

GAHC010016412017



2026:GAU-AS:1911

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1673/2017

SHIVA PRASAD SARMA
S/O DHIREN CHANDRA SARMA R/O GHORAMARA, NIRIBILI PATH, P.O.
BELTOLA, P.S. BASISTHA, GUWAHATI - 781028, DIST. KAMRUP METRO,
ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR, GUWAHATI -6,
ASSAM

2:THE MISSION DIRECTOR

NATIONAL HELATH MISSION
ASSAM
SAIKIA
COMMERCIAL COMPLEX
G.S. ROAD
CHRISTIAN BASTI
GUWAHATI-5
ASSAM

3:THE EXECUTIVE DIRECTOR

NATIONAL HEALTH MISSION
ASSAM
SAIKIA COMMERCIAL COMPLEX
G.S. ROAD
CHRISTIAN BASTI
GUWAHATI -5
ASSA

Advocate for the Petitioner : MR. B SARMA,

Advocate for the Respondent : SC, HEALTH, SC, NRHM

Date on which Judgment was reserved : 02.02.2026

Date of pronouncement of Judgment : 11.02.2026

Whether the pronouncement is of the operative part of the Judgment ? : NA

Whether the full Judgment has been pronounced ? : Yes

**BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA**

JUDGMENT & ORDER

Heard Mr. B. Sarma, the learned counsel for the Petitioner. Also heard Ms. A. Bora, the learned Standing Counsel, NRHM for Respondents.

2. The instant writ petition has been filed assailing the Notice of Termination dated 23.02.2017, issued by the Mission Director, National Health Mission, Assam to the Petitioner invoking Clause-9 of the "Terms of Contract" executed between the Petitioner and the Respondent Authority (District Health Society, HKD).

3. The aforesaid Notice of Termination was issued to the Petitioner wherein it was stated that the Petitioner was issued the show cause notice for not maintaining the Books of Accounts properly at his place of duty and on receipt of a reply from the Petitioner's end, which was found to be not satisfactory, the

instant Notice of Termination was issued to the Petitioner, whereby it has been stated that his services will be terminated one month after the date of issuance of the aforesaid letter.

4. Aggrieved by the aforesaid Notice of Termination, the Petitioner has filed the instant petition before this Court; and vide, the order dated 22.03.2017, this Court in the interim, directed that the impugned letter dated 23.02.2017 issued by the Mission Director, NRHM, Assam to remain suspended until further orders.

5. The case of the Petitioner is that the Petitioner was initially appointed as PHC Accountant cum Assistant Block Programme Manager on contractual basis under the National Rural Health Mission, Assam, vide letter dated 9th March, 2008. Accordingly, the Petitioner joined in Gurimara SD in the Kamrup district and had performed his duties as per the terms of contract. Later on, the Petitioner was appointed as Block Accounts Manager in Tamulpur BPHC in Baksa district on contractual basis, vide letter dated 20.03.2012, issued by the Executive Director, NRHM, Assam and the Deputy Secretary, Health & FW Department, Government of Assam.

6. While he was serving in the aforesaid post, all of a sudden, the Petitioner received a show cause notice dated 01.09.2016 issued by the Mission Director, National Health Mission, Assam whereby, it was alleged that the Petitioner was not maintaining the Books of Accounts properly at his place of duty which was not acceptable under NHM in mission mode. Therefore, he was show caused as to why disciplinary action as per Clause 9 of the Terms of Contract should not be initiated against him for his apparent indiscipline and negligence towards duty.

He was asked to reply to the aforesaid show cause notice within a period of 7 (seven) days. On receipt of the aforesaid show cause notice, the Petitioner has submitted a detailed reply, vide his letter dated 07.09.2016 addressed to the Mission Director, National Health Mission, Assam.

7. In the aforesaid reply, the Petitioner has detailed his scope of works as well as the way he has been maintaining the finances in the Office, with details of the registers he has been maintaining to keep records of the financial transactions. However, on 23.02.2017, the Petitioner received the impugned Notice of Termination issued by the Mission Director, National Health Mission, Assam, whereby it was intimated to him that the reply received from his end was not found to be satisfactory and such indiscipline and negligence towards duty are not acceptable under the NHM in mission mode. Therefore, he was intimated that his contract will be terminated as per Clause-9 of "Terms of Contract" after one month from the date of issuing of the letter.

8. Mr. B Sharma, the learned counsel appearing for the Petitioner submits that the Petitioner has been performing his duties effectively and in fact, his performance has never been doubted and he has been getting good grades in his performances. He submits that the impugned Notice of Termination is a motivated one and brings in stigma to the service of the Petitioner. He further submits that though a show cause notice was issued to him, vide letter dated 01.09.2016, which mentions about the initiation of disciplinary action as per Clause 9 of the Terms of Contract, however, no such disciplinary action was ever conducted. He further submits that before issuance of Notice of Termination, he was not given any opportunity of being heard other than the Show-cause notice,

which was replied by him. He further submits that invocation of Clause 9 of the Terms of Contract is not correct in the instant case as Clause 9 provides for termination simpliciter, whereas in the instant case, allegations of indiscipline and negligence towards duty have been casted against him, which is punitive in nature and will affect his future career. He submits that the impugned Notice of Termination does not contain any whisper of any performance related issues rather it talks about indiscipline and negligence towards duty in a vague manner without specifying any actual incidents.

