

GAHC010290062023



2026:GAU-AS:3020

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

Case No. : WP(C)/7490/2023

ANJAN KUMAR BHATTACHARJEE
S/O LT. RAJ BIHARI BHATTACHARJEE R/O HOJAI DIST. NAGAON ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE COMMISSIONER AND SECRETARY HIGHER EDUCATION
DISPUR GUWAHATI PIN 781006

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA GUWAHATI 78101

Advocate for the Petitioner : MR. B CHAKRABORTY, MRS P HAZARIKA

Advocate for the Respondent : SC, HIGHER EDU,

BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

24/02/2026

Heard Mr. B Chakraborty, learned counsel for the petitioner. Also heard Mr. K Gogoi along with Mr. D Upamanyu, learned Standing counsels, Department of Higher Education for the respondents.

2. The petitioner in the present proceeding has presented a challenge to an order dated 07.10.2023 issued by the Director of Higher Education, Assam, dismissing the petitioner from his services in terms of the decision already arrived at in the matter by the Governing Body of the college, i.e., Hojai College, now renamed as Rabindranath Tagore University.

3. The petitioner, herein, was initially appointed as a Lecturer in the then Hojai College, Hojai. Thereafter, in the year 2001, i.e., w.e.f. 07.03.2001, the petitioner was appointed as the Principal of the college.

Basing on allegations of misconduct coming on record against the petitioner, herein, he was placed under suspension. Thereafter, a departmental proceeding came to be instituted against the petitioner by the Governing Body of the college, vide issuance of a show cause notice dated 13.12.2007. On conclusion of the departmental enquiry held against the petitioner, the Enquiry Officer submitted his enquiry report, holding the charges leveled against the petitioner to have been established.

The Governing Body of the college, thereafter, examined the enquiry report and on such examination, had resolved to impose the penalty of dismissal from service upon the petitioner. The resolution, so adopted in this connection, came to be forwarded to the Director of Higher Education, Assam for approval. Accordingly, the Director of Higher Education, Assam vide order dated 15.06.2009, proceeded to approve the resolution adopted by the Governing Body of the college towards imposition of the penalty of dismissal from service upon the petitioner.

Being aggrieved, the petitioner had assailed the said penalty before this Court by way of instituting a writ petition, being WP(C) No. 2429/2009. A Co-ordinate Bench of this Court vide order dated 06.08.2011 was pleased to dismiss the writ petition, upholding the penalty of dismissal from service as imposed upon the petitioner, herein.

The petitioner, being aggrieved, assailed the decision arrived at by the Co-ordinate Bench of this Court vide order dated 06.08.2011 before a Division Bench of this Court by way of instituting a writ appeal, being WA No. 273/2011.

The Division Bench of this Court on a consideration of the issues arising before it, arrived at a conclusion that the Governing Body at the relevant point of time did not have the jurisdiction to hold an enquiry in the matter against the petitioner and also to pass orders of dismissal. Basing on the said conclusion that the penalty as imposed upon the petitioner came to be interfered with, however, a direction was issued to the Director, Higher Education, Assam to hold a *de-novo* enquiry into the matter and pass appropriate orders in accordance with law, within a period of 6 (six) months. The reinstatement of the petitioner was denied, inasmuch as, in the meanwhile, he had retired on attaining the age of superannuation.

Thereafter, the respondent authorities, basing on the show cause notice already issued to the petitioner vide show cause notice dated 13.12.2007 proceeded with the enquiry. The Enquiry Officer on conclusion of the said enquiry proceeded to submit his enquiry report on 31.05.2019 holding that charge Nos. 2, 8, 13, 15 and 16 as leveled against the petitioner vide show cause notice dated 13.12.2007 stood established while charge Nos. 7, 9, 10, 11, 18, 19 and 23 were not established.

In the meantime, during the pendency of the said enquiry, the petitioner had assailed the said decision of the Division Bench of this Court in WA No. 273/2011 before the Hon'ble Supreme Court and the same was pending in Civil Appeal No. 5729/2019. Said Civil Appeal was taken up for consideration by the Hon'ble Supreme Court and the counsel, representing the Director of Higher Education, Assam had apprised the Hon'ble Supreme Court that the *de-novo* enquiry as held in the matter in pursuance to the directions passed by the Division Bench of this Court was already concluded.

