

(2021) 08 GAU CK 0056

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3264 Of 2017, 6727 Of 2018

Khandan Kumar Das

APPELLANT

Vs

State Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 17-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Limitation Act, 1963 — Section 14
Assam Municipal Act, 1956 — Section 50
Indian Contract Act, 1872 — Section 63

Citation : (2021) 08 GAU CK 0056

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : I. Choudhury, A.K. Baruah, J.K. Goswami

Final Decision : Partly Allowed

Judgement

1) Heard Mr. I. Choudhury, learned senior counsel, assisted by Mr. A.K. Baruah, learned counsel for the petitioner and Mr. J.K. Goswami, learned

Addl. Senior Govt. Advocate appearing for the respondent nos. 1 to 3.

2) Mr. P.J. Saikia, the learned counsel who had entered appearance on behalf of the respondent no. 3 and 4, i.e. the Biswanath Chariali Municipal

Board and its Chairman, is present and has submitted at the outset that during the pendency of this writ petition, the term of the said Board had

expired and the said Board has been taken over by the Deputy Commissioner, Biswanath Chariali and the affairs of the respondent no. 3 i.e. the

Biswanath Municipal Board is now run by the Deputy Commissioner through a nominated officer and therefore, at present there is no Chairman i.e.

respondent no. 4. Accordingly, it is submitted that although he is on record for respondent nos. 3 and 4, but as the respondent no. 3 is being controlled

by the State, for all intents and purport, the Govt. Counsel would ideally have to represent the said respondent nos. 3 and 4. On a perusal of the record,

it is seen that the affidavit-in- opposition on behalf of the respondent nos. 3 and 4 was signed and sworn by the then Chairman on 08.06.2018 and the

same was filed before this Court by Mr. Bikash Sharma, the learned counsel on 10.07.2018. There is no record of any vakalatnama filed by the

learned counsel for the respondent nos. 3 and 4 along with or prior to filing of the affidavit-in-opposition. However, on record is a vakalatnama signed

by the Chairperson of Biswanath Municipal Board, which was filed on behalf of the respondent nos. 3 and 4 by Mr. M.R. Adhikari and Mr. P.N.

Sharma, learned counsel. The Court is unable to find vakalatnama of Mr. P.J. Saikia, learned counsel on record.

3) Be that as it may, in brief, the case projected in this writ petition is that on 27.09.1985, the petitioner was initially appointed as the Tax Collector in

the office of the respondent no.3, previously known as Biswanath Chariali Town Committee. On 03.10.1996, he was promoted to the post of Assistant

Tax Daroga and that on 29.08.2005, the petitioner was promoted to the post of Tax Daroga. On 17.01.2011, the respondent no. 4 issued a show cause

notice to the petitioner as to why disciplinary action will not be taken against the petitioner for violation of office discipline alleging indiscipline. The

petitioner had submitted his reply on 24.01.2011. It is projected that without affording any opportunity of hearing to the petitioner, by an office order

dated 05.01.2012, the Chairman (respondent no. 4) had demoted the petitioner to the post of Assistant Tax Daroga, however, at the existing scale of

pay and another person was appointed in his place. Thereafter, by another order dated 21.06.2012, the respondent no. 4, on the basis of a purported

letter of confession dated 20.01.2011, held that despite of several warnings and notices, the petitioner had not rectified his character for which the

office had to suffer financial loss and that the petitioner had violated the office discipline/ norms in spite of several warnings and accordingly, in public

interest, the petitioner was given compulsory retirement from the post of Assistant Tax Daroga with immediate effect. The aggrieved petitioner had

approached this Court by filing W.P.(C) 3407/2014 and this Court by judgment and order dated 12.10.2015, had set aside and quashed the orders

dated 05.01.2012 and 26.06.2012 and direction was issued to reinstate the petitioner in service with full back wages. The petitioner had submitted his

representation before the respondent no. 4 along with a copy of the order of this Court. On receipt of the copy of the order of this Court, the

respondent no. 4 by an order dated 26.11.2015, asked the petitioner to join in his post w.e.f. 01.12.2015 and further stated that as regards back wages,

decision would be taken after discussing with the petitioner.

