the petitioner preferred a statutory appeal under Section 50(2) of the Assam Municipal Act, 1956. In the said appeal amongst other, the petitioner raised the issue that while initiating the departmental proceeding, the Rule 9 of the Assam Services (Discipline & Appeals) Rules, 1964 has been violated more particularly no specific and definite charges were framed, no statement of the petitioner were recorded, no list of documents and witnesses were given, prayer for allowing a defence counsel of the petitioner was denied.

(ix) While such appeal was pending before the Appellate Authority, the petitioner approached this court by way of WP(C) No. 6849/2016. The said writ petition

was disposed of directing the Appellate Authority to dispose of the appeal pending before it, preferably within a outer limit of 8 (eight) weeks from the passing of the order of the writ court, as the limited prayer was made to that effect.

(x) Subsequent to this, the Appellate Authority vide its order dated 28.02.2017 decided the appeal by upholding the decision taken by the Board and rejecting the contention of the writ petitioner. The said order is also under challenge in this writ petition.

Submissions of the learned counsel for the petitioner:-

3. According to the learned Senior Counsel, Mr. U. K. Nair, the entire proceeding has been vitiated for non adherence of Rules and extant procedure. He contends the following:-

(i) The entire proceeding is vitiated by bias making it a void proceeding.

(ii) In support of his contention, Learned Senior Counsel, stresses upon the contents of the show cause notice which has been issued under the signature of the Chairperson of the Board. According to Mr. Nair, a bare reading of the show cause notice reflects that the misconduct /in subordination alleged relates to the alleged misbehavior towards the Chairperson, Vice-Chairperson and the Executive Officer of the Board. But while issuing the show cause, the Chairman not only issued the Show cause under her signature but going beyond the Boards resolution, expressed certain personal humiliation in the said show cause notice. According to the learned Senior Counsel, since the entire misconduct relates to misbehavior meted out to the Chairman, Vice Chairman and the Executive Officer, they ought not to have even participated in the Board meeting. The show cause notice ought not to have been issued by the Chairman herself. The Chairman, Vice Chairman and Executive Officer ought not to have the part of the Board resolution by which the petitioner has been dismissed from service. Thus according to Mr. Nair, the Chairman is a victim of alleged of misbehavior of the petitioner, she is an author of the show cause notice, she is a witness of the disciplinary proceeding, she along with the Vice Chairman and the Executive Officer were the witnesses and they were also the part of the decision of the Board i.e. resolution No. 2 dated 20.08.2016 and according to him the impugned order of dismissal has also been issued under the signature of the Chairman. Therefore, the entire proceeding has been vitiated by bias and the same is void-ad-initio and accordingly, same is liable to be set aside.

4. Contention of the respondent Board.

i. The respondent No. 4 has contested the writ petition by filing affidavit. It is contended by the respondent No. 4 that the enquiry was not conducted behind the back of the petitioner inasmuch as he was duly served with notice to appear before the Disciplinary Committee and after appearing, the petitioner himself refrained from recording his statement before the authority. Therefore, the

petitioner cannot take advantage of his own fault.

ii. It is also contended that the Board vide communication dated 17.05.2016, intimated the petitioner that there is no rule for appointment of legal practitioner in departmental enquiry and accordingly his application was rejected.

iii. It is also contended that the petitioner has, after appearing before the Enquiry Committee created a situation by shouting at the member of the Enquiry Officer and making a situation which was uncontrollable and thus he has intentionally created a situation to avoid the departmental proceeding.

5. Submissions of the learned counsel for the respondents.

i. Mr. Mazumdar, the learned Senior Counsel, submits that subsequent to the issuance of the show cause notice dated 26.02.2016, the petitioner vide reply dated 29.02.2016, without replying to the allegations made has prayed for mercy for his unpardonable offences with an assurance that he will continue to respect the Chairman, Vice-Chairman and the Executive Officer of the Board. According to the learned Senior Counsel, the petitioner also made a prayer before the Board that the petitioner should be pardoned on humanitarian ground. Therefore, the said show cause reply is nothing but an admission of guilt and therefore, there was no necessity to proceed further with a departmental proceeding but the Board in its wisdom has appointed Enquiry committee.

ii. According to Mr. Mazumdar, learned Senior Counsel, since the petitioner had admitted his guilt in writing, the doctrine of bias is not applicable as the petitioner cannot improve his case beyond what he had submitted in the show cause reply.