The Hon'ble Supreme Court, noticing that there was no stay order operating in the matter, expressed anguish on the respondents for not taking action in the matter after receipt of the enquiry report in the year 2019 itself. Accordingly, the Hon'ble Supreme Court vide its order dated 20.07.2023 directed the respondent authorities, herein, to take appropriate action against the petitioner, herein, strictly in accordance with law. It was also provided that the petitioner, herein, shall also be entitled to seek appropriate legal recourse, if aggrieved by the decision taken by the disciplinary authority in the matter. With the above observation, the Civil Appeal came to be closed.

Thereafter, the Director of Higher Education, Assam issued a show cause notice dated 23.08.2022 to the petitioner, forwarding to him the enquiry report received in the matter. The petitioner is found to have submitted a representation against the said enquiry report, on 29.08.2023. Thereafter, the Director of Higher Education, Assam vide a speaking order dated 07.10.2023 proceeded to reiterate the penalty of dismissal from service as imposed upon the petitioner by the Governing Body of the college on 10.07.2008, which was subsequently, approved by the Director, Higher Education, Assam on 15.06.2009. The petitioner, on being imposed with the penalty of dismissal from service, he was also held to be not entitled to any pensionary benefits.

Being aggrieved, the petitioner has instituted the present proceedings.

4. Mr. B Chakraborty, learned counsel for the petitioner, by reiterating the facts, noticed hereinabove, has made the following submissions:

4.1 Mr. Chakraborty, learned counsel for the petitioner submits that the speaking order dated 07.10.2023 would not be maintainable, inasmuch as, a penalty prescribed under the provisions of Rule 7 of the Assam Service (Discipline and Appeal) Rules, 1964 was not mandated to be imposed upon the petitioner after he had proceeded on superannuation.

4.2 Mr. Chakraborty, learned counsel for the petitioner, by referring to the directions passed by the Division Bench of this Court vide order dated 04.02.2015 has submitted that the Division Bench of this Court after having held that the departmental proceedings instituted against the petitioner was so instituted without jurisdiction, had granted liberty to the Director, Higher Education, Assam to hold the *de novo* enquiry into the matter against the petitioner. He submits that the show cause notice issued by the Governing Body in the matter on 13.12.2007 having already been held by the Division Bench of this Court to have been issued without jurisdiction, it was not open to the departmental authorities to revive the same after the directions were so issued by the Division Bench of this Court. He submits that a fresh proceeding was mandated to be so instituted in the matter against the petitioner, which admittedly was not done. He submits that the proceeding being continued in terms of the show cause notice dated 13.12.2007, the proceedings so instituted before by the

departmental authorities would be of no consequence and the same is *void ab initio*.

4.3 Mr. Chakraborty, learned counsel for the petitioner has submitted that the enquiry, report of which was submitted by the Enquiry Officer on 31.05.2019, was so held behind the back of the petitioner without any reference to him. No notices of the same is contended to have been issued to the petitioner, herein. Mr. Chakraborty, submits that although, after the decision of the Hon'ble Supreme Court, a copy of the enquiry report was forwarded to the petitioner, the petitioner in his representation dated 29.08.2023 had raised the issue with regard to the maintainability of such enquiry.

4.4 Mr. Chakraborty, learned counsel for the petitioner submits that along with the plea with regard to the maintainability of the said enquiry, basing on a show cause notice already interfered with by this Court, the petitioner had also highlighted that the enquiry, report of which was forwarded to him was so conducted behind his back, violating all norms and rules and also without giving him a reasonable opportunity to defend his case. He submits that the fact that the departmental authorities had proceeded to conduct a *de novo* enquiry into the matter, had come to the knowledge of the petitioner only during the hearing before the Hon'ble Supreme Court in the proceedings of Civil Appeal No. 5729/2019, when a copy of the enquiry report furnished by the Enquiry Officer was placed before the Hon'ble Supreme Court. He submits that the said report having been placed, the Hon'ble Supreme Court had only required the departmental authorities to take the matter to its logical conclusion.

