
(2018) 04 GAU CK 0121
In the Gauhati High Court
Case No : WP(C) 6722 of 2013

MD. ABDUL JABBAR KHAN

APPELLANT

Vs

THE STATE OF ASSAM AND 4 ORS

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0121

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. A. K. Purkaystha, learned counsel for the petitioner and Mr. N. Sarma, learned Standing Counsel for the Elementary Education

Department.

2. The petitioner was the Headmaster of Kolohi Kas L.P. School at Guwahati and was dismissed from service by an order dated 07.01.2011 of the

Director of Elementary Education, Assam. The said order of dismissal has been assailed in this writ petition. The petitioner seeks to raise several

grounds for assailing the order of dismissal and amongst others, some of the grounds are that in a related criminal case lodged against the petitioner as

regards the allegation of forgery, which was in fact also the charge against the petitioner in the disciplinary proceeding, the petitioner had been duly

exonerated. Apart from the above, grounds have also been taken that the required procedure under the law had not been followed in the proceedings,

which resulted in the order of dismissal dated 07.01.2011. As per the memorandum of charges dated 18.11.2008 leading to the departmental

proceeding, the core charge against the petitioner was that he had forged the

HSLC certificate and thereby had mislead the departmental authorities.

After the memorandum of charge was served on the petitioner, several other communications were made to him to give reply to the charges. It

appears that as no reply was given, another show cause notice dated 02.06.2010 was issued to the petitioner on the same charges. Against the show

cause notice of 02.06.2010, the petitioner had submitted his reply dated 21.06.2010, whereby a stand was taken that he had not obtained his

appointment by submitting any fake or forged HSLC passed certificate. The petitioner took a stand that the appropriate authorities in the department

of education upon verification of his testimonials had regularized him in service and therefore, the said issue cannot be raised once again.

3. In the resultant situation, an enquiry was ordered against the petitioner. Although it has not been specifically stated in the affidavit, but Mr. N.

Sarma, learned Standing Counsel for the Education Department relies upon an enquiry report submitted by the Officer on Special Duty in the

Directorate of Elementary Education, Assam, by which the authorities had concluded that the matriculation certificate submitted by the petitioner was

a forged certificate. Based upon such enquiry report, the order dated 07.01.2011 was issued by the Director of Elementary Education, by which the

petitioner was dismissed from service.

4. The order of dismissal indicates that the enquiry officer had fixed 21.06.2010, 25.08.2010 and 26.10.2010 for the purpose of appearance of the

petitioner before the enquiry, but he had failed to so appear on all such occasions. In the aforesaid premises, the question to be examined is whether

the enquiry officer was duly appointed and whether the petitioner had been notified about the dates of appearance before the enquiry officer. On a

perusal of the record, nothing could be found out as regards the appointment of the enquiry officer to conduct the enquiry.

5. Be that as it may, even if it is construed that the enquiry officer was duly appointed, but what is noticed is that the order of dismissal contains that

the petitioner was required to remain present in the enquiry on 21.06.2010, 25.08.2010 and 26.10.2010. Records reveal that the petitioner was duly

informed by the appropriate communications that he is required to be present before the enquiry officer on 21.06.2010 and 25.08.2010. On both such

dates, the petitioner had submitted applications for the enquiry to be adjourned

and accordingly it was adjourned. But the record does not reveal of any communication, by which the petitioner may have been informed about the subsequent date of appearance i.e. 26.10.2010. In the absence of any such communication, the only available conclusion would be that the petitioner was not informed about the requirement to appear before the enquiry officer on 26.10.2010.

6. But when the enquiry report dated 12.11.2010 is looked into, it is noticed that the enquiry report takes it into consideration that the last chance for appearance was given to the petitioner on 26.10.2010, but he had failed to appear on the said date. In the aforesaid premises, the enquiry report indicates that the proceeding against the petitioner proceeded ex-parte thereafter. It is also noticed that in the enquiry report, certain documentary evidences were also taken into consideration to arrive at a conclusion that there was a forgery by the petitioner as regards his matriculation certificate.