9. He further submits that as per Clause 9, either of the parties have the right to terminate the contract without assigning any reasons, provided that a written notice of one month is given to the other party. However, in the instant case, Clause 9 has been wrongly applied as the Petitioner is sought to be terminated by citing reasons of indiscipline and negligence of duty. Therefore, the invocation of Clause 9 in the instant case is not tenable under the Terms of Contract. He, therefore, submits that the impugned Notice of Termination is not as per the Terms of Contract and is also in violation of the Principles of Natural Justice and therefore, is not sustainable and needs to be set aside and quashed.

10. On the other hand, the learned Standing Counsel appearing for the NRHM submits that the Notice of Termination was, in fact, issued in terms of Clause 9 of the Terms of Contract which provides a right to the Mission Director to terminate the contract of the Petitioner if the performance of the party is found to be unsatisfactory or below the minimum expected levels or if the party is found to be guilty of any insubordination, dereliction of duty or any other misconduct. She further submits that in the instant case, though there is no

allegation of any insubordination, dereliction of duty or any other misconduct, however, the Petitioner is found to be performing in a standard which is not satisfactory to the authority, below the minimum expected levels and therefore, there is no violation of any terms of contract and the impugned Notice of Termination was, in fact, issued as per the terms of contract and not in violation of any Principle of Natural Justice as the contract terms provide for such termination under Clause 9. Therefore, she submits that there is no wrong in issuance of Notice of Termination to the Petitioner and accordingly, the instant case does not warrant an interference of this Court.

11. This Court has heard the submissions made by the counsel appearing for the respective parties. It is seen that a show cause notice dated 01.09.2016 was issued by the Mission Director, National Health Mission, Assam to the Petitioner in the following terms :-

“Whereas, it has been reported that your are apparently not maintaining the Books of Accounts of properly at your place of duty which is not at all acceptable under NHM in mission mode.

You are hereby asked to show cause why disciplinary action as per Clause 9 of the Terms of Contract should not be initiated against your for your apparent indiscipline and negligence towards duty. Your reply must reach the undersigned within 7 days of receipt of this letter. If no written statement of explanation is received within the time, matter will be processed considering that you have nothing to offer in defense.”

12. From the above, it is apparent that the show cause notice was, in fact, issued for initiation of disciplinary action as per Clause 9 of the terms of contract for allegations of apparent indiscipline and negligence towards duty by the

Petitioner. It is also seen that against the aforesaid show cause notice, a detailed reply was submitted by the Petitioner, vide his reply dated 07.09.2016, wherein he has denied any negligence towards duty in maintaining the Books of Accounts as well as indiscipline in duty. However, he has stated in his reply that though he has been trying to maintain the Books of Accounts in a proper manner as per the guidelines, he may have unintentionally made certain procedural error which was pointed out by the Financial Monitoring team in their recent visit and accordingly, he has taken the corrective measures as per their directions. Accordingly, he has detailed those remedial or corrective measures that have been taken by him after he has been pointed out certain lapses in the procedural part in keeping and maintaining the Books of Accounts.

13. In the instant case, an affidavit-in-opposition has been filed by the Respondent No. 2 (Mission Director, National Health Mission, Assam) wherein a stand has been taken by the respondent authority that the Petitioner was given Notice of Termination as per the District Monitoring Report of Senior State Level Accounts officials including the Finance Manager, NHM, Assam, for being indiscipline and negligence towards his duty. It was also stated in the aforesaid Affidavit that the Petitioner was given opportunity to prove himself by issuing the Show-cause notice dated 01.09.2016 for apparent indiscipline of not maintaining Books of Accounts properly at his place of duty and negligence towards his duty. However, the reply submitted by the Petitioner was not found to be satisfactory at all and therefore, the Notice of Termination was issued to the Petitioner.

14. In the Affidavit-in-Opposition, the Respondent has also detailed various

aspects such as the financial guidelines that was already issued to the Accounts Person and as per the guidelines, how the money collected from the patients are to be maintained and deposited in the bank account. Broadly, it has been detailed that there are certain lapses in maintaining such Books of Accounts by the Petitioner. It was also pointed out that certain cheques have been issued in the names of wrong persons. It has also been stated in the Affidavit that the Petitioner has accepted all the irregularities mentioned in the Financial Monitoring Report including the observations made in the aforesaid Affidavit. It was also stated that the Petitioner is solely responsible for maintaining the Books of Accounts and from his reply to their show cause notice, it revealed that the Petitioner is indisciplined and he is negligent towards duty and therefore, the impugned Notice of Termination was issued to the Petitioner.

