

GAHC010034002017



2026:GAU-AS:2831

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

Case No. : WP(C)/4771/2017

ON THE DEATH OF KIRAN CHANDRA DEKA HIS WIFE DEBABALA DEKA
W/O. LT. KIRAN CHANDRA DEKA, R/O. VILL. SARTHEBARI JAMATHER
CHUPA, BHAKTA DAS ROAD, P.O. SARTHEBARI, P.S. SARTHEBARI, DIST.
BARPETA, ASSAM, PIN-781307.

VERSUS

THE ASSAM COOPERATIVE APEX BANK LTD. and 2 ORS.
REP. BY THE MANAGING DIRECTOR, HEAD OFFICE AT PANBAZAR,
GUWAHATI-01.

2:THE BRANCH OFFICE
ASSAM COOPERATIVE APEX BANK

PATHSALA BRANCH
P.O. and P.S. PATHSALA
DIST. BARPETA
ASSAM
PIN-781325.

3:THE BRANCH OFFICE
ASSAM COOPERATIVE APEX BANK

NAHARKATIA BRANCH
NAHARKATIA
DIST. SIBSAGAR
ASSAM
PIN-786610

Advocate for the Petitioner : MR S.C DAS, MR.K R PATGIRI,MS.C DAS

Advocate for the Respondent : MR.P N GOSWAMI SC, Assam Co-op. Apex Bank.,

**BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR**

JUDGMENT & ORDER (ORAL)

Date : 24-02-2026

(Rajesh Mazumdar, J)

Heard Mr. K.R Patgiri, learned counsel for the petitioner and also heard Mr. D. Gogoi, learned Standing counsel, Assam Co-operative Apex Bank Limited, appearing for the respondents.

2. This writ petition was the 9th round of litigation for the deceased husband of the present petitioner, an erstwhile employee of the Assam Co-operative Apex Bank Limited. The writ petition was filed on 04.08.2017 and the original writ petitioner met his demise on 28.01.2018. Later the wife of the petitioner was substituted as the petitioner.

3. The husband of the petitioner had joined service in Assam Co-operative Apex Bank Ltd. on 08.11.1957 as an Assistant. He was later upgraded in service and allowed to work as Branch Manager In-charge of Pathsala Branch. On 15.11.1986, the erstwhile petitioner was served a notice asking him to show cause as to why disciplinary proceedings should not be initiated against him on allegations of misconduct levelled in the aforesaid show cause notice.

4. The erstwhile petitioner was dismissed from service on 10.10.1987. Both his appeals filed before the Board of Directors as well as the Administrative Council were dismissed.

5. The erstwhile petitioner approached this Court by filing Civil Rule No. 777/1992 which was disposed by directing reconsideration of the appeal filed by the petitioner. The appeal filed by the erstwhile petitioner was rejected by the Board of Directors.

6. Civil Rule No. 3341/1996 filed thereafter by the erstwhile petitioner was disposed by this Court by order dated 26.11.1998 requiring the Administrative Council to decide the appeal preferred by the writ petitioner. The appeal filed by the petitioner was again dismissed.

7. The petitioner raised the ground of violation of principles of natural justice which led to registration of Reference Case No. 16/2001 before the Labour Court at Guwahati. Upon contest, the learned Labour Court passed an award holding that the petitioner was not a workman and therefore, the reference was not maintainable. However, the learned Labour Court had taken the view that the dismissal was justified.

