
(2016) 05 GAU CK 0029
In the Gauhati High Court
Case No : Writ Appeal No. 157 of 2016

Shri Dhrubajyoti Talukdar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 23-05-2016

Acts Referred:

Citation : (2016) 4 NEJ 493

Hon'ble Judges : Mr. Ajit Singh, CJ. and Mr. Suman Shyam, J.

Bench : Division Bench

Advocate : Mr. G. Alam, Advocate, for the Appellant; Mr. M. Choudhury, Standing Counsel, Higher Education Department, Mr. M. Khataniar, Standing Counsel, BTC, for the Respondents

Final Decision : Dismissed

Judgement

Suman Shyam, J. (Oral) - Heard Mr. G. Alam, learned counsel for the appellant. Also heard Mr. M. Choudhury, learned Counsel appearing for the Department of Higher Education as well as Mr. M. Khataniar, learned Standing Counsel, BTC.

2. This intra-court appeal has been preferred against the judgement and order dated 17.12.2013 passed in WP(C) No. 4759/2012, whereby the learned Single Judge had dismissed the writ petition filed by the appellant challenging the enquiry proceeding initiated against him as well as the order dated 20.11.2012, by means of which the penalty of dismissal from service was imposed upon him. The learned Single Judge had, however, converted the penalty of dismissal from service to "removal from service" so as not to affect his future employment prospect.

3. The facts of the case, in brief, is that the appellant was appointed as Assistant Professor of Zoology in Barama College in the year 2007 against a non-sanctioned post. While he was serving in the said post, the appellant had received an offer as Senior Research Fellowship (Fishery) by the Central Inland Fishery Research Institute (ICAR), Kolkata and the fellowship was up to

31.03.2011. Accordingly, the petitioner had joined the project on the basis of a certificate purportedly issued by the Principal of the College permitting him to do so. In that process, the appellant had remained absent from duty in the Barama College for several days. Such being the position and the college authorities not being satisfied with the reply of the appellant against the preliminary show cause notice, a charge memorandum dated 24.05.2012 was served upon the appellant containing 4 (four) charges requiring him to submit reply in respect thereof. The charges contained in the memorandum dated 24.05.2012 are quoted herein below:-

"1. That you remained absent in your service of Assistant Professor, Department of Zoology (Non-Provincialised Science Stream), Barama College unauthorised as no permission has been obtained from the Governing Body of the college. You remained absent for the period of 17 days out of 25 working days in the month of December, 2010 as per the record of the morning shift attendance register. You remained absent for the whole month of December, 2010 as per the record of evening shift attendance register except one day, that day too, you remained absent as per the record of the morning shift. In the month of January, 2011, you remained totally absent unauthorised. In the month of February, 2011, you were absent all along except the day of 28th February. In the month of March, 2011, though there were a couple of signatures in the morning shift register, you remained absent for the whole month except two days as per the record of the evening shift register. Likewise, you were found absent unauthorised for the whole months of April and May, 2011 as per the record of evening shift attendance except a few signatures found in the morning shift record. Not only that, you were found absent all along except a few days appearance in the college for a couple of minutes in the morning shift starting from the months of November/December, 2010 to the month of May, 2012 is quite unbecoming for an Assistant Professor of the Department of Zoology (under non-provincialised science stream) of Barama College and which are gross misconduct, insubordination and negligence of duty in the event of proving the same against you.

2. That you have joined in the course of Fellowship under ICAR at Central Inland Fisheries Research Institute without permission from the college authority and further you submitted a fraudulent letter containing permission dated 25.09.2010 of the former Principal of Barama College. So far joining in the project, you were drawing salaries from both the college for the period of your unauthorised absence and from the Central Inland Fisheries Research Institute by making fraud and which is unbecoming in part of an Assistant Professor of the Department of Zoology (Non-Provincialised Science Stream) of Barama College and gross misconduct in the event of proving the same against you.

3. That you have misconducted by not attending classes and by remaining absent unauthorised throughout even after giving undertaking to the college authority to attend the classes as well as installing your finger impression in the

Bio-Matrix Machine after the interim order of the Honourable Gauhati High Court which is sheer disobedience and misconduct as an Assistant Professor of Zoology Department (Non-Provincialised Science Stream) of Barama College.

4. That after the interim order issued by the honourable Gauhati High Court, you had gone to the college at 22nd August, 2011 and misbehaved the Principal-in-Charge using harsh words in presence of his subordinate employees while demanding a copy of the selection list of the contractual teachers of the college that did not come under his purview. This is an act of severe misconduct and insubordination in part of an Assistant Professor of Zoology Department (Non-Provincialised Stream) of Barama College."

4. In his reply dated 09/06/2012, the appellant had inter-alia admitted the fact that he was absent for a certain period due to his joining as Research Fellow under CIFS, Kolkata but had maintained that he had obtained written permission from the earlier Principal.

5. Not being satisfied with his explanation, the authorities had initiated disciplinary enquiry against the appellant, wherein the charges were found to be proved and established. Consequently, by the order dated 20.11.2012, the penalty of dismissal from service was imposed upon the appellant.

6. The learned counsel for the appellant has sought interference with the impugned order dated 17.12.2013 primarily urging the ground that the learned Single Judge has failed to consider the fact that the enquiry proceeding was conducted without giving due opportunity to the appellant of presenting his case before the Enquiry Officer. However, on perusal of the impugned judgement and order, we find that the learned Single Judge had recorded categorical finding answering the said plea in para 9 of the order, which is quoted herein-below for ready reference:-

"9. After forming the opinion to conduct an enquiry on the basis of the materials on record, the petitioner was issued with notice of enquiry on number of occasions, but he did not respond to the proceeding. However, it is on record that on a particular date he had appeared before the Enquiry Committee and after remaining present before the Enquiry Committee for a while, left the place. There was similar repetition on the second occasion also. Although the Enquiry Committee had informed him that the enquiry would proceed Ex-parte in his absence, the petitioner did not pay any heed to the said warning. Situated thus, the Enquiry Committee had no other option then to proceed Ex-parte against the petitioner. Based on the Enquiry Report, the Governing Body of the College adopted resolution towards dismissal of the petitioner from service and accordingly the same was conveyed to him vide the Annexure-3 letter dated 20.11.2012 annexed to the counter affidavit."

7. Mr. Alam could neither draw our attention to any ground taken in the memorandum of appeal assailing the said findings of the learned Single Judge nor could the learned counsel point out any material irregularity in the conclusion

reached by the learned Single Judge. The learned counsel for the appellant also could not produce any material before us to demonstrate that the certificate issued by the erstwhile Principal was a genuine one. In such view of the matter, we do not find any justifiable ground to interfere with the impugned judgement and order dated 17.12.2013.

8. In the result, this appeal is held to be devoid of any merit and the same is accordingly dismissed. No order as to costs.