

GAHC010083572019



2025:GAU-AS:2308

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

Case No. : WP(C)/2546/2019

**FAZLUR RAHMAN SON OF LATE FAKIR RAHMAN, RESIDENT OF VILL-
JAJORI, P.O. AND P.S. JAJORI, DIST. NAGAON, ASSAM, PIN- 782142.**

VERSUS

**THE STATE OF ASSAM AND 3 ORS.
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, HOME AND
POLITICAL DEPTT., DISPUR, GHY.-6.**

2:THE DIRECTOR GENERAL OF POLICE ASSAM ULUBARI GHY.- 781007.

**3:THE DY. INSPECTOR GENERAL OF POLICE(SR)
ASSAM SILCHAR PIN- 788001.**

**4:THE COMMANDANT 5TH ASSAM POLICE BATTALION SONTILA
DIMA HASAO ASSAM PIN- 788819**

**Advocate for the Petitioner : MR. N J KHATANIAR, MS. P. KASHYAP, M K BORAH, MR. M K
CHOUDHURY**

Advocate for the Respondent : GA, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 21.02.2025

Date of Judgment: 05.03.2025

JUDGMENT & ORDER(CAV)

Heard Mr. M. K. Borah, learned counsel for the petitioner. Also heard Mr. P. N. Goswami, learned Addl. Advocate General, Assam, appearing on behalf of all the respondents.

2. The petitioner, by way of instituting the present proceeding, has prayed for a direction upon the respondent authorities to reinstate him in his service in terms of the directions passed by this Court vide judgment & order, dated 11.04.2001, in WP(c)5001/2001.

3. The petitioner, herein, while working as a Constable in the 5th Assam Police Battalion, was served with a Show Cause Notice, 31.10.1994, issued by the Commandant of the Battalion, requiring him to show cause as to why appropriate penalty should not be imposed upon him for having remained unauthorizedly absent w.e.f. 13.10.1994. It was further alleged that on account of the unauthorized absence of the petitioner, herein, extremist elements had overpowered the sentry constable and other guard party on 17.10.1994 and looted away arms and ammunitions along with a wireless handset. The petitioner was further alleged to have remained absent from his duty w.e.f. 13.10.1994 till 24.11.1994.

4. On conclusion of the inquiry so held in the matter, the disciplinary authority of the petitioner, i.e. Commandant, 5th Assam Police Battalion, proceeded, vide order, dated 05.04.1995, to discharge the petitioner from his service w.e.f. 05.04.1994. Further, the period of desertion from the camp by the petitioner w.e.f. 13.10.1994 to 24.10.1994, was treated as leave without pay and the period of suspension of the petitioner w.e.f. 24.10.1994 to 05.04.1994, was treated as on duty. The appeal as preferred by the petitioner in the matter, was rejected by the appellate authority, vide order, dated 24.06.1998.

5. The petitioner, herein, being aggrieved by the said order, dated 05.04.1995, assailed the same by way of instituting before this Court a writ petition being WP(c)5003/2001. This Court, proceeded to take-up the matter for final consideration and upon hearing the parties to the proceeding and also upon considering the materials coming on record, was pleased vide judgment & order, dated 11.04.2006, to dispose of the said writ petition, by setting aside the impugned order of discharge of the petitioner from service, dated 05.04.1995, as well as the order of the appellate authority, dated 24.06.1998, and further directed that the proceedings of the inquiry be re-commenced from the stage of furnishing a copy of the report of the Inquiry Officer, to the petitioner, herein. It was further directed that in the event, the copy of the Inquiry Report was not made available to the petitioner, the respondent authorities would be called upon to pass consequential orders exonerating him from the charges so levelled against him, as any punishment, in such circumstances, was construed to have the effect of violating the principles of natural justice as well as the provisions of Article 311(2) of the Constitution of India.

6. The respondent authorities having not acted in the matter in terms of the directions passed by this Court vide judgment & order, dated 11.04.2006, in WP(c)5003/2001, by, either, furnishing a copy of the Inquiry Report to the petitioner, or, exonerating him from the charges as well as in not reinstating him, in service; the petitioner, herein, has instituted the present proceeding before this Court on 10.04.2019.

7. Mr. Borah, learned counsel for the petitioner, by reiterating the facts as noticed hereinabove, has submitted that after passing of the judgment &

order, dated 11.04.2006, by this Court in WP(c)5003/2001; the petitioner had visited the office of the respondent authorities on numerous occasions, however, the respondent authorities inspite of having assured the petitioner of taking appropriate steps for compliance of the directions passed by this Court vide judgment & order, dated 11.04.2006; had not complied with the same. Mr. Choudhury, learned counsel, has accordingly submitted that the petitioner on 29.08.2006, had prayed for exonerating him from the charges so levelled against him and for his reinstatement in his service.