4) It is projected that the petitioner was paid his salary for the month of December, 2015 and no back-wages was paid, as such, the petitioner had

submitted his representations dated 19.01.2016, 21.03.2016 and 12.04.2016, but in vain. It is alleged that the respondent no. 4 asked the petitioner to

stop coming to office and did not allow the petitioner to sign the attendance register. This was followed by issuance of a show cause notice dated

28.06.2016 by the Secretary of respondent no. 3 on the ground that he had remained absent for a long period without any intimation, which had caused

loss to the office and the petitioner was directed to submit his show cause reply before 01.07.2016, failing which disciplinary action would be intimated

against the petitioner. The petitioner had submitted his show cause reply dated 30.06.2016, wherein the Secretary of the respondent no. 3 was

informed that he had obstructed the petitioner from signing the attendance register though he was present in office and as such, the authorities were

requested not to initiate disciplinary proceedings against him. Accordingly, the said show cause notice is under challenge in the present writ petition

filed under Article 226 of the Constitution of India. Moreover, aggrieved by non-payment of back wages in terms of the order of this Court, the

petitioner has filed Cont. Case (C) No. 268/2017. During the pendency of the said writ petition, the respondent no. 4 had served on the petitioner

another notice dated 20.08.2018, thereby informing the petitioner that while working as Tax Daroga, he had not deposited a sum of Rs.1,68,355/-

(Rupees one lakh sixty eight thousand three hundred fifty five only) collected as tax, i.e. Rs.1,387/- for the year 2010-11, Rs.59,681/-for the year

2011-12, Rs.26,729/- for the year 2012-13, Rs.80,558/- for the year 2014-15 and 2015-16. The said notice is the subject matter of challenge in W.P.

(C) 6727/2018. The learned counsel for the petitioner has submitted that the petitioner was superannuate on 31.07.2019 and though the petitioner

disputes the alleged date of his superannuation, but he has accepted his fate and does not want to extend the litigation on the point of being

superannuated before the due date.

5) The respondent no. 3 and 4 had contested the writ petition by filing their joint written statement, which was signed and sworn by the respondent no.

4, the Chairperson of the respondent no. 3. The stand of the respondent nos. 3 and 4 is that the petitioner was irregular in office and unable to perform

his official duty as per Govt. guidelines and started misusing his powers. It has been stated that on 12.04.2016, the petitioner had written a letter to the

Chairperson that he was willing to accept the salary as quantified by the office and on the same date, the petitioner was paid a sum of Rs.20,000/-

(Rupees twenty thousand only) as first installment of his arrear salary. It is alleged that the petitioner used to attend office by consuming alcohol and

he could not manage his duty. It is further alleged that the petitioner did not attend the office within stipulated time and could not sign attendance

register as the register was kept with the Chairperson and that the petitioner did not attend the office regularly since January, 2016 though a lot of

request was made by the respondent no. 4 and as such, the show cause notice was issued upon the petitioner. It is further alleged that although the

petitioner did not attend office, but he had collected taxes on behalf of the respondent no. 3 but did not deposit the amount in the office account despite

request made by the Office Assistant. It is also alleged that the petitioner used to collect maximum taxes from the shop and other institutions and that

when contacted, the petitioner would threaten that he would move the High Court if any investigation is carried on against him. It is alleged that the

audit report revealed that there was short deposit of taxes by the petitioner and one another Asst. Tax Daroga for the period from 01.04.2014 to

31.03.2016. It is specifically alleged that the petitioner had not deposited (i) a sum of Rs.59,681/- for the period from 01.04.2011 to 31.03.2012; (ii) a

sum of Rs.26,729/- for the period from 01.04.2012 to 31.03.2013; and (iii) a sum of Rs.80,558/- for the financial year 2015-16. It is the stand of the

respondent nos. 3 and 4 that after receiving information of audit report, the petitioner had stopped attending the office and money could not be realized

from him.

6) The learned counsel appearing for the then respondent no. 4 has submitted that in so far as the back wages are concerned, the financial condition