iii. Mr Mazumdar, further submits that the show cause notice has been issued on the basis of a resolution of the Board. It is not an individual act of the Chairman, as individual but as the authority representing collective wisdom of the Board and thus, the learned Counsel submits, the show cause was issued by virtue of her office and not on her individual capacity. Therefore, the doctrine of bias is not applicable, the resolution being a collective decision of the Board as per the provisions of Municipal Act.

iv. Mr. Mazumdar also submits that the Enquiry Officers were independent and they were nowhere related to the alleged incident and accordingly the allegation of bias cannot sustain relating to the Enquiry Officers. Therefore, a writ Court may not revisit the findings of the Enquiry Committee in exercise of its power of judicial review. Mr. Mazumdar also submits that the final decision to impose the punishment of dismissal from service was also taken by the Board the Chairman only signed the said order of dismissal as the statutory authority not as an individual. Therefore, the principle of bias is not applicable in this case. Accordingly, Mr. Mazumdar, this writ petition is liable to be dismissed more so, in view of the fact that the petitioner himself has created a situation so that the departmental proceeding fails.

6. I have given the anxious considerations to the materials available on record, the submissions made by the learned Senior counsels and also perused the record of the departmental proceeding, produced by Ms. M. Bhattacharjee, Learned Counsel assisting Mr. Mazumdar, Learned Senior Counsel.

7. Since the learned Senior counsels representing the contesting parties made deliberations only on the point of bias, this court will confine its decisions to that point only.

8. The basic allegation against the petitioner, as given in the show cause notice dated 20.06.2016 are reproduced herein below:-

"Sub- Show cause notice.

An emergent meeting of the Barpeta Road Municipal was held on 24th Feb, 2016 at about 2 P.M. at Municipal Office premises under the Presidentship of the Chairperson to discuss about the misbehavior, misconduct and the disrespect shown by you on 18th Feb, 2016 at about 1.55 PM at the chamber of the Executive Officer, Vice-Chairperson and Executive Officer while they were discussing regarding the development works and extension of Municipal Market. The Board after discussing the matter thereby, adopted a resolution and authorize the Chairperson to issue a show-cause notice mentioned under the following allegations-

1) On 18.02.2016 at about 1.55 PM when the Chairperson, Vice-Chairman and Executive Officer was discussing about improvement works and extension of market in the office chamber of the executive officer, you unauthorizedly entered into the room and misbehaved, threatened and intentionally insulted.

2) You said to three of us that I had kept the earlier Chairman Dilip Kr. Saha out of office for fourteen months after filing court case against him. I will also not work with you (present chairperson), what you can do.

3) Addressing the chairperson you said that you will face the same fate as that of Howli Town Committee president, who was arrested by filing court case in the High Court if I court case in the High Court.

4) You said that president and vice-president are no one in the Municipal Board. Officer will look into the file. Director has no power to give extension. I don't obey the director.

5) You against said that you are given time till February last or else I will make complain in the office of the Deputy Commissioner. All files should be passed through me, I have no scarcity of money, I have not come to do work for money.

6) You again said that if the files are not sent through me you will not sign any file. You also said that if you file case you will also make the executive office as party.

Moreover you in various occasion humiliated me and the vice-chairman at office

and also threatened us. You being an employee of the Municipal Board intentionally violating all norms and shown indiscipline and disrespect to the seniors. You also did such type of activities to the previous Chairman for which you have to be placed under suspension. Due to your conduct the office could not function smoothly and you are disturbing in every works of the Board.

So, I am giving you this show cause notice in the allegation mentioned above and you are directed to submit your reply to the show cause notice within 7 (seven) days from the date of receiving this notice, failing which the Board will proceed accordingly and then you will liable for the action.

Given under my hand and seal on this 25th day of February, 2016 at Barpeta Road.

Yours faithfully

Illegible

(Sabita Deb Nath)

Barpeta Road Municipal Board, Barpeta Road".

9. The last but one paragraph of the show cause notice dtd. 26.02.2016 clearly reveals that the Chairman had a personal humiliation and the content of the said paragraph expresses individual concern of the Chairman beyond the allegation/ charges made in the first 1 to 6 paragraphs.

10. The record further reveals that the Chairman, the Vice-Chairman and the Executive Officer were also part of the Board meeting dated 24.02.2016 and took active part while taking the decision to issue show cause notice was taken.

11. The allegation 1 to 6 clearly reveals that the show cause has been issued on the fact arising out of misbehavior, threatening and intentionally insulting the Chairman, Vice-Chairman and the Executive Officer. Thus the victims of the alleged misconduct of the petitioner are the Chairman, Vice-Chairman and the Executive Officer.

12. The record reveals that the Chairman, Vice-Chairman and the Executive Officer also appeared before the enquiry committee and deposed as witnesses.