8. Accordingly, Mr. Choudhury, learned counsel, has submitted that in terms of the directions passed by this Court vide judgment & order, dated 11.04.2006, in WP(c)5003/2001, which was contended to have attained its finality; the petitioner, herein, is entitled to be reinstated in his service with all consequential benefits of pay, seniority, etc..

9. Per contra, Mr. Goswami, learned Addl. Advocate General, Assam, appearing on behalf of the State Respondents, has, at the outset, fairly submitted that the judgment & order, dated 11.04.2006, passed by this Court in WP(c)5003/2001, was not assailed by the State Respondents and the same has attained its finality.

10. Mr. Goswami, learned Addl. Advocate General, Assam, has further submitted that although the judgment & order, dated 11.04.2006, had mandated for completion of the proceedings within a period of 4(four) months from the date of receipt of a certified copy of the said judgment & order, however, it is found that the petitioner had submitted the certified copy of the judgment & order, dated 11.04.2006, only, vide his

representation, dated 29.08.2016, and not prior to that.

11. Mr. Goswami, learned Addl. Advocate General, Assam, has further submitted that the records of the disciplinary proceeding so drawn against the petitioner, was misplaced during the earlier proceedings instituted by him before this Court and the same remained untraceable. Accordingly, the respondent authorities were not in a position to furnish a copy of the Inquiry Report to the petitioner, herein.

12. Mr. Goswami, learned Addl. Advocate General, Assam, has submitted that the petitioner, in view of his laches, in instituting proceedings for violation by the respondent authorities of the directions passed by this Court vide judgment & order, dated 11.04.2006, in WP(c)5003/2001; the petitioner would not be entitled to any backwages as claimed by him in the matter.

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

14. It is an admitted position that the petitioner came to be discharged from his service vide order, dated 05.04.1995, issued by the disciplinary authority in pursuance of a disciplinary proceeding so instituted against him in the matter.

15. The appeal as preferred by the petitioner against the order, dated 05.04.1995, was also rejected by the appellate authority vide order, dated

24.06.1998. The petitioner, thereafter, had instituted before this Court, a writ petition being WP(c)5003/2001. The said writ petition was given a final consideration and vide judgment & order, dated 11.04.2006, the same was disposed of by this Court.

16. The operative part of the judgment & order, dated 11.04.2006, passed by this Court in WP(c)5003/2001; being relevant, is extracted hereinbelow:

“6. In the present case, as already held by this Court, the petitioner was not furnished with a copy of the enquiry officer's report. I have read and considered the reply submitted by the petitioner to the charge memo dated 31.10.94 which has been placed before the Court by the learned counsel for the petitioner at the hearing. In view of the stand taken by the petitioner in his reply to the charge memo I am of the view that prejudice can safely be presumed to have been caused as the petitioner had offered certain explanations for his alleged absence from duty on the date(s) in question. In such circumstances, following the law laid down by the Apex Court in Managing Director, ECIL (supra) the Inevitable order that this writ petition would call for Is to set aside the orders dated 5.4.95 and 24.6.98 and direct the recommencement of the proceedings of enquiry from the stage of furnishing of the report of the enquiry officer to the petitioner. It is made clear that if the said report of the enquiry officer is not made available to the petitioner, the respondent authorities will have to pass consequential orders exonerating the petitioner from the charge levelled as any punishment, In such circumstances, will violate the principles of natural justice and the provisions of Article 311(2) of the Constitution.

7. As over a decade has elapsed in the meantime, I direct that the proceedings against the petitioner from the stage of furnishing of the report of the enquiry officer will be initiated and completed by the authority within a period of four months from the date of receipt of certified copy of this order.

8. Consequently and in view of the discussions that have preceded, this writ petition is allowed to the extent indicated above.”

17. A perusal of the directions passed by this Court vide judgment & order, dated 11.04.2006, in WP(c)5003/2001; would go to reveal that the Court had interfered with the order of discharge of the petitioner from service as well as the order passed by the appellate authority, on the ground that the petitioner was not furnished with a copy of the Inquiry Report, by the respondent authorities. On such interference being made; this Court had required the respondent authorities to re-commence the

proceedings in the inquiry against the petitioner from the stage of furnishing a copy of the Inquiry Report to him. This Court was further pleased to direct the respondent authorities that, in the event, the copy of the Inquiry Report was not so furnished to the petitioner, they would be called upon to pass consequential orders exonerating the petitioner from the charges so levelled against him.