of respondent no. 3 was not good and the petitioner being aware of the said

financial condition, through his letter dated 12.04.2016, the petitioner had waived right to receive one-time payment of back wages and thereby the performance of the order of this Court by the respondent nos. 3 and 4 was also waived and accordingly, the petitioner had started accepting back-wages in installments @ Rs.20,000/- per month till January, 2021. It is submitted that although as per affidavit-in- opposition filed in this writ petition as well as the connected Cont. Case (C) 268/2017, the petitioner was paid a sum of Rs.3.60 lakh, but as per current oral instructions, the petitioner has been paid a sum of Rs.5,60,000/-. As regards, the prayers made in the writ petition, it is submitted that by filing W.P.(C) 3264/2017 and W.P.(C) 6727/2018, the petitioner has approached this Court against show cause notices dated 28.06.2016 and 20.08.2018 respectively instead of participating in the enquiry, as such, it is submitted that the writ petitions are premature and not maintainable on facts and in law. In support of his submissions, the learned counsel for the respondents has cited the following cases, viz., (i) State of U.P. Vs. Brahm Datt Sharma & Anr., AIR 1987 SC 943; (ii) State of Punjab Vs. Davinder Pal Singh Bhullar & Ors., AIR 2012 SC 364 (iii) Kalpraj Dharmshi & Anr. Vs. Kotak Investment Advisors Ltd., 2021 SCC OnLine 104: 2021 STPL 3022 SC.

7) In connection with W.P.(C) 3264/2017, perused the writ petition, affidavit-in-opposition filed by the respondent nos. 3 and 4 and affidavit-in-reply filed by the petitioner and in connection with W.P.(C) 6727/2018, perused the writ petition, affidavit-in-opposition filed by the respondent nos. 3 and 4, and affidavit-in-reply filed by the petitioner.

8) The point of waiver, as urged by the learned counsel for the respondent no. 3 and 4 is taken up first. It would be pertinent to quote paragraphs 101

to 107 of the case of Kalpraj Dharmshi (supra) below:-

101. The second ground raised, with regard to waiver and acquiescence, is based upon the participation of KIAL in the Resolution Plan

Process after Kalpraj was permitted to participate in the proceedings.

102. The word 'waiver' has been described in Halsbury's Laws of England, 4th Edn., Para 1471, which reads thus:

1471. Waiver.- Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of

confession and avoidance if the right is thereafter asserted, and is either express

or implied from conduct. ... A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted on it is sufficient consideration. ...

It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration.â??

103. In Halsbury's Laws of England, Vol. 16(2), 4th Edn., Para 907, it is stated:

The expression 'waiver' may, in law, bear different meanings. The primary meaning has been said to be the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may arise from a party making an election, for example whether or not to exercise a contractual right... Waiver may also be by virtue of equitable or promissory estoppel; unlike waiver arising from an election, no question arises of any particular knowledge on the part of the person making the representation, and the estoppel may be suspensory only... Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver; nor may a party benefit from the waiver unless he has altered his position in reliance on it.

104. For considering, as to whether a party has waived its rights or not, it will be relevant to consider the conduct of a party. For

establishing waiver, it will have to be established, that a party expressly or by its conduct acted in a manner, which is inconsistent with the continuance of its rights. However, the mere acts of indulgence will not amount to waiver. A party claiming waiver would also not be entitled to claim the benefit of waiver, unless it has altered its position in reliance on the same.

105. As early as in 1957 in the case of *Manak Lal vs. Dr. Prem Chand*, 1957 SCR 575: AIR 1957 SC 425 an advocate was held guilty for

professional misconduct by a Tribunal of Three Members. The matter was argued before the High Court. An objection was taken before the

High Court, that one of the members had appeared on behalf of the complainant and therefore, he was disqualified from acting as a

member of the Tribunal. A question arose before this Court, that since such an objection was not taken before the Tribunal, whether it

amounted to waiver. This Court observed thus:

It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be

inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in

question. As Sir John Romilly, M.R., has observed in *Vyvyan v. Vyvyan* [(1861) 30 Beav 65, 74: 54 ER 813, 817] ""waiver or acquiescence,

like election, presupposes that the person to be bound is fully cognizant of his rights, and, that being so, he neglects to enforce them, or

chooses one benefit instead of another, either, but not both, of which he might claim"".

106. It has been held, that a waiver cannot always and in every case be inferred merely from the failure of the party to take the objection.

Waiver can be inferred, only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the

objection in question. The waiver or acquiescence, like election, presupposes, that the person to be bound is fully cognizant of his rights,

and that being so, he neglects to enforce them, or chooses one benefit instead of another.

107. As such, for applying the principle of waiver, it will have to be established, that though a party was aware about the relevant facts and

the right to take an objection, he has neglected to take such an objection. (extracted from 2021 STPL 3022 SC).

