
(1991) 09 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 935 of 1989

Md. Abdul Awal

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 26-09-1991

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) 2 GLR 477

Hon'ble Judges : Manisana, J;M. Sharma, J

Bench : Division Bench

Advocate : A.K. Purkayastha and S.K. Saha, for the Appellant; K.K. Mahanta, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—In this writ application, the Petitioner has challenged the order of the Deputy Commissioner Nagaon by which the services of the Petitioner were terminated. The Petitioner was appointed as peon in the Election Office Nagaon under order dated 18.3.85. The appointment order runs as follows:

In the Interest of public service, Md. Abdul Awal, s/o Md. Ajujur Rahman of vill. Alitangani, PO-Alitangani in the district of Nagaon is hereby appointed as peon against the sonctioned post of peon in the Election Office Nagaon in the usual pay and allowance as admissible under the Rule, The appoint merit is purely temporary and terminable at any time without assigning any reason thereof.

(Emphasis added)

By order dated 1.4.86, the Deputy Commissioner Nagaon terminated the services of the Petitioner.

2. Shri A.K. Purkayastha, learned Counsel for the Petitioner has submitted that the Petitioner was regularly appointed after he was interviewed by the Selection Board and, therefore, he could not be terminated without assigning any reason.

The letter of the Under Secretary to the Government of Assam, Personnel (B) Department, indicates that the Petitioner appeared at the test conducted by the Central Recruitment Committee Nagaon. There is specific statement in the petition that in pursuance of the notification Annexure-"B" to the petition the Petitioner applied for the post of Grade-IV and he appeared before the Selection Board on 29.6.84 for interview and his Roll No was 38-B. The State has not filed counter-affidavit, In the absence of the counter-affidavit, considering the materials laid before us we conclude that the Petitioner was appointed on regular basis. That apart, the order of appointment noted above clearly indicates that the Petitioner was appointed on regular basis.

3. The next question which, therefore, arises for consideration is whether the Petitioner could be terminated "without assigning any reason." In the order of appointment, it is stated that the services of the Petitioner are "terminable at any time without assigning any reason." *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, the Supreme Court has held that "without assigning any reason" implies that the decision has to be communicated, but reasons for the decision have not (sic) be stated; but the reasons must exist, otherwise, the decision would be arbitrary.

In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, the Supreme Court has held: the non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy.

The requirement to record reasons can be regarded as one of the principles of natural justice which governs exercise of powers by the administrative authority, in view of expanding horizon of the principles of natural justice. In *S.N. Mukherjee Vs. Union of India*, the Supreme Court has held that recording of reasons by administrative authority serves a salutary purpose, namely it excludes chance of arbitrariness and ensures a degree of fairness in the process of decision making. However, it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of reason would depend upon the facts and circumstances of each particular case.

4. In view of the discussions above, reasons for decisions to terminate the services of the Petitioner must exist, otherwise, the decision would be arbitrary and violative of Article 14 of the Constitution.

5. In the present case, the State has not produced any material to show that the reason was recorded for the decision to terminate services of the Petitioner. In that view of the matter, it shall be presumed that no reason was recorded, Therefore, the order termination is arbitrary and is violative of Article 14 of the constitution, and is liable to be quashed.

6. Considering the over-all facts and circumstances of the case we(sic) of the

view that it would be just and fair and in consonance with equity if we dispose of the petition in terms of the following order. The(sic) initiation of the services of the Petitioner is set aside. The Respondents are directed to reinstate the Petitioner in his services with(sic) 3 months from the date of receipt of this order, but the petition(sic) shall not be entitled to his back wages, However, the period from the date of termination till the date of reinstatement shall be(sic) as a period spent on duty for all purposes.

7. In the result, the petition is allowed to the extended above.

No costs.