13. The Board meeting held on 26.07.2016 came to a conclusion, on the basis of the Enquiry Report, that the allegations against the petitioner are proved and that the petitioner has accepted the allegations level against him. In the said meeting, while accepting the enquiry report, the three victims participated and decided to issue second show cause notice asking the petitioner to show cause why the petitioner should not be dismissed from service. Such notice was also issued under the signature of the Chairman, one of the victims of alleged misbehavior of the petitioner.

14. The communication dated 05.08.2016 i.e. the second show cause notice issued to the petitioner, reveals that the Enquiry Committee submitted the report

before the Chairperson.

15. In view of the aforesaid facts, it is clear that on the basis of the allegations of misbehavior committed towards the Chairman, Vice-Chairman and the Executive Officer, the departmental proceeding was initiated against the petitioner.

16. The Chairman, Vice-Chairman and the Executive Officer was also the part of the Board meeting held on 26.07.2016 where under vide resolution No. 1, a decision was taken to issue show cause notice to the petitioner. The said three victim of allege misconduct/misbehavior was also part of the Board meeting whereby decision to appoint Enquiry Committee was taken, the meeting wherein a decision to dismissed the petitioner from service was taken. The said three persons also deposed their evidence before the Enquiry Committee alleging misbehavior by the petitioner.

17. The legal position is clear that no man shall be judge of his own cause and such principle is required to be followed by all judicial and quasi- judicial authorities and if such principle is not followed it will amounting to violation of principle of natural justice. The departmental proceeding against any government employee and resultant of imposition of punishment under the provision of statutory rules is a quasi judicial proceeding. It is well settled that the principles of natural justice is required to be strictly adhered to in such a proceeding. It is also well settled that no person should adjudicate a dispute whose, he or she has dealt with any capacity. The failure to observe this principle creates and apprehension of bias on the part of the said person. Therefore, the law requires that a person should not decide a case wherein he is interested. The question is not whether, the person is actually bias but whether the circumstances are such as to create a reasonable apprehension in the minds of the others as there is bias affecting the decision. (A. U. Kureshi -Vs- High Court of Gujrat)

18. In the case in hand, the Chairman, Vice Chairman and the executive officer, had personnel interest in the enquiry as the said enquiry has been initiated on the basis of the allegation of misbehavior meted to them. The record reveals that they had also appeared and deposed before the Enquiry Committee. In that situation, the said three persons ought to have kept themselves from the proceeding initiated against the petitioner, but instead of remaining aloof they had taken active part in the entire enquiry proceeding. That being so, this court is having no hesitation to hold, in the given facts and circumstances of the case that the entire departmental proceeding including the imposition of punishment, is in violation of principles of natural justice for the reason of the existence of bias.

19. Having thus concluded, now this court is to decide on the further direction that is necessary to be issued in the present proceeding.

20. Mr. Mazumdar, alternatively argues that in the event, the punishment is set aside on the ground that the proceeding was not conducted properly, the court needs to direct the Disciplinary Authority to conduct the enquiry from the point

that it vitiate and be directed to conclude the same. In support of such contention Mr. Mazumdar relies on a decision of the Hon'ble Apex Court in the case of Chairman, LIC of India and others -Vs- A. Masilamoney reported in (2013) 6 SCC 530 and Union of India -Vs- Y. S. Sadhu reported in (2008) 12 SCC 30.

21. It is by now well settled that once the court sets aside an order of punishment on the ground that enquiry was not properly conducted, the court may not reinstate the employee and it must remit the concerned case to the Disciplinary Authority for it to conduct the enquiry from point it was vitiated and conclude the same.

22. That being the position, this court directs as follows:-

(i) The punishment imposed upon the petitioner vide order dated 20.08.2016 is hereby set aside and quashed.

(ii) The respondent Board shall start the proceeding de-novo against the petitioner by issuing a fresh show cause notice on the basis of allegation of misbehavior/threatening alleged by the then chairman, Vice Chairman and Executive officer of the Barpeta Road Municipal Board.

(iii) The entire proceeding shall be completed within a period of six months from the date of receipt of the certified copy of this order.

(iv) The petitioner shall participate in the proceeding and the petitioner shall not create any inappropriate situation during the departmental enquiry.

(v) The petitioner is hereby reinstated in service for the purpose of the de-novo proceeding; however, he shall continue to remain under such suspension during pendency of the departmental proceeding.

(vi) The petitioner shall be entitled for the subsistence allowance during such period of suspension.

(vii) In the aforesaid terms, this writ petition is disposed of however, no order as to cost.