9) In light of the aforesaid legal position, on examination of the materials available on record, it is seen that by the judgment and order dated

12.10.2015 passed by this Court in W.P.(C) 3407/2014, not only the impugned orders dated 05.01.2012 and 26.06.2012 were set aside quashed, but

direction was also issued that the petitioner shall be re-instated in service forthwith will back wages. Thus, the claim of the petitioner against back-

wages is upto 30.11.2015. It is seen that vide representation dated 19.01.2016, the petitioner had submitted before the Secretary of respondent no. 3

that he was facing severe financial difficulty in maintaining his family and in providing education to his two daughters who were studying in College

and as such it was submitted that as per the direction of the High Court, his salary be released on urgent basis to sustain his family and it was also

mentioned that tax amount payable by him may be deducted from his salary and the remaining amount be paid to him. Prayer for release of arrear

salary was reiterated by way of representation dated 21.03.2016. The representation dated 12.04.2016, which is portrayed as waiver by the learned

counsel for the respondent no. 4 reads as follows:-

â??Madam,

With due respect I would like to state that I am not satisfied with the quantification of the salary that has been decided to be paid to me. However,

with due respect to you and taking into account my financial crisis, I am accepting the arrear salary that has been quantified for being paid to me.

Madam, as I will retire from service in 2019, my arrear salary as quantified by you will not be complete. However, on the verbal assurance given by

you that my salary will be increased once the financial situation of the municipality Board is stable, I am compelled to accept the salary as fixed by

you.

This is my humble request before your goodself.â??

10) From the tone and tenor of the said representation, it appears that the contents thereof reflect frustration of the petitioner rather than waiver. For

the petitioner, who has not received his salary from 2012 and is suffering penury, the acceptance by the petitioner the offer by the respondent nos. 3

and 4 to pay to the petitioner back wages at the rate of Rs.20,000/- per month,

is something like "take it or leave it". It would be travesty and/or mockery of justice to accept that acceptance of part payment, which is wholly unfair and unreasonable terms offered by the respondent nos. 3 and 4 would amount to waiver on part of the petitioner. The representation dated 12.04.2016 is clear on the point that on account of his financial crisis the petitioner was accepting the quantification of arrear salary and the acceptance was on the basis of assurance that his salary would be increased once the financial situation of the respondent no. 3 Board would become stable. Paragraphs 106 and 107 of the case of Kalpraj Dharmshi (supra) make it clear that "a waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred, only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. The waiver or acquiescence, like election, presupposes, that the person to be bound is fully cognizant of his rights, and that being so, he neglects to enforce them, or chooses one benefit instead of another. As such, for applying the principle of waiver, it will have to be established, that though a party was aware about the relevant facts and the right to take an objection, he has neglected to take such an objection." In this case in hand, the petitioner never waived his right to arrear salary and was compelled to accept unfair terms to sustain his family and educational needs of his two College going daughters. It is the specific stand of the respondent nos. 3 and 4 in their affidavit that once the petitioner had submitted his representation dated 12.04.2016, the respondent nos. 3 and 4 had immediately, on the same date, released a sum of Rs.20,000/- as part payment out of total arrear. The learned counsel for the respondent no.4 had placed reliance on the case of Davinder Pal Singh Bhullar (supra). However, the said case does not help the respondents. In this case, the petitioner had not abandoned his right, rather, the respondent nos.3 and 4 had used superior bargaining power so as to coerce the petitioner to accept part payment of arrear salary, which the petitioner had to accept for starvation with his family. There was no voluntary or unintentional relinquishment of any right.

11) It would be relevant to refer to the provisions of Section 63 of the Contract Act, 1872, which is extracted below:-

"63. Promisee may dispense with or remit performance of promise.-

Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such

performance, or may accept instead of it any satisfaction which he thinks fit.â??

12) In the present case in hand, the petitioner is not a promisee. He is to receive his arrear salary on the strength of the direction of this Court, which

was contained in order dated 12.10.2015, passed in W.P.(C) 3407/2014. Therefore, it would appear to the Court that by non-payment of arrear salary,

the respondent nos. 3 and 4 had misused their superior bargaining power to coerce the petitioner to submit a representation dated 12.04.2016,

accepting their unfair and unreasonable terms of paying arrear salary. The said order dated 12.10.2015, passed in W.P.(C) 3407/2014 did not contain

any time limit to make payment of the arrear salary. The Court perhaps never expected a statutory body to act in the manner it has done. In this case,

the petitioner has made a prayer for a direction to the authorities to release the arrear as well as current salary to the petitioner. The petitioner is found

entitled to a direction for release of his arrear salary for a period upto 31.11.2015.

13) The second point urged by the learned counsel for the respondent no. 4 was that the writ petitions were filed against the issuance of show-cause

notices dated 28.06.2016 and 20.08.2018 respectively and in this regard, reliance was placed on the case of Brahm Datt Sharma (supra). Para-9 of

the said judgment is quoted below:-

â??9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a

statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by

showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued

palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant

and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant

and only thereafter a final decision -in the matter could be taken. Interference by the Court before that would be premature. The High

Court in our opinion ought not to have interfered with the show cause notice.â??

14) In the aforesaid legal observations, the two show cause notices are being examined. The show cause notice dated 28.06.2016, which is assailed in

W.P.(C) 3264/2017 is quoted below:-

??Sir,

With regard to the subject referred to above you are hereby informed that you have remained absent from the office for a long period without any

intimation which has resulted in sufficient loss to the office.

You are directed to furnish reply before 01.07.2016. Failing which disciplinary action will be initiated against you.??

15) Firstly, it is seen that the said notice has no indication that it was being issued under any statutory provision. As per the decision of the Supreme

Court in the case of Brahm Datt Sharma (supra), the High Court ought not to intervene if the show cause notice was issued under a statutory

provision. Secondly, the allegations are absolutely vague, without stating the period during which the petitioner had not been attending office, and

without any indication how much loss was suffered by the respondent no. 3. In this regard, it is seen that in the affidavit-in-opposition, the specific

pleading of the respondent nos. 3 and 4 is to the effect that the petitioner was irregular in office and unable to perform his official duty as per Govt.

guidelines and started misusing his powers. It is also alleged that the petitioner used to attend office by consuming alcohol and he could not manage his

duty. It was also alleged that the petitioner did not attend the office within stipulated time and could not sign attendance register as the register was

kept with the Chairperson and that the petitioner did not attend the office regularly since January, 2016 though a lot of request was made by the

respondent no. 4 and as such, the show cause notice was issued upon the petitioner. It was also alleged that although the petitioner did not attend

office, but he had collected taxes on behalf of the respondent no. 3 but did not deposit the amount in the office account despite request made by the

Office Assistant. It is the stand of the respondent nos. 3 and 4 that after receiving information of audit report, the petitioner had stopped attending the

office and money could not be realized from him. Thus, it is seen that there is an admission that the petitioner was in fact coming to office, but as there

was delay in attending and because the petitioner was intoxicated, and the attendance register was with the respondent no. 4, the petitioner was not

allowed to sign, nonetheless, the petitioner collected taxes. It appears to be strange that the respondent nos. 3 and 4 permitted the petitioner to collect tax, but without allowing him to sign attendance register. Unless tax receipt books are issued by the respondent nos. 3 and 4, the petitioner could not have collected taxes in the first place. Assuming that the charges contained in show cause notice dated 20.08.2018 is correct, then the respondent nos. 3 and 4 had also permitted the petitioner to collect tax and to perform his duties even while the petitioner was compulsorily retired from service on 21.06.2012 till he was reinstated on 1.12.2015. It is not the stand of the respondent nos. 3 and 4 that the petitioner had illegally retained tax receipt books and was illegally collecting taxes, rather, the allegation is that the petitioner was collecting maximum taxes from shops and other institutions. From the series of three writ petitions that the petitioner had to file against the respondents, proceedings under Contempt of Courts Act, 1971, coupled with non-payment of salary, it is evident that the respondent no.4 was leaving no stone unturned to prevent the petitioner to sign the office register. It is also seen that from 28.06.2016, only 3 clear days' time was granted to the petitioner to submit his show-cause reply. However, the petitioner had submitted his show cause reply on 30.06.2016. The respondent nos. 3 and 4 did not take any steps to initiate any disciplinary enquiry, as such, the petitioner had filed W.P.(C) No. 3264/2017 on 30.05.2017, i.e. after 11 (eleven) months. The matter was first listed before the Court on 02.06.2017 and this Court, as an interim measure, directed that the show cause notice dated 28.06.2016 (Annexure-M) be kept in abeyance till the returnable date. The said interim order was extended from time to time and the respondent nos. 3 and 4 did not show any urgency to have the interim order vacated or modified, thereby allowing the petitioner to superannuate allegedly on 31.07.2019. Incidentally, no document has been brought on record to show that the petitioner was notionally retained in service pending drawal of disciplinary proceeding. Thus, the only inference that can be presumed is that any action contemplated by the respondent nos. 3 and 4 against the petitioner had died its natural death on 31.07.2019.