8. The petitioner had again approached this Court by filing W.P(C) No. 1306/2005 and by an order dated 27.11.2007, this Court held that when the learned Labour Court came to the conclusion that the petitioner was not a workman as required under the provision of law, the learned Labour Court had committed an error when it decided the merits of the reference. This Court further held that the dismissal of the petitioner stood vitiated due to the violation of the principles of natural justice since the enquiry report was not furnished to the petitioner. The matter was remanded back to the Assam Co-operative Apex Bank Ltd. to recommence the disciplinary proceeding from the stage of such submission of the enquiry report. It was further directed that the enquiry should be completed within a period of 4 months from the date of the

judgment. The Managing Director thereafter, by letter dated 20.03.2008, wrote to the petitioner furnishing a copy of the enquiry report. The petitioner filed his reply on 04.04.2008 and by order dated 26.07.2008, the petitioner was found guilty in respect of all the charges and the Bank proposed to impose the penalty of dismissal from service as per the Rule-46(a)(vi) of the Staff Rules of the Bank. The petitioner was asked to show cause against the proposed penalty.

9. The petitioner had at that stage filed W.P.(C) No. 4693/2008, seeking reinstatement in service with all consequential benefits and one of the grounds raised by the petitioner was the elapse of the time period allowed by the Court for concluding the departmental proceedings. However, this Court noticed that the disciplinary proceeding had been completed, though beyond time, with the passing of the order dated 18.11.2008 and this Court held that the grievances raised by the petitioner did not survive. By the order dated 20.11.2008, the writ petition was closed without expressing any opinion on the order dated 18.11.2008, giving liberty to the petitioner to challenge the validity and legality of the said order.

10. The petitioner had preferred an appeal before the Division Bench against the judgment & order passed by this Court on 27.11.2007 in W.P.(C) No. 1306/2005, which was registered as W.A No. 69/2009. However, the said appeal was dismissed for non-prosecution. The application for restoration of the writ appeal was also dismissed on 16.08.2012.

11. Thereafter, the petitioner filed W.P.(C) No. 5421/2012 challenging the legality and validity of the order dated 18.11.2008. This Court by the order dated 22.03.2016 has held as follows;

“30. From a careful perusal of the impugned order as extracted above, it is evident that the disciplinary authority simply accepted the findings of the Enquiry Officer and, thereafter, decided to impose the penalty of dismissal from service on the petitioner. It goes without saying that enquiry report is only an opinion. Ultimate decision taking authority is the disciplinary authority, who has to take the final decision on the disciplinary proceeding drawn up against the delinquent employee. The enquiry report certainly is a relevant material to be considered by the disciplinary authority while considering guilt or otherwise of the delinquent. But the disciplinary authority has to give its own findings on each of the charges framed against the delinquent. which must be supported by cogent reasons. All these are not discernible from the impugned order. Moreover, when the Staff Rules provide for multiple penalties it becomes necessary for the disciplinary authority to examine as to which one of the several penalties would be appropriate keeping in mind the gravity of the misconduct. Some application of mind to the imposition of penalty must be discernible from the impugned order. Here also, such application of mind is not discernible.

31. That being the position, Court is of the considered opinion that Impugned order dated 18.11.2008 cannot be sustained and is accordingly set aside and quashed. Matter is remanded back to the disciplinary authority to pass fresh order(s) having regard to all the relevant facts and circumstances of the case and in accordance with law keeping in mind the observations made above. While passing the fresh order(s), the disciplinary authority shall bear in mind the long litigation history of the case and the fact that petitioner is about 75 years of age now. Let such a fresh decision be taken within a period of 3(three) months from the date of receipt of a certified copy of this order, which shall be communicated to the petitioner.”

12. It is the case of the petitioner that thereafter the Managing Director, the Assam

Co-operative Apex Bank Ltd. had issued an undated letter which was received on 15.06.2017, whereby it was recorded that the petitioner shall be notionally treated as being in service until he reached the age of superannuation from the date the earlier dismissal from service with effect from 10.10.1987 and further, considering that no service was rendered to the Bank during the intervening period, no back wages were required to be paid to the petitioner. The Bank, therefore, held the petitioner to be entitled to superannuation benefits amounting Rs. 2,82,757/-. This order is under challenge in this present writ petition.

13. The respondent Bank has filed an affidavit, in which, having reiterated the facts leading up to the litigation, the Bank had stated that since no service was received by the respondent Bank during the intervening period from 10.10.1987 to 28.02.1998, no back wages were required to be paid to the petitioner. A reference to the Staff Rule-46(c) has been made. However, no such Staff Rules have been quoted.

14. This Court has heard the submissions of the learned counsel appearing for the contesting parties and also gone through the different documents annexed to the writ petition and the submissions made in the affidavit filed on behalf of the Assam Co-operative Apex Bank Ltd., through its Managing Director.

15. This Court notices that the undated letter which is under challenge in this writ petition does not record any findings of guilt against the original writ petitioner/employee of the Bank and merely records that since the employee of the Bank had not rendered service during the period from the date of his initial dismissal till the date of superannuation, he would not be entitled to arrear salary for the intervening period. This Court by the order dated 22.03.2016 had observed that the

disciplinary authority has to give its findings on each of the charges framed against the delinquent, which must be supported by cogent reason and had further observed that in the impugned order for dismissal, which was set aside, no such cogent reasons were discernible.

16. Be that as it may be, the order by which it has been decided not to give any back wages to the husband of the present petitioner, who was an employee of the Bank does not record any reason except that the Bank had not availed the service of the husband of the petitioner for the period from 10.10.1987 to 28.02.1998.

17. In this regard, this Court notices that the law laid down in the case of **Deepali Gundu Surwase -Versus- Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Others**, reported in **(2013) 10 SCC 324** had taken into account the different kinds of situations in which an employee, would be entitled to the back wages and arrear. To quote:

“33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first

instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman

and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

18. In the present case, this Court has repeatedly held that the order terminating the service of the husband of the petitioner/an employee of the Bank suffered from various illegalities. On one occasion, the enquiry report was not provided to him before a penalty was imposed. On a subsequent occasion, the disciplinary authority

failed to provide cogent reasons for coming to the decision that he deserved termination from service. In the final order now been challenged, no opinion of the disciplinary authority was provided regarding the guilt of the petitioner. However, in the opinion of this Court, the respondents have deemed it fit to give full superannuation benefits to the petitioner by treating her husband as being notionally in service.

19. In the opinion of this Court when the respondents intended to grant the full superannuation benefits to the petitioner, they were conscious of the fact that no penalty had been imposed upon the petitioner and therefore, it is obvious that the guilt of the petitioner had not been decided upon by the respondent authorities or at least it was not decided against the petitioner or to his detriment.

20. In such view of the matter and in view of the law laid down by the Apex Court in Deepali Gundu Surwase (supra), this Court is of the opinion that the back wages of the petitioner for the period 10.10.1987 to 28.02.1998 cannot be denied and/or withheld by the respondent authorities. This is an appropriate case where this Court can hold that the termination of the petitioner was not in accordance with law and the petitioner has been deprived the opportunity to offer his service to the Bank because the Bank had kept the petitioner away from service through an illegal order passed on 10.10.1987.

21. In the above view of the matter, the respondent authorities are directed to pay the petitioner arrears of salary from 10.10.1987 to 28.02.1998. The aforesaid period of the petitioner had already been held to be in notional continuity for the purpose of other pensionary benefits. The amount shall be calculated and paid to the petitioner

herein within a period of 60 days from the date of receipt of the certified copy of this order. For this purpose, the petitioner shall appear before the Managing Director, Assam Co-operative Apex Bank Ltd. on or before 10.03.2026 with the certified copy of this Court.

22. Upon receipt of the same, the Managing Director shall start further proceedings to make the payment. Upon making the payment, the Managing Director, Assam Co-operative Apex Bank Ltd. shall file an affidavit of compliance before the Registry of this Court. In case, no affidavit of compliance is filed on or before **02.06.2026**, the matter shall be re-listed before this Court again on **06.06.2026**.

23. In case, the affidavit of compliance is filed by the respondents, there shall be no further requirement to list this matter again.

24. This writ petition is disposed. No cost.

JUDGE

Comparing Assistant