15. It is seen from the petition that though Clause 8 and Clause 9 are extracted but the whole contract agreement is not brought on record either by the Petitioner or by the respondent authorities. However, during the hearing, the learned counsel appearing for the respondent authorities has submitted a document which is a proforma of terms of contractual engagements, containing the above referred Clauses 8 & 9.

16. The aforesaid document is kept in record by marking 'X'.

17. In view of the contents of the aforesaid document, it is seen that the Society/Mission Director, in fact, has the power to terminate a party any time if the performance of the party is found to be unsatisfactory or below the minimum expected level as per Clause-8, whereas, Clause-9 provides for

termination without any reasons by providing a written notice of one month by one party to the other. It is also provided that one month's notice can be dispensed with by either party by depositing a sum equivalent to one month's salary or a shorter notice than one month with a sum equivalent to the amount of his pay for the period of which such notice falls short of one month. Therefore, it is clear that provision under Clause-9 cannot be invoked if the Respondent no. 2 desires to terminate the services of the Petitioner for indiscipline and negligence towards duty.

18. Therefore, apparently, the impugned Notice of Termination is not in terms of Clause-9 of the Contract Agreement. It may be relevant herein to refer to the stand taken by the Respondent no. 2 in the Affidavit-in-Opposition filed by it in the instant writ petition. Paragraph-5 of the Affidavit-in-Opposition, being relevant, is reproduced herein below: -

“5. That as regards to the statements made in paragraph 4 of the writ petition; the deponent begs to state that securing higher grade in Performance appraisal by the Petitioner is a matter of record, but on that basis it cannot be presumed that his performance will be consistent with due course of time. That his last performance appraisal grade may not be same in following financial years. It may be stated here that the Petitioner was terminated as per the District Monitoring Report of Senior State Level accounts officials including Finance Manager, NHM, Assam for being indiscipline and negligent towards his duty. It may be further stated there that the Petitioner was given opportunity to prove himself by issuing Show Cause Notice, vide No. NHM/Fin/505/2011-12/5069 dated, 01/09/2016 for apparent indiscipline of not maintaining Books of Accounts

properly at his place of duty and negligence towards his duty and the reply submitted by the Petitioner was not found satisfactory at all.”

19. The stand of the Respondent no. 2, therefore, is clear that the Petitioner was issued the Notice of Termination for apparent indiscipline and negligence towards his duty, which makes the proposed termination clearly stigmatic and punitive in nature. The Respondent no. 2 has not stated in his affidavit as to whether the Petitioner was proposed to be terminated by invoking Clause-8 or Clause-9 of the Contract Agreement, though in the impugned Notice of Termination, it is mentioned that the termination was proposed in terms of Clause-9 of the Contract Agreement. Whatever there is in the Contract Agreement, it is seen that the Petitioner was proposed to be terminated not as termination simpliciter, but the same as stigmatic and punitive in nature. It is also seen from the facts of the case that other than issuance of the Show-cause Notice, the Petitioner was not given any further hearing or opportunity to defend his matter in the case. The Hon'ble Supreme Court, in numerous cases has held that in case of termination of a temporary or contractual employee also, the protection of Article 311 (2) of the Constitution of India shall be applicable when the termination is punitive in nature. In this connection, the case of ***State of Uttar Pradesh & Another vs Kaushal Kishore Shukla***, reported in ***(1991) 1 SCC 691*** can be referred to. Paragraph-7 of the aforesaid case is extracted herein below for ready reference: -

“7.Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of

the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of [Article 311](#) of the Constitution. Since, a temporary government servant is also entitled to the protection of [Article 311\(2\)](#) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open Neutral Citation Number: 2023:DHC:2944 to the court to determine the true nature of the order.”

20. Considering the aforesaid ratio laid down by the Hon’ble Supreme Court in the case of ***Kaushal Kishore Shukla (supra)***, it is clear that a contractual employee shall also get the protection under Article 311 of the Constitution of India in case of his termination order is treated as punitive and stigmatic.

21. In the instant case, a bare perusal of the impugned Notice of Termination dated 23.02.2017, clearly reveals that the Petitioner’s service was sought to be terminated due to indiscipline and negligence towards duty. Therefore, Notice of Termination is clearly punitive and stigmatic. Since, there is admittedly no enquiry or disciplinary proceeding instituted against the Petitioner before the Notice of Termination issued to him, the Notice of Termination cannot be sustained under the law as laid down by the Hon’ble Supreme Court.

22. Hence, it is seen that there is apparent violation of the Principle of Natural

Justice as well as protection granted to an incumbent under Article 311(2) of the Constitution of India. Having come to the aforesaid finding, this Court is of the considered view that the impugned Notice of Termination dated 23.02.2017 cannot be sustained being against the settled law, is set aside and quashed.

23. It is seen that the Petitioner has been continuing in his services on the strength of an interim order of this Court dated 31.03.2017. Therefore, the Petitioner shall be allowed to continue in his services without any interference by the impugned Notice of Termination dated 23.02.2017, in view of the same being set aside and quashed in the instant order.

24. In the aforesaid terms, the instant writ petition is disposed of as allowed.

JUDGE

Comparing Assistant