16) On a specific query of the Court, the learned Govt. Advocate appearing for respondent no.1 and 2 and the learned counsel for the respondent no.

4 had submitted that under the provisions of section 50 of the Assam Municipal Act, 1956, the respondent no.4 had the competence to initiate

disciplinary proceeding against employee of the respondent no. 3 and that the Municipal bodies including the respondent no.3 were following Assam

Services (Discipline and Appeal) Rules, 1964 to proceed against the delinquent employees.

17) Thus, it appears that the petitioner has been able to demonstrate that the show cause notice was absolutely vague and bereft of any material

particulars. The admission contained in the affidavit-in-opposition filed by the respondent nos. 3 and 4 are sufficient to indicate that the petitioner did

attend office, but beyond usual time of attendance. However, the petitioner was not charged for coming to office late or intoxicated, as projected in

the affidavit-in-opposition. Thus, it is apparent that the respondent nos. 3 and 4 have altered their stand in their affidavit-in-opposition, which was not

the case of the petitioner in the impugned show-cause notice dated 28.06.2016. It is too well settled that the reasons must be evident from the

impugned show cause notice and the Court ought not to take cognizance of improved version of the respondent in their affidavit-in-opposition.

Therefore, the Court has no hesitation to hold that the show cause notice dated 28.06.2016 was issued with an ulterior motive and the same is bereft

of material particulars and that neither from the said show-cause notice, nor from any material on record, the respondents have been able to show that

the said show-cause notice was issued under any particular Act, rules or notification in force. Moreover, the petitioner has already superannuated on

31.07.2019. Accordingly, the Court has no hesitation to set aside and quash the said impugned show-cause notice dated 28.06.2016, impugned in W.P.

(C) 3264/2017.

18) In respect of the show-cause notice dated 20.08.2018, which is assailed in W.P.(C) 6727/2018, it has been specifically alleged that the petitioner

had not deposited (i) a sum of Rs.1,387/- for the year 2010-11; (ii) a sum of Rs.59,681/- for the year 2011-12; (iii) a sum of Rs.26,729/- for the year

2012-13; and (iv) a sum of Rs.80,558/- for the year 2015-16. As per the documents annexed to the writ petition, the petitioner was promoted to the

post of Tax Daroga by order dated 29.08.2005 and he was demoted to the post of Assistant Tax Daroga by order dated 05.01.2012.

19) While it cannot be ruled out that the petitioner had not deposited a sum of Rs.1,387/- for the year 2010-11 and a sum of Rs.59,681/-for the year

2011-12, which he might have allegedly collected as Tax Daroga. But from 05.01.2012, the petitioner was demoted to the post of Assistant Tax

Daroga, and then he was compulsorily retired on 21.06.2012, as such, it is quite impossible to believe that the petitioner could have collected taxes,

acting as Tax Daroga from 05.01.2012 till he was reinstated on 01.12.2015. Therefore, not only the allegations contained in the second show-cause

notice is vague and bereft of material particulars, but on the face of the said show-cause notice, the allegations appear to be impossible. Nonetheless,

it is seen that via representation dated 19.01.2016, the petitioner had offered to the Secretary of the respondent no.3 to deduct tax amount from his

salary and to pay him the remaining arrear salary. Thus, there appears to be an admission that some tax collection had remained with the petitioner.

Thus, the only point remains is that what would be the money recoverable from the petitioner as tax collected by him. Under such circumstances, as

the issue of public money allegedly retained by the petitioner has cropped up, and considering the backdrop that the petitioner was not paid his arrear

salary upto 30.11.2015, till the petitioner was reinstated in service, and non-payment of his salary from January, 2016 till he had superannuated on

31.07.2019, it is deemed appropriate that the respondent no.3 be permitted to bring the show-cause notice dated 20.08.2018 to its logical conclusion in

accordance with law, by taking note of the superannuation of the petitioner on 31.07.2019 and accordingly, the impugned show-cause notice dated

20.08.2018, assailed in W.P.(C)6727/2018 is not interfered with.

20) However, in so far as the claim of the petitioner for salary from 01.12.2015 to 31.07.2019 is concerned, it appears that there are highly disputed

facts which are required to be determined as to whether the petitioner was actually prevented from signing the attendance register or that because of

delay in attending office, he was marked absent. It is also required to be determined on which dates, the petitioner was permitted to collect taxes,

without signing the attendance register. Such determination cannot be made unless the witnesses and documents are examined and it is not possible to

examine such disputed facts on the basis of affidavits alone. Moreover, it is seen that the claim for salary is from 01.12.2015 to 31.07.2019, and the

petitioner had filed W.P.(C) No. 6727/2018 on 25.09.2018, i.e. well within the period of limitation prescribed for instituting a money claim. Therefore,

the Court is inclined to relegate the petitioner to the Civil Court to agitate his money claim against salary from 01.12.2015 to 31.07.2019. Accordingly,

it is provided that in the event the petitioner files a suit within a outer limit of 6 (six) weeks from the date of this order, the petitioner would be entitled

to claim the benefit of the provisions of Section 14 of the Limitation Act, 1963 of agitating his claim before this Court in W.P.(C) 6727/2018.

21) In paragraph 30 of W.P.(C) 6727/2018, the petitioner has provided the break-up of his arrear salary from July, 2012 to 30.11.2015, together with

claim from December, 2015 to September, 2018, amounting to Rs.21,75,400/- (excluding increment, if any from 01.01.2017). In this regard, the Court

is inclined to direct the respondent no. 3 to provide to the petitioner a statement providing the details of money receivable on account of arrear salary

for a period upto 30.11.2015, which may be done within a period of two weeks from the date of receipt of a copy of this order.

22) Thus, the Court is inclined to pass the following orders:-

a. the respondent no. 3 to provide to the petitioner a statement providing the details of money receivable on account of arrear salary for a period upto

30.11.2015, which shall be done within a period of two weeks from the date of receipt of a copy of this order. The statement prepared by the

respondent no.3 shall be based on salary actually due to the petitioner as Tax Daroga, as per the approved and notified salary structure.

b. The respondent no. 3 is also directed to release the balance arrear salary of the petitioner for the period upto 30.11.2015 within the outer limit of 4

months from the date of receipt of a copy of this order. Accordingly, in respect of claim for arrear salary as made in prayer (b) of W.P.(C) 3264/2017

and prayer (c) of W.P.(C) 6727/2018 are allowed.

c. In the event the respondent no.3 fails to make payment of the balance arrear salary to the petitioner upto 31.11.2015 within the time allowed, the

respondent no. 3 would be liable to pay interest on the outstanding balance at the rate of 9% simple interest per annum.

d. The Court is inclined to relegate the petitioner to the Civil Court to agitate his money claim against salary from 01.12.2015 to 31.07.2019.

Accordingly, it is provided that in the event the petitioner files a suit within a outer limit of 6 (six) weeks from the date of this order, the petitioner

would be entitled to claim the benefit of the provisions of Section 14 of the

Limitation Act, 1963 for agitating his claim before this Court in W.P.(C)

6727/2018. Accordingly, in respect of claim for current salary as made in prayer (b) of W.P.(C) 3264/2017 and prayer (c) of W.P.(C) 6727/2018, it is

ordered accordingly.

e. The show-cause notice bearing Memo No. B.C.M.B./2(New)/2016-17/213 dated 28.06.2016 issued by the Secretary, Biswanath Chariali Municipal

Board is set aside and quashed.

f. No interference is called for in respect of show-cause notice bearing Memo No. B.C.M.B./2/2018-19/222 dated 20.08.2018 issued by the

Secretary, Biswanath Chariali Municipal Board. Hence, prayer (a) and (b) of W.P.(C) 6727/2018 is declined.

g. As the petitioner has superannuated on 31.07.2019, the prayer for allowing him to join his post as made in prayer (c) of W.P.(C) 3264/2017 and

prayer (d) of W.P.(C) 6727/2018 has been rendered infructuous.

23) Both the writ petitions stand partly allowed on terms and to the extent as indicated above.

24) As the respondents have deprived the petitioner of the fruits of judgment and order dated 12.10.2015 passed by this Court in W.P.(C) 3407/2015,

and compelled him two more rounds of writ petition and to file contempt petition, the petitioner is found entitled to cost of litigation in respect of these

two writ petitions, which is assessed at Rs.30,000/- (Rupees Thirty thousand only). The respondent no. 3 shall pay such cost to the petitioner within a

period of 4 (four) weeks from the date of this order, failing which it would be open to the petitioner to realize such cost as envisaged under the Gauhati

High Court Rules.