4.5 Mr. Chakraborty, learned counsel for the petitioner submits that the Hon'ble Supreme Court did not have an opportunity to examine the validity of the enquiry as held against the petitioner, herein and only being apprised about the submission of the enquiry report, the Hon'ble Supreme Court had directed the respondent authorities to take the matter to its logical conclusion. He submits that merely on the ground that the Hon'ble Supreme Court had permitted the departmental authorities to take the matter to its logical conclusion after submission of the enquiry report in the matter by the Enquiry Officer would not validate and otherwise, invalid enquiry held against the petitioner, herein. Accordingly, Mr. Chakraborty, submits that the very proceedings instituted against the petitioner leading to the passing of the order dated 07.10.2023 being *void ab initio*, the penalty as imposed upon the petitioner

vide order dated 07.10.2023 would mandate an interference by this Court. Mr. Chakraborty, submits that on an interference being made by this Court by order dated 07.10.2023, this Court would direct the respondent authorities to prepare a proposal for authorization to the petitioner his pension and pensionary benefits with effect from the date he had so superannuated from his services.

5. Per contra, Mr. K Gogoi, along with Mr. D Upamanyu, learned Standing counsels, Department of Higher Education, Assam have submitted that the enquiry as conducted against the petitioner in pursuance to the directions passed by the Division Bench of this Court vide order dated 04.02.2015 in WA No. 273/2011, validity thereof, cannot be now adjudicated by this Court, inasmuch as, the Hon'ble Supreme Court on being apprised about the submission of such enquiry report and required the departmental authorities to take the same to its logical conclusion.

5.1 It is submitted by the learned Standing counsels, Higher Education Department that in the event this Court finds that the speaking order dated 07.10.2023 to suffer from any infirmity, the same would be permissible to be interfered with by this Court. However, liberty is required to be granted to the departmental authorities to pass fresh order in accordance with law, basing on the enquiry report already coming on record.

5.2 In support of their such contentions, learned Standing counsels, Department of Higher Education, Assam have relied upon the decision of the Hon'ble Supreme Court in the case of the *State of Uttar Pradesh and Others Vs. Prabhat Kumar*, reported in *2022 LiveLaw (SC) 736* and the *Inspector of Panchayats and District Collector Vs. S Arichandran and Others*, reported in *(2022) AIR(SC) 4611*.

5.3 In the above premises, it is submitted by the learned Standing counsels, Higher Education Department that a liberty be granted to the departmental authorities to pass a fresh order with regard to the materials already coming on record in the enquiry report in the light of the representation submitted by the petitioner, herein.

6. I have heard the learned counsels for the parties and also perused the materials available on record.

7. The petitioner, herein, was subjected to a departmental proceeding instituted by the Governing Body of Hojai College, Hojai, vide issuance of a show cause notice dated 13.12.2007. The petitioner in pursuance to the said departmental proceeding instituted against him was recommended by the Governing Body of the college to be imposed with a penalty of dismissal from service. Basing on the said recommendation made by the Governing Body of the college, the Director of Higher Education, Assam vide order dated 15.06.2009 proceeded to impose the penalty of dismissal from service, as recommended by the Governing Body of Hojai College upon the petitioner.

8. The challenge presented to by the petitioner to the said order dated 15.06.2009 was rejected by a Co-ordinate Bench of this Court vide order dated 06.08.2011 in WP(C) No. 2429/2009. The petitioner being aggrieved, had assailed the said order dated 06.08.2011 before the Division Bench of this Court by instituting a writ appeal, being WA No. 273/2011.

9. The Division Bench of this Court vide order dated 04.02.2015, upon examining the issues arising in the appeal proceeded to draw a conclusion to the effect that on the date when the departmental proceeding was instituted against the petitioner, the Governing Body of the college had no jurisdiction to institute such enquiry and/or to pass orders of dismissal and later send to the Director for approval.

10. In view of the said conclusions, the Division Bench of this Court proceeded to interfere with the penalty of dismissal imposed upon the petitioner and directed the Director of Higher Education, Assam to hold a *de novo* enquiry into the matter and pass appropriate orders in accordance with law within a period of 6 (six) months. It was further provided that the petitioner having attained the age of superannuation, in the meanwhile, the question of his reinstatement would not arise and in the event of his success, he would be entitled to only monetary benefits.

11. The materials brought on record reveals that basing on the same show cause notice dated 13.12.2007 issued by the Governing Body of Hojai College, a *de novo* enquiry was held in the matter, in terms of the liberty granted by the Division Bench of this Court.

12. The petitioner, herein, being aggrieved by the order dated 04.02.2015 passed by the

Division Bench of this Court in WA No. 273/2011 had assailed the same before the Hon'ble Supreme Court.

13. The Hon'ble Supreme Court in the proceedings of Civil Appeal No. 5729/2019 was apprised by the learned counsel appearing for the Higher Education Department of the fact that in pursuance to the directions passed by the Division Bench, a *de novo* enquiry in the matter was already completed and the Enquiry Officer had submitted its report on 31.05.2019. On noticing the said position, the Hon'ble Supreme Court vide order dated 20.07.2023 proceeded to direct the respondent authorities, herein, to take appropriate action as per law, basing on the findings written in the enquiry report. The Hon'ble Supreme Court further provided that in the event the department proposes to take action against the petitioner, herein, principles of natural justice shall be adhered to and he shall be afforded an opportunity to place his case before the Disciplinary Authority/Appellate Authority.

14. In pursuance to the directions passed by the Hon'ble Supreme Court in Civil Appeal No. 5729/2019, the Director of Higher Education, Assam issued a show cause notice dated 23.08.2022 to the petitioner, forwarding to him the enquiry report and required the petitioner to submit a representation as to why the penalty as prescribed under Rule 7 of the Assam Services (Discipline and Appeal) Rules, 1964 shall not be imposed upon him. The petitioner, thereafter, vide his representation dated 29.08.2023 responded to the said show cause notice dated 23.08.2022.

15. The petitioner in his representation raised a preliminary objection on the ground that the enquiry held after the directions passed by the Division Bench of this Court was so held behind his back without giving him an opportunity to defend his charges. It was further submitted that such enquiry was also not permissible to be carried out basing on the show cause notice issued by the Governing Body of the college dated 13.12.2007.

16. In view of the above, the petitioner, herein, prayed for setting aside the enquiry report by holding it to be *non est* in the eyes of law. The disciplinary authority of the petitioner, thereafter, vide a speaking order dated 07.10.2023 by placing reliance on the enquiry report dated 31.05.2019, submitted by the Enquiry Officer in pursuance to the *de-*

novο enquiry held in the matter proceeded to impose upon the petitioner the penalty of dismissal from service as was imposed upon him earlier and the petitioner was held to be not entitled to any pensionary benefits. However, the disciplinary authority while drawing conclusions basing on the Enquiry Report submitted in the matter, miserably failed to appreciate the contentions raised by the petitioner in the representation submitted by him against the enquiry report, wherein, he had highlighted that the enquiry was so held without any reference to him.

17. The Division Bench of this Court having interfered with the penalty of dismissal imposed upon the petitioner, the same would have an effect of setting aside all the proceedings initiated against the petitioner culminating in the order of penalty starting from the show cause notice dated 13.12.2007. [Refer decision of the Hon'ble Supreme Court in the case of Dharampal Arora Vs. Punjab State Electricity Board & Another, reported in (2006) 13 SCC 593].

18. Accordingly, the respondent authorities in terms of the liberty granted by the Division Bench of this Court vide order dated 04.02.2015 were required to issue a fresh show cause notice against the petitioner and thereafter, proceeded in the matter in accordance with the provisions of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964.

19. This Court also finds that the *de-novo* enquiry instituted in the matter in respect of the petitioner, herein, was so conducted without any reference to the petitioner.

20. The respondents in the affidavit filed by them in the matter had not raised any contention to the effect that the petitioner had participated in the said *de-novo* enquiry and/or the petitioner being informed about the conduct of such enquiry had not participated in the same even after having knowledge of the initiation of such enquiry against him.