In the aforesaid premises, as the order of dismissal is based entirely on the enquiry report, which had proceeded ex-parte against the petitioner without notifying him of the subsequent date of the enquiry, this Court is of the view that the procedure adopted by the respondent authorities is vitiated.

7. The record clearly indicates the absence of there being any communication to the petitioner informing him about the subsequent date of enquiry on 26.10.2010. In the absence of any such communication informing him about the date on which he was required to appear before the enquiry officer, it cannot be construed that there was a failure on the part of the petitioner to appear before the enquiry officer thereby justifying an ex-parte proceeding thereafter. In such view of the matter, the procedure adopted to conduct the enquiry against the petitioner in an ex-parte manner, is found to be unsustainable. As the procedure adopted in conducting the enquiry is found to be unsustainable, the consequential order of dismissal dated 07.01.2011 based upon such enquiry is also found to be unsustainable.

8. In such view of the matter, both the enquiry report dated 12.11.2010 and the order of dismissal dated 07.01.2011 are hereby set aside. But as a technical benefit is given to the petitioner to the extent that the subsequent date of holding the enquiry was not communicated, it would be apposite to look into as to how the petitioner was informed about the earlier two dates of 21.06.2010 and 25.08.2010.

9. As regards the requirement of appearance in the enquiry on 21.06.2010, the record reveals a communication from the petitioner, which requests the Inspector of Schools to adjourn the hearing of the enquiry on 21.06.2010. The purport of the said communication is that the petitioner was duly informed about the date of the enquiry. The record also reveals that by a communication dated 12.08.2010, the petitioner was informed about the next date of hearing, which was fixed on 25.08.2010. The said communication bears No.AQA-21/2009/43 dated 12.08.2010 and it contains the signature of the officer on duty in the Director of Elementary Education, who happens to be the enquiry officer. Against the said communication, the petitioner had submitted a written request that the date of the hearing be deferred and be again fixed on a given date. The said reply from the petitioner is also an indication that the communication dated 12.08.2010 was duly received by the petitioner. In the same manner, it is also noticed that the record contains another communication bearing No.AQA-21/2009/54 dated 11.10.2010 from the officer on special duty in the Director of Elementary Education informing the petitioner that the next date of hearing is fixed on 26.10.2010. The nature and purport and contents of the earlier communication dated 12.08.2010 informing the date to be 25.08.2010 and the later communication of 11.10.2010 informing the date to be 26.10.2010 are same in all respect and it being so, a natural presumption can also be drawn that the said communication of 11.10.2010 may also have been received by the petitioner. But, however, as such presumption cannot be the basis to arrive at a conclusion that the enquiry was done by following the required procedure, but the same standard may not be applicable for arriving at a conclusion as to whether the petitioner is required to be paid the back wages.

10. In view of the presumption that can be drawn and also from the conduct of the petitioner during the enquiry, it is deemed appropriate that back wages need not be allowed to the petitioner for the period for which he remained terminated from service. It is also provided that the effect of the order of dismissal being set aside would be that the petitioner would now, be reinstated in service. However, as the interference of the order of dismissal of the enquiry is on a technical reason, liberty is granted to the respondent authorities to proceed with the enquiry and the further proceeding against the petitioner be drawn from the stage of requiring the petitioner to appear before the enquiry officer. If necessary, the respondent authorities

may appoint a separate enquiry officer, if the earlier officer is unavailable as of now and upon such appointment, the enquiry proceeding would be

brought to its logical end. In doing so, all the requirement of the procedure of the disciplinary proceeding shall be strictly followed.

11. It is further indicated that if the respondents are of the view that the situation so warrants, there shall not be any impediment pursuant to this order

from not allowing the respondents to place the petitioner under suspension. It is noticed from the records that by an order dated 14.06.2010 of the

Director of Elementary Education, Assam, Ms. E. Kathar, OSD in the Office of the Directorate was appointed as the Enquiry Officer and one Sri

Anil Mandal was appointed as the Presenting Officer, respectively to undertake the process of the enquiry. It is expected that in the event, the enquiry

and proceeding is further carried out against the petitioner, the same shall be completed at the earliest without any delay. In terms of the above, the

writ petition stands disposed of.