

(2021) 08 GAU CK 0052

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3390 Of 2019

Hemanta Das

APPELLANT

Vs

Assam State Agricultural Marketing Board And 2 Ors

RESPONDENT

Date of Decision : 16-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 311

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 9

Citation : (2021) 08 GAU CK 0052

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : D Saikia

Final Decision : Dismissed

Judgement

1. Heard Mr. R. Sarma, learned counsel for the petitioner. Also heard Mr. N.J. Gogoi, learned standing counsel for respondent no.1 and Mr. B.D.

Konwar, learned senior counsel assisted by Mr. H. Agarwal, learned counsel for respondent nos.2 and 3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondents to allow the

petitioner for joining his erstwhile Grade-IV post Contingency Menial under Lanka Regulated Market Committee. The case of the petitioner, as

projected in the writ petition is that he was appointed as Grade-IV Contingency Menial at a consolidated pay of Rs.900/- (Rupees nine hundred only)

per month vide order dated 18.11.1999. It is projected that due to his illness, the petitioner had remained absent from duty from 15.05.2018 to

09.10.2018 and during this period, the respondent no.3 had purportedly issued letter dated 22.06.2018 to join forthwith and to show cause about

unauthorized absent, further informing the petitioner that he was released from Jamunamukh Centre and he did not join Nilbagan, office of the

respondent no.2. In this regard, it is projected that the said transfer order dated 16.05.2018 was never served on the petitioner. It is further projected

that on 12.07.2018, an FIR was filed by three marketing inspectors before the Jamunamukh police station alleging misappropriation of Rs.13,35,000/-

by the petitioner by forgery and that during enquiry, the petitioner had confessed in writing and to repay the misappropriated amount within 30.06.2018

and that since then the petitioner remained absent from office. By a notice dated 13.07.2018, the petitioner was informed of his unauthorised absence

since 17.05.2018 and he was directed to join office within 5 days and to show cause for his absence, failing which the respondent no.3 threatened the

petitioner action as per departmental rule. It is projected that the petitioner had been granted pre-arrest bail by this Court by order dated 24.08.2018

passed in A.B. 2363/2018 and thereafter, on 08.10.2018, the petitioner had prayed before the respondent no.3 to allow him to join his service, which

was accompanied by a medical certificate.

3. The respondents have filed a joint affidavit-in-opposition, stating therein that the petitioner was appointed purely on temporary basis and that job of

the petitioner was primarily to assist the marketing inspector to collect cess. The petitioner had remained absent from work without prior notice since

the month of May, 2018 and that by order dated 16.05.2018, the respondent no.3 (now re-designated as CEO) had transferred the petitioner from

Jamunamukh Centre to Nilbagan office and that by an order dated 17.05.2018, the petitioner was released from Jamunamukh Centre. It is projected

that in spite of letters dated 22.06.2018, 13.07.2018, 16.07.2018 and 26.07.2018 by the respondent no.3, the petitioner did not join his service at

Nilbagan office. The case projected by the respondents is that three marketing inspectors of Jamunamukh office, Hojai office, Nilbagan office had

entrusted the petitioner with the duty to deposit the cess money in the Market Committee's bank account at UBI, Kapashbari Branch, District

Hojai, but in the month of May, 2018, it was revealed from internal office enquiry/ audit that there was mis-match on the cash handed over to the

petitioner with the deposit slip provided by the petitioner to the extent of Rs.13,35,000/-. Accordingly, in order to save their service, the said three

marketing inspectors had deposited a sum of Rs.13,35,000/- from out of their own pocket. It is alleged that the petitioner used to make short deposits

and manipulated the figures in bank pay-in-slips to show as if higher deposits were made in the bank. Accordingly, FIR was filed by the three

marketing inspectors. However, despite admission of guilt, the petitioner did not repay the misappropriated amount and absconded without submitting

any show cause reply. The learned senior counsel for the respondent nos.2 and 3 submits as the petitioner remained absent on duty, the principle of

“no work no pay” was applied and that the petitioner had abandoned his service.

4. Perused the writ petition, affidavit-in-opposition filed by the respondents, affidavit-in-reply filed by the petitioner, rejoinder affidavit filed by the

respondents and additional affidavit filed by the petitioner.

5. It is seen that the petitioner was temporarily appointed in the post of Contingency Menial which is a Grade-IV post. Although the petitioner has

worked in the said post for eighteen years, but there is no document on record to show that the service of the petitioner was regularized. It is the

admitted case of the petitioner that he had remained absent from 15.05.2018 to 09.10.2018. Thereafter, as per the extract of the minutes of the Board

meeting of Lanka Regulated Market held on 26.12.2018, amongst others, it was resolved not to accept the joining letter of the petitioner due to his

unauthorized absence for six months, though he was transferred from Jamunamukh Centre to the Head Office on 16.05.2018.

6. In the present case in hand, the petitioner was appointed on a temporary basis. There is nothing on record to show that any substantive right had

accrued in favour the petitioner in respect of the Grade-IV post of Contingency Menial. Therefore, notwithstanding that the order of appointment

dated 18.11.1999 does not provide for any term/ tenure, the appointment is temporary in nature and is terminable at any time without notice. The Court

is unable to accept the submissions made by the learned counsel for the petitioner that by dint of long and interpret service of the petitioner rendered

from 18.11.1999 till he remained absent from 15.05.2018 was sufficient to establish that the petitioner was a permanent Govt. servant. In this regard,

the Court is of the considered opinion that merely by dint of long service rendered by the petitioner for about 19 years, the Court cannot presume that

the petitioner had acquired the status of a permanent Govt. servant. In such a case, it was not mandatory for the respondents to follow the formalities

contemplated either by Article 311 of the Constitution of India or to follow the procedure prescribed in section 9 of the Assam Services (Discipline

and Appeal) Rules, 1964 to formally terminate the service of the petitioner. The petitioner had remained absent on and from 15.05.2018 till it was

resolved on 22.06.2018 by the Lanka Regulated Market Committee not to accept application dated 08.10.2018 for joining. The said resolution amounts

to termination of the service of the petitioner. Therefore, as the petitioner has made a prayer for joining his erstwhile Grade-IV post, the said prayer

cannot be allowed in the absence of any prayer to set aside and quash the resolution dated 26.12.2018 (Annexure-6 to the affidavit-in-opposition). The

existence of such resolution was brought to the notice of the petitioner with the filing of the affidavit-in-opposition on 30.07.2019

7. It may be mentioned that the Court is refrained from making any observation on the correctness of otherwise of the allegations made by the

respondents against the petitioner.

8. Accordingly, this writ petition fails and the same is dismissed, there shall be no order as to cost.