21. The respondents in the present proceedings have raised a plea to the effect that the Hon'ble Apex Court having directed the respondent authorities to pass appropriate orders basing on the enquiry report already submitted in the matter by the Enquiry Officer, the petitioner having been forwarded with a copy of the said enquiry report and a representation thereon, submitted by him, the passing of the impugned order dated 07.10.2023 would not

mandate an interference by this Court. The said submission is noticed only to be rejected, inasmuch as, the Hon'ble Supreme Court was not apprised of the fact that the *de-novo* enquiry was carried out against the petitioner in the matter without affording to him a reasonable opportunity to defend the charges so leveled against him in the matter. Further, the Hon'ble Supreme Court was also not apprised of the fact that the *de-novo* enquiry was so carried out without any reference to the petitioner, herein. The forwarding of the enquiry report to the petitioner was responded to by the petitioner by raising preliminary objection in his representation dated 29.08.2023 to the effect that the enquiry having been carried out behind his back was *non est* in the eyes of law.

22. This Court finds that there being no denial of the fact by the respondent authorities that the *de-novo* enquiry was carried out behind the back of the petitioner without affording to him a reasonable opportunity to defend himself against the charges framed in the matter, the said enquiry is clearly *non est* being in violation of the provisions of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964.

23. In the considered view of this Court, no penalty would be permissible to be imposed upon the petitioner in pursuance to such vitiated enquiry carried out in the matter de hors the provisions of law holding the field.

24. Having drawn the said conclusions, this Court now consider the speaking order dated 07.10.2023 issued by the Director of Higher Education, Assam. A perusal of the said order would reveal that the same is based on the report of the Enquiry Officer, which this Court had already held to be so submitted in pursuance to a vitiated enquiry. Further, vide the said order, the only reference to the involvement of the petitioner is in pursuance to the 2nd show cause notice dated 23.08.2022.

25. Having accepted the enquiry report, the disciplinary authority of the petitioner vide speaking order dated 07.10.2023 proceeded to impose upon the petitioner the penalty of dismissal from service in the following manner:

“After careful examination of the enquiry report and the records, documents submitted, including the show cause reply of the petitioner, i.e., Shri Anjan Kumar

Bhattacharjee, I am of the considered opinion that Shri Anjan Kumar Bhattacharjee was dismissed from service in accordance with the provisions of law and not entitled to any pensionary benefits."

26. A perusal of the operative portion of the speaking order dated 07.10.2023 would reveal that what was actually done in respect of the petitioner was a reiteration of the penalty that was approved to be imposed upon the petitioner vide order dated 15.06.2009, although, the same was already interfered with by the Division Bench of this Court in WA No. 273/2011. Accordingly, this Court is of the considered view that the order dated 07.10.2023, being the result of a vitiated enquiry held against the petitioner, the same would not be sustainable and would call for an interference. Further, the petitioner having already retired even before initiation of the *de novo* enquiry against him, the penalty of dismissal, a penalty prescribed under the provisions of Rule 7 of the Assam Service (Discipline and Appeal) Rules, 1964, was not permissible to be imposed upon him.

27. Having drawn the above conclusions, this Court would now consider the submissions of the learned counsel for the respondents, to provide to the respondents a liberty to proceed against the petitioner by instituting a *de novo* proceeding. This Court has considered the said submissions and is not inclined to accept the same, considering the long lapse of time occasioning since the proceedings was initially instituted against the petitioner. This Court also finds that the petitioner is presently aged around 76 years and it will not be fair to subject him to a *de novo* proceeding at this stage. Accordingly, the said submission of the learned counsel for the respondent stands rejected.

28. In view of the above discussions, this Court proceeds to set aside the speaking order dated 07.10.2023 along with all proceedings so instituted in the matter, including the *de-novo* enquiry held for the reasons already stated, hereinabove. The petitioner having already superannuated from his services and presently, he being around 76 years of age, the respondent authorities are directed to compute the pension and pensionary benefits of the petitioner with effect from the date he had retired from his services on reaching the age of superannuation. The pension and pensionary benefits be authorized to the petitioner within a period of 6 (six) months from the date of receipt of a certified copy of this order.

29. Pending finalization of the petitioner's pension and pensionary benefits, it is directed that within a period of 1 (one) month from the date of receipt of a certified copy of this order, the Director of Higher Education, Assam shall authorize to the petitioner a provisional pension along with a provisional DCRG and other retirement benefits, like Leave Encashment, GIS etc. which are to be authorized by the departmental authorities.

30. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant