

**(1995) 09 GAU CK 0003**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 1288 of 1989**

Phani Bhusan Sarma

APPELLANT

Vs

General Manager, Assam State Fertilisers And Chemicals Ltd.

RESPONDENT

**Date of Decision :** 22-09-1995

**Acts Referred:**

Constitution of India, 1950 — Article 226, 226

**Citation :** (1996) 1 GLJ 66 : (1995) 3 GLT 402

**Hon'ble Judges :** J.N.Sarma, J

**Bench :** Single Bench

**Advocate :** B.Malakar, B.Kalita , Advocates appearing for Parties

## **Judgement**

1. This application has been filed to quash the order of suspension dated 6.8.71 and the order of termination dated 31.7.87 passed by the respondents. It is not necessary to consider the legality and Validity of the order of suspension inasmuch as that order of suspension must be deemed to have emerged with the order of termination dated 31.7.87. The order of termination dated 31.7.87 is quoted below: (not quoted : Editor)

2. The brief facts of the case are as follows ; The petitioner was appointed as Commercial Trainee Executive on 21.9.74 by the Assam Industrial Development Corporation. On completion of 18 months training, the Corporation appointed him as Assistant Materials Officers and posted him in the Chemical Unit of the Associated Industries, Assam. The Govt. of India in the interest of public took the control and management of this undertaking through Assam Industrial Corporation (AIDC) the authorised controller. Thereafter, the Govt. of Assam took over the unit in 1988 and it is known as Assam State Fertilisers and Chemical Ltd. The petitioner was transferred from office to factory on 15.12.79. There were some correspondences regarding the realisation of debts of the Corporation and ultimately the petitioner was asked to do the needful for recovery of the lose. The petitioner stated that he was under no obligation to realise the amount stipulated but he would cooperate with the authority in respect of any measure

adopted for the purpose. On 6.7.81 the petitioner was placed under suspension. A statement of allegation was furnished to the petitioner. The suspension order was challenged before this Court by filing Civil Rule No.72ff of 1981 and this Civil Rule was disposed of with a direction that the petitioner should cooperate in the proceeding with a further direction to complete the proceeding within 3 (three) months. This is order dated 11.4.84. The petitioner thereafter filed written statement. The enquiry was conducted and the enquiry was completed on 14.7.86. The, petitioner was informed that the Enquiry Officer has submitted report and on 31.7.87 the impugned order of termination was passed. An appeal was preferred. The appeal was not disposed of and for the disposal of the appeal Civil Rule No.753 of 1988 was filed. This Court directed the authority to dispose of the appeal and on 27.6.88 the appeal was disposed of by rejecting the same. Hence, this writ application.

3. Affidavit in opposition has been filed wherein it is stated that the Corporation is not a instrument of the State and as such not amenable to writ jurisdiction. Regarding the merit, it is said that the enquiry was properly conducted and thereafter the impugned order of termination was passed.

4. I have heard Shri B. Malakar, learned Advocate for the petitioner and Shri B. Kalita, learned Advocate for the respondents. The enquiry and other relevant records have been produced before me by Shri Kalita. Shri Malakar submits that the order of termination is bad and based on no evidence.

5. There was as many as 11 charges as against the petitioner and regarding the charges, the Enquiry Officer held as follows : (not quoted : Editor)

6. In the enquiry, the petitioner examined himself and the department also examined the witnesses and the witnesses were cross examined by the delinquent.

7. For decision of this case, it is not necessary to decide the question whether the Corporation is an authority under Article 12 of the Constitution as the matter can be disposed on merit itself.

8. The law is clear that in a proceeding under Article 226 of the Constitution, the High Court cannot sit in an appeal for the findings recorded by the domestic Tribunal in a departmental enquiry, inasmuch as if the High Court attempts to reappreciate the evidence itself that would be outside its jurisdiction. The findings can be touched only when it is shown that these findings are not supported by any evidence. Whether or not the evidence on which the domestic authority relied was satisfactory and sufficient for justification/conclusion cannot be considered in a writ application.

9. This being the position of law, in exercise of my writ power, let us see whether this order of dismissal is valid and proper. Shri Malakar, learned Advocate for the petitioner failed to point out me any infirmity in the impugned order.

10. Accordingly, there is no merit in this writ application and the same is

dismissed. However, I leave the parties to bear their own costs.

11. This disposes of the writ application.