18. It is seen that the respondent authorities, on account of the File of the disciplinary proceeding being misplaced and not being traceable; had not furnished a copy of the Inquiry Report, in question, to the petitioner.

19. In the present proceeding also, it was highlighted by the respondent authorities that the said File has not been retrieved, thereafter. Accordingly, the petitioner cannot be now directed to be again furnished with a copy of the Inquiry Report of the disciplinary proceeding, in-as-much as, the same is not available with the respondent authorities on account of loss of the File.

20. In view of the above situation; the further direction as passed by this Court vide judgment & order, dated 11.04.2006, passed in WP(c)5003/2001, for passing of orders by the respondent authorities exonerating the petitioner, herein, from the charges framed against him, should have been complied. However, the respondent authorities have not complied even with the further directions passed by this Court vide judgment & order, dated 11.04.2006, in WP(c)5003/2001.

21. Accordingly, this Court is of the considered view that the petitioner, herein, ought to be deemed to have been reinstated in his service immediately on passing of the judgment & order, dated 11.04.2006, by this Court in WP(c)5003/2001.

22. Having drawn the above conclusions; the reliefs to be extended to the petitioner, herein, is required to be so considered.

23. This Court, vide judgment & order, dated 11.04.2006, passed in WP(c)5003/2001, had required the respondent authorities to conclude the disciplinary proceeding instituted against the petitioner after furnishing to him, a copy of the Inquiry Report within a period of 4(four) months from the date of receipt of a certified copy of the said judgment & order. It is not evident from the pleadings brought on record by the petitioner, in the present proceeding, as to the date when the certified copy of the said judgment & order, dated 11.04.2006, was placed by the petitioner before the respondent authorities.

24. The earliest reference of the petitioner, herein, having placed such document before the respondent authorities, is by way of a representation, dated 29.08.2016. By construing that it was on 29.08.2016, that the petitioner had placed the certified copy of the said judgment & order, dated 11.04.2006 before the respondent authorities; the inquiry proceeding not being permissible to be taken forward on account of loss of the File related to the disciplinary proceeding so initiated against the petitioner, the respondent authorities ought to have passed an order exonerating the petitioner from the charges so levelled against him vide the Show Cause

Notice, dated 31.10.1994. However, it is found that such order has not been so issued by the respondent authorities.

25. Noticing the position emerging in the matter as well as the fact that the directions passed by this Court vide judgment & order, dated 11.04.2006, in WP(c)5003/2001, had attained its finality; in the absence of a challenge being presented to it by the respondent authorities, this Court having interfered with the order of discharge of the petitioner from his service, the petitioner ought to be deemed to have continued in his service w.e.f. 05.04.1995.

26. However, the laches having noticed hereinabove, on the part of the petitioner, herein, in following-up the directions passed by this Court vide judgment & order, dated 11.04.2006, in WP(c)5003/2001, and he, having approached the respondent authorities only after a decade having elapsed from the date of passing of the said judgment & order, by way of representation, dated 29.08.2016, and the present proceeding having been instituted before this Court only in the year 2019; this Court is of the considered view that the petitioner, herein, would not be entitled to any backwages, moreso, when he had not discharged any duties, after being discharged from his service.

27. The present proceedings having been instituted by the petitioner, herein, before this Court, on 10.04.2019, and the same having remained pending consideration of this Court; this Court is of the considered view that following directions are mandated to be issued in the matter:

(i). The petitioner, herein, be deemed to have continued in his service w.e.f. 05.04.1995.

(ii). The period of service w.e.f. 05.04.1995, till the date of passing of this order shall be held to be continuous in respect of the petitioner.

(iii). For the said period w.e.f. 05.04.1995, till the date of passing of the present order, the petitioner's pay and allowances be notionally fixed.

(iv). With effect from the date of passing of the present order; the petitioner, herein, would be entitled to his pay and allowances, which would be now so fixed notionally by calculating the pay and allowances w.e.f. 05.04.1995.

(v). While fixing the pay and allowances of the petitioner, the revision(s) of pay coming into effect, in the meanwhile, as well as any other financial upgradation benefits that would have been entitled to be authorized to the petitioner, in the event, he had continued in his services, would also be accounted for.

(vi). The petitioner would be released his salaries with effect from the date of passing of the present order.

(vii). Further, the period w.e.f. 05.04.1995, till the date of passing of this order, would be counted for the purpose of pension and pensionary benefits of the petitioner.

28. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant