

GAHC010038472024



2025:GAU-AS:8486

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

Case No. : WP(C)/1093/2024

SHAYED MASUD MAZUMDER
S/O SAMSUDDIN MAZUMDER, VILL AND P.O.-SONABARIGHAT PART-I, P.S.-
RANGIRKHARI, DIST-CACHAR, ASSAM, PIN-788013

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, PANJABARI,
GUWAHATI-37

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
GUWAHATI-37

3:THE DEPUTY COMMISSIONER
CACHAR
CUM DISTRICT PROGRAMME CO-ORDINATOR (MGNREGA)
CACHAR
ASSAM

4:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
ASSAM

5:THE BLOCK DEVELOPMENT OFFICER
SONAI DEVELOPMENT BLOCK
DIST-CACHAR
ASSAM

6:THE CHIEF EXECUTIVE OFFICER

CACHAR ZILLA PARISHAD
CUM PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
CACHA

Advocate for the Petitioner : MR. K MIRA, MR. H A TALUKDAR

Advocate for the Respondent : SC, P AND R.D., GA, ASSAM

Linked Case : WP(C)/4720/2023

ATAUR RAHMAN
SON OF ABDUR RAHMAN

RESIDENT OF VILLAGE- BOWALGURI

P.O.- GORAIMARI
DISTRICT- MORIGAON

ASSAM
PIN- 782104.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM

PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT

DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR

GUWAHATI-37
ASSAM.

3:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY
MORIGAON
ASSAM.

4:THE CHIEF EXECUTIVE OFFICER
MORIGAON ZILLA PARISHAD
MORIGAON
ASSAM.

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : WP(C)/4758/2023

MEHTABUDDIN AHMED
C/O- LATE ABDUS SUBHAN
RESIDENT OF VILLAGE- JAJORI MULANKAMURA
P.O. BORMONIPUR
DISTRICT- MORIGAON
ASSAM
PIN- 782141

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI- 781006

2:THE COMMISSIONER TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR
GUWAHATI- 37
ASSAM

3:THE DIRECTOR
STATE INSTITUTE OF RURAL DEVELOPMENT
G.S.ROAD
KHANAPARA GUWAHATI- 781022

4:THE CHIEF EXECUTIVE OFFICER

MORIGAON ZILLA PARISHAD
MORIGAON
ASSAM

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : WP(C)/4707/2023

MANASH JYOTI DEKA
SON OF LATE GHANA KANTA DEKA

RESIDENT OF VILLAGE- TARANI KALABARI

P.O.- AZAR BARI
DISTRICT- MORIGAON

ASSAM
PIN- 7820105.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM

PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT

DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR

GUWAHATI- 37
ASSAM.

3:THE DIRECTOR
STATE INSTITUTE OF RURAL DEVELOPMENT
G.S. ROAD
KHANAPARA

GUWAHATI- 781022.

4:THE CHIEF EXECUTIVE OFFICER
MORIGAON ZILLA PARISHAD
MORIGAON
ASSAM.

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : WP(C)/4709/2023

SOFIKUL ISLAM
SON OF LATE EUSUF ALI

RESIDENT OF VILLAGE- SARUCHALA

DISTRICT- MORIGAON
ASSAM

PIN- 782123.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM

PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT

DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR

GUWAHATI-37
ASSAM.

3:THE CHIEF EXECUTIVE OFFICER
MORIGAON ZILLA PARISHAD
MORIGAON

ASSAM.

Advocate for : MR. K N CHOUDHURY

Advocate for : SC

P AND R.D. appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WP(C)/4759/2023

ASHADUZ ZAMAN

S/O ABDUS SUBAN

VILL.- BHUYANBARI PATHAR

P.O.- CHATIENTOLI

P.S.- LAHARIGHAT

DIST.- MORIGAON

ASSAM

PIN- 782127.

VERSUS

THE STATE OF ASSAM AND 3 ORS.

REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM

PANCHAYAT AND RURAL DEVELOPMENT DEPTT.

DISPUR

GUWAHATI- 781006.

2:THE COMMISSIONER

TO THE GOVT. OF ASSAM PANCHAYAT AND RURAL DEVELOPMENT DEPTT.

PANJABARI

JURIPAR

GUWAHATI- 37

ASSAM.

3:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY

MORIGAON

ASSAM.

4:THE CHIEF EXECUTIVE OFFICER

MORIGAON ZILLA PARISHAD

MORIGAON

ASSAM.

Linked Case : WP(C)/1091/2024

TAHIR HUSSAIN MAZUMDER
S/O LATE JALAL UDDIN MAZUMDER
VILL AND P.O.-UTTAR KRISHNAPUR PART-I
P.S.-RANGIRKHAIRI
DIST-CACHAR
ASSAM
PIN-788006

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
GUWAHATI-37

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
GUWAHATI-37

3:THE DEPUTY COMMISSIONER
CACHAR
CUM DISTRICT PROGRAMME CO-ORDINATOR (MGNREGA)
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ASSAM

5:THE BLOCK DEVELOPMENT OFFICER
SONAI DEVELOPMENT BLOCK
DIST-CACHAR
ASSAM

6:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
CUM PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
CACHAR

For the Petitioners : Mr. K. N. Choudhury, Sr. Advocate.
Mr. R. M. Deka, Advocate.
Mr. K. Mira, Advocate.

For the Respondents : Mr. S. Dutta, SC, P & RD, Assam.
Ms. A. Talukdar, GA, Assam.

**BEFORE
HON'BLE MR. JUSTICE SUMAN SHYAM**

Dates of hearing : 29.04.2025 & 10.06.2025.

Date of judgment : **24.06.2025.**

JUDGMENT & ORDER (CAV)

Heard Mr. K. N. Choudhury, learned senior counsel assisted by Mr. R. M. Deka, learned counsel appearing for the writ petitioner(s) in WP(C) Nos.4707/2023, 4709/2023, 4720/2023, 4758/2023 and 4759/2023. I have also heard Mr. K. Mira, learned counsel for the writ petitioner(s) in WP(C) Nos.1093/2024 and 1091/2024. Mr. S. Dutta, learned Standing Counsel, Panchayat & Rural Development Department, Assam as well as Ms. A. Talukdar, learned Government Advocate, Assam have appeared for the official respondents.

2. Common questions of law and facts are involved in all these writ petitions. As such, with the consent of learned counsel for both the sides, all the writ petitions are being taken up for disposal, at the stage of admission hearing, by this common judgment and order.

3. The writ petitioners in all these writ petitions were initially appointed on contractual basis on different dates as Accredited Engineer/ Accountant-cum-Computer Assistant/ Gram Sahayak/ Computer Assistant/ Accounts Assistant etc. under the respondent authorities. Their periods of appointment were limited by the time mentioned in the respective contract agreements. However, as per the writ

petitioners, even after the expiry of the contractual period, they were allowed to continue until the termination of their services by the respective orders of termination. The basic grievance of the writ petitioners, in all the 7 writ petitions are to the effect that their contractual services have been terminated by the respondent authorities by issuing stigmatic orders of termination without holding any proper enquiry for the purpose of establishing the charges of misconduct brought against the writ petitioners or giving them any opportunity to defend their interests in the matter. According to the writ petitioners, the impugned orders of termination have been issued in utter violation of the principles of natural justice and administrative fair play. For the purpose of disposal of these writ petitions, the facts involved in WP(C) No.1093/2024 are briefly referred to herein below.

4. The writ petitioner in WP(C) No.1093/2024 was engaged as an Accredited Engineer on 02.03.2019 *vide* appointment order issued by the Commissioner to the Government of Assam, Panchayat & Rural Development Department, Assam i.e. the respondent No.2 herein, whereafter, he had reported for duty under the Sribar Gaon Panchayat under the Lakhipur Development Block of Cachar District. On 05.03.2019 a contract agreement of service was entered into by and in between the writ petitioner and the authorized representative of Panchayat & Rural Development Department, Government of Assam, which in this case, was the Chief Executive Officer, Cachar Zilla Parishad and the Project Director, DRDA, Cachar. As per clause-3 of the contract agreement dated 05.03.2019, the duration of the contractual employment of the writ petitioner was for a maximum period of 364 days. As per clause-3, the service of the employee would stand automatically terminated on the expiry of the contract period without any further notice from the employer. While the writ petitioner was discharging his duties as an Accredited Engineer, a show-cause notice dated 17.06.2022 (Annexure-9) was served upon him calling upon the writ petitioner to show cause as to why, his services should not be terminated as per the terms and conditions of the contract. Considering the nature of controversy involved in this writ petition, reference to the contents of the show cause notice dated 17.06.2022 is deemed necessary and therefore, the same is being reproduced herein

below for ready reference :-

“No.CPRD/GRS/184/2020/114

Dated 17-06-2022

To

Sayed Masud Mazumdar,
Accredited Engineer,
Dakhin Saidpur Gaon Panchayat,
Sonai Development Block, Cachar.

Sub : Show Cause Notice.

In pursuance to the Govt. letter dated 05.05.2021 an enquiry was conducted and on perusal of the report dated 01.12.2021 submitted by the Joint Commissioner & Asstt. Commissioner of this Commissionerate, relating to alleged anomalies in the preparation and execution of the list of schemes under MGNREGA during 2020-21 under Sonai Dev. Block, Cachar in respect of W.P(C) No.311/2021 –in the matter of Sri Taher Barbhuiya and W.P(C) No.3976/2021 – in the matter of Forhana Begum Laskar (Copy enclosed), wherein it has come to the notice of the undersigned that you have prepared the list of 53 nos. INRM schemes without giving weightage to schemes approved by GPDP and thus violating existing Govt. Guidelines.

Therefore, you are charged with gross negligence of duty and misappropriation of Govt. money with malafide intention.

In view of the above, you are hereby asked to submit your reply along with all relevant documents, if any, as to why you shall not be terminated as per terms and conditions laid down in the contractual agreement which amounts to gross indiscipline as well as gross negligence of duty and misconduct on your part and is unbecoming of an employee in contractual service under the department.

Your written statement in this regard is to be submitted to the undersigned on or before 27.06.2022 positively.

Sd/- Illegible

(Bikram Kairi, IAS)

Commissioner

O/o the Commissioner P & RD, Assam."

5. Upon receipt of the show-cause notice dated 17.06.2022 the writ petitioner submitted his show cause reply on 05.08.2023, categorically denying the allegation of malafide intent brought against him by the authorities. In his show-cause reply, the writ petitioner had *inter-alia* stated that he had discharged his duties with utmost care and sincerity and to the entire satisfaction of his higher authority. He had also stated that he had obeyed all orders of his superior authority and he did not have any knowledge regarding "changes in the scheme list GPDP" and therefore, the question of violating the Government guidelines did not arise.

6. After receipt of the show-cause reply submitted by the writ petitioner, the respondent No.2 had issued the impugned order of termination of service dated 07.02.2024. For the sake of ready reference, the order of termination from service dated 07/02/2024 issued to the writ petitioner in WP(C) No.1093/2024 is being reproduced herein below :-

"ORDER

No.359576/1/435695/2024

Date – 07-02-2024

Whereas the Joint Commissioner and Assistant Commissioner of this Commissionerate has submitted enquiry report relating to alleged anomalies in the preparation and execution of schemes under MGNREGA during 2020-2021 under Sonai Dev. Block, Cachar. As per enquiry report it appears that the

delinquent officials Shri Sayed Masud Mazumder, Accredited Engineer of Dakshin Saidpur GP under Sonai Dev. Block, Cachar has prepared 53 Numbers of INRM Schemes without giving weightage to schemes approved by GPDP and thus violating existing Govt. Guidelines.

Whereas a show cause notice was issued against Shri Sayed Masud Mazumder, Accredited Engineer of Dakshin Saidpur G.P. under Sonai Dev. Block, Cachar vide letter No.CPRD/GRS/184/2020/114 dated 17-06-2022 of the basis of enquiry report.

Whereas the delinquent official has submitted replies of show cause notice on 05-08-2023 and the replies were not found to be satisfactory.

Whereas Shri Sayed Masud Mazumder, Accredited Engineer during the time of hearing on 25th August has admitted preparation of 53 Nos. of Schemes within a short period of two weeks that were not approved by the Gaon Sabha violating 7.11.5 of the Master Circular (FY 2018-19) in which emphasized that incomplete/ongoing works should be given priority in the allocation of work.

Whereas the delinquent official has neglected to uphold the requirement of maintaining mandatory work files for each scheme, thereby violating 7.11.5 of the Master Circular (FY 2018-19) which stipulates that a case record/work file is a physical file that much be maintained for each project/work under MGNREGA this clearly indicates a violation of both the provisions and the spirit of the Act.

Failure to maintain demand register. The delinquent official did not maintain a demand register during the execution of the schemes, which is essential for taking laborer's demands and allocations.

Whereas the delinquent official were found responsible for allocating works to job seekers as per para 4.1.1.(v) of the Operational Guidelines of MGNREG which states the responsibilities of the Accredited Engineer are (a) Overseeing the process of registration, distribution of job cards, provision of

date wise receipts against job applications, allocation of work to applicants etc.

Whereas according to the operational guidelines 2013 of MGNREGA, it is extremely important that workers are assigned first to ongoing works so that these can be completed on time and the benefits thereof can be derived. The delinquent officials initiated 45 Nos. new schemes out of the 53 Nos sanctioned without the approval of the Gram Sabha and immediately began allocating works to Job Card holders in a single Gaon Panchayat after the schemes were sanctioned, without considering ongoing works. These indicates a lack of proper planning and co-ordination and execution.

Whereas according to Para 4.1.1(iv) of the operational guidelines 2013 of MGNREGA (a) recording attendance of labours everyday, either by the officials themselves or through the mate in the prescribed master rolls at the work site, (b) ensuring that all mates attend worksites on time and take roll calls/attendance in the prescribed master roll at the work site only. However, the attendance of workers, shown to have been taken at the work sites of a significant number under (45 new scheme started) at the Gaon Panchayat which is non negotiable in work execution as per Para 5(b) which says muster rolls will be maintained on the work site with copies in the Gaon Panchayat were not consistently recorded by the delinquent official, suggesting a lack of transparency in the employment process.

Whereas the absence of project initiating meetings indicates a lack of transparency in the implementation of the works, proper planning in starting the works and communication between stake holders. As per 5.5(i) of the operational guidelines 2013 of the MGNREGA, project initiation meetings must be held not only to discuss the details of work but also to explain them about the entitlements of the workers and the expected benefits of the work very clearly.

In view of the above circumstances and as per provision of contract

agreement the services of the contractual employee Shri Sayed Masud Mazumder, Accredited Engineer of Dakshin Saidpur G.P. under Sonai Dev. Block, Cachar is hereby terminated with immediate effect.

In lieu of notice period and in view of the exigent circumstances for which this order passed ex-parte, one month extra salary is to be paid to the concerned employee,

Sd/- illegible

Commissioner

Panchayat and Rural Development, Assam"

7. By filing WP(C) No.1093/2024, the writ petitioner has assailed the impugned order of termination from service dated 07.02.2024 basically on two counts. Firstly, the order of termination was issued primarily on the basis of a preliminary enquiry conducted behind the back of the petitioner. Secondly, the impugned order of termination had been issued in utter violation of the principles of natural justice inasmuch as the petitioner was neither given any opportunity to produce evidence so as to establish his innocence nor had the authorities dealt with the reply submitted by the writ petitioner on merit.

8. Leading the arguments on behalf of the writ petitioners Mr. K. N. Choudhury, learned senior counsel has submitted that in all these cases, although the respondent authorities had served show cause notices upon the respective petitioners, yet, their replies were not all considered on merit while issuing the impugned order(s). That apart, submits Mr. Choudhury, there being serious allegation of misconduct and financial irregularities brought against the petitioners, the authorities ought to have held a regular departmental proceeding akin to one contemplated under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 before issuing the orders of termination. Contending that a stigmatic order of termination from service cannot be issued without holding a proper enquiry, giving sufficient opportunity to the

delinquent to establish his innocence, Mr. Choudhury submits that whether it is a case of permanent employee or a contractual employee, the protection under Article 311 of the Constitution read with Article 16 of the Constitution of India would be available to both the categories as otherwise, the order of termination would stand vitiated due to violation of the principles of natural justice.

9. By referring to the decisions of this Court rendered in the cases of **Ali Ahmed Barbhuiya Vs. State of Assam and others [WP(C) No.2977/2023]**, **Surajit Barman Vs. State of Assam and others [WP(C) No.1785/2022]**, **Md. Saddam Hussain Vs. State of Assam and others [WP(C) No.104/2022]**, **Md. Imran Hussain Barbhuiya Vs. State of Assam and others [WP(C) No.4266/2023]**, **Sailendra Bora Vs. State of Assam and others [WP(C) No.6680/2022]**, **Partha Pratim Saikia Vs. State of Assam and others [WP(C) No.4061/2023]** Mr. Choudhury has argued that this Court has consistently interfered with similar orders of termination of contractual services of similarly situated employees serving under the same respondents, issued in similar fashion and in violation of the principles of natural justice, directing the respondents to reinstate the petitioners. Having regard to the facts of the case, the *ratio* laid down in the aforesaid decisions would, according to Mr. Choudhury, be squarely applicable to the facts of the present case as well.

10. Mr. K.N. Choudhury has also placed reliance on an unreported decision of the Supreme Court rendered in the case of **U. P. State Road Transport Corporation & others Vs. Brijesh Kumar and another** to submit that law is firmly settled that an order of termination of service of an employee, even if engaged on contractual basis, passed on account of alleged misconduct, without following the principles of natural justice would not be sustainable in law if the same appears to be stigmatic. Mr. Choudhury, therefore, submits that the impugned order(s) of termination from service are vitiated by complete arbitrariness and illegality warranting interference with the same by this Court.

11. By relying upon and referring to the decision of the Supreme Court rendered in the case of **GRIDCO Ltd. and another Vs. Sadananda Doloi and others** reported in

(2011) 15 SCC 16 Mr. Choudhury has further argued that merely because the initial appointment of the writ petitioner was contractual, the same cannot be a valid basis to contend that the power of judicial review by the writ court would not be available in such cases merely on the ground that the matter lies within the realm of a contract.

12. Supporting the arguments advanced by the learned senior counsel, as noted above, Mr. K. Mira, learned counsel for the writ petitioners in WP(C) No.1093/2024 and WP(C) No.1091/2024, while adopting the arguments of Mr. Choudhury, has submitted that an order of termination from service, issued by taking note of the facts and events beyond the original show cause notice would be illegal as the same would be in violation of the principles of natural justice. In support of his above argument, Mr. Mira has relied upon a decision of the High Court of Judicature at Allahabad rendered in the case of **Ramlala Vs. State of U.P. and others [Neutral Citation No. 2023 : AHC : 220646-DB]**.

13. Opposing the stand taken by the learned counsel for the petitioners, Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department, Assam has argued that the decisions rendered by this Court in **Ali Ahmed Barbhuiya (supra)**, **Md. Saddam Hussain (supra)**, **Imran Hussain Barbhuiya (supra)**, **Sailendra Bora (supra)**, **Partha Pratim Saikia (supra)** and **Surajit Barnan (supra)** are distinguishable on facts, inasmuch as, unlike those cases where no prior show-cause notice was served upon the petitioner, in the present writ petitions, show cause notices had been duly served upon all the individual writ petitioners and it is only after taking note of the reply furnished by them that the impugned orders of termination from service had been issued.

14. Referring to clause -9 of the contract agreement, Mr. Dutta, learned departmental counsel has further argued that since the contract agreement permits termination of service of the employee if the service is found to be unsatisfactory, no fault can be found with the impugned order of termination of service since under the contract agreement, it was permissible for the employer to discharge the employee on expiry of the contract period, if their services were found to be unsatisfactory.

15. Mr. Dutta has further argued that a contractual employee is not a Government servant and therefore, he is not governed by the service rules but the appointment is entirely governed by the terms and conditions contained in the contract agreement. As such, submits Mr. Dutta, in case of contractual employment, there would be no requirement on the part of the State to conduct a full fledged departmental enquiry before issuing the order of termination from service.

16. Contending that after the issuance of the show cause notices upon the respective petitioners and after taking note of the reply furnished by them, the departmental authorities have acted in substantive compliance of the principles of natural justice Mr. Dutta submits that the writ petitioners being in contractual employment, the respondents were totally justified in terminating their service by serving prior notices. According to Mr. Dutta, the present are not fit cases for interference with the order(s) of termination of service by this Court. In support of his above arguments Mr. Dutta has referred to and relied upon the following decisions :-

1. **Rabindra Kr. Roy Vs. State of Assam and others [2014 SCC OnLine Gau 559).**
2. **Rajasthan SRTC Vs. Paramjeet Singh [(2019)6 SCC 250].**
3. **Satish Chandra Anand Vs. Union of India [(1953) 1 SCC 420]**
4. **Union Territory of Tripura Vs. Gopal Chandra Dutta Choudhuri [1962 SCC OnLine SC 115].**
5. **Jan Saikia Vs. State of Assam [WP(C) 4632 of 2023]**
6. **N. Mani Vs. Sangeetha Theatre [(2004) 12 SCC 278]**
7. **GRIDCO Limited and another Vs. Sadananda Doloi and others [(2011) 15 SCC 16]**
8. **U.P. State Textile Corporation Limited Vs. Suresh Kumar [(2011) 15 SCC 180]**

17. To sum up his arguments, Mr. Dutta has submitted that even if the Court

chooses to interfere with the impugned orders of termination from service, even in that event, the department be given the option either to proceed afresh against the petitioners by serving charge-sheet or as an alternative measure, the department be permitted to discharge the petitioner(s) from service on the ground of non-renewal of their contract agreements.

18. In his reply argument, Mr. R. M. Deka, learned counsel appearing for the writ petitioners has argued that the cases of the petitioners are squarely covered by the previous decisions rendered by the Court in similar matters. Therefore, the impugned orders of termination from service be set aside. On a query made by this Court, Mr. Deka has, however, fairly submitted that notwithstanding the interference with the orders of termination, the departmental authority would still have the option not to renew the contract of service of the petitioners, if so desired.

19. I have considered the submissions made at the Bar and have also gone through the materials available on record. As noted above, the fact situations involved in all the writ petitions are identical in nature, the only difference being the posts in which they were engaged, their respective dates of appointment and the dates of the orders of termination. The common grievance of all the writ petitioners, as noted herein above, is to the effect that their services have been terminated on the allegation of misconduct, by issuing stigmatic orders but without holding a proper enquiry so as to establish the charge brought against them.

20. The issue as to whether, a stigmatic order of termination from service in case of similarly situated contractual employees engaged as Accredited Engineers/ Computer Assistants/ Gram Rojgar Sahayak issued in violation of the principles of natural justice would be sustainable in the eyes of law, fell for consideration of this Court in the case of **Ali Ahmed Barbhuiya** (*supra*). In that case, similarly situated contractual employees, working under the department of Panchayat and Rural Development, were terminated from service on allegation of misconduct by giving them one month's salary *in lieu* of notice. While dealing with the issues involved in that proceeding, this Court had allowed the writ petitions by setting aside the orders of

termination from service. However, the departmental authorities were permitted to proceed against the contractual appointees afresh, in accordance with law, after serving proper notice indicating the specific charges brought against the petitioners. The relevant observations made in **Ali Ahmed Barbhuiya** (*supra*) are reproduced herein below for ready reference :-

“It is no doubt correct that in case of a contractual engagement, the terms and conditions of the contract would govern by the service conditions of the employee. In the present case, the contract agreement signed by the petitioner does have a clause permitting termination of the contract at any point of time if the services rendered by the contractual staff was not found to be satisfactory. However, what is to be noted herein that bare perusal of the impugned order of termination demonstrates on the face of the record that the same was issued on the basis of findings of the enquiry proceeding conducted behind the back of the petitioner wherein, it had been projected that the petitioner was guilty of misconduct. Therefore, the order of termination of service of the petitioner dated 30/10/2021 is not only based on allegation of misconduct but the same is also stigmatic on the face of the records. In other words, the impugned order of termination dated 30/10/2021 was founded on allegation of misconduct. However, the petitioner was not given any opportunity of being heard in the matter. Therefore, it is a clear case where the respondents have acted in violation of the Principles of Natural Justice.

The order of termination from service issued to the petitioner has the trappings of an order of dismissal/removal from service. Therefore, such an order could not have been issued without giving the employee an opportunity of being heard, even if the same pertains to a temporary and / or contractual employee. This is for the simple reason that such an action, besides causing serious prejudice to the interest of the employee, would also have a bearing on the prospect of his future employments.

Situated thus, this Court is of the unhesitant opinion that the order of

termination dated 30/10/2021 is unsustainable in the eyes of law. Therefore, the same is set aside. The respondents are directed to reinstate the petitioner back in service within 10(ten) days from the date of receipt of a certified copy of this order. After reinstatement of the petitioner, it would be open for the respondents to proceed against him, in accordance with law, by serving proper notice indicating specific charges brought against the petitioner.

In doing so, it would also be open to the department to place the petitioner under suspension pending drawal/conclusion of the departmental proceeding, if so advised. However, in such an event, the petitioner will be paid subsistence allowance. The authorities shall also strictly comply with the requirement of the Rules as well as Principles of Natural Justice while conducting the enquiry.

On conclusion of the enquiry, it would be open to the department to pass appropriate order, as may be deemed necessary, in the facts and circumstances of the case.

Writ petition stands allowed to the extent indicated above.”

21. Similar view was adopted by this Court in the case of **Surajit Barman** (*supra*) wherein also, the service of similarly situated contractual appointee, working as Accountant-cum- Computer Operator under the Gaon Panchayat was terminated by issuing a stigmatic order of termination without, however, holding any proper enquiry into the allegations.

22. In the case of **Sailendra Bora** (*supra*) and **Partha Pratim Saikia** (*supra*), referred to above, similar issues were involved wherein, this Court had adopted the same view. In those cases also, the authorities had not served prior notices upon the employees. Notwithstanding the same, orders of termination from service, which appeared to be stigmatic, had been issued without conducting any enquiry based on proper charge framed against the employees, nor had the employees given any opportunity to establish their innocence. By relying upon the law laid down in the case of **Ali Ahmed Barbhuiyan (Supra)** the order(s) of termination from service was set

aside by this Court.

23. On a careful examination of the different orders of termination of service impugned in the present batch of writ petitions, I find that those orders had not only dealt with issues which were strictly not the subject matter of the show cause notices served upon the employees, but none of the orders, even remotely indicate, as to in what manner, the show-cause reply furnished by the respective employees had been dealt with by the concerned authority before issuing the order of termination from service. Not only that, it also appears that the order of termination from service was also substantially based on enquiry conducted behind the back of the respective petitioner and without even furnishing them with a copy of the enquiry report. It is not clear from the materials available on record as to in what manner and to what extent, the findings of the enquiry conducted behind the back of the writ petitioners had weighed with the authority while issuing the respective order(s) of termination. This Court is, therefore, of the considered opinion that apart from failing to give the petitioners a reasonable opportunity to defend their interest, the respondents have also failed to establish the allegation of negligence/misconduct brought against the individual petitioners based on cogent materials.

24. Mr. Dutta, learned departmental counsel has argued that in view of the admission made by the writ petitioners in their show-cause reply, there was no necessity to hold a full-fledged enquiry so as to establish the charge. However, on a careful examination of the show-cause replies I find that none of the writ petitioners had actually admitted of any wrong doings on their part, amounting to misconduct. Although the writ petitioners in WP(C) No.1093/2024 and WP(C) No.1091/2024, have admitted some facts, yet, the allegation of malafide intent and misconduct brought against them had been stoutly denied by those writ petitioners. Therefore, it cannot be said that the allegations of misconduct had been admitted by any of the writ petitioners involved in this batch of writ petitions.

25. From the materials on record, it appears that some opportunity was given to the writ petitioners to explain their stand. However, as noted above, although there

were serious allegation of misconduct brought against them including allegations of financial irregularities, yet, no proper enquiry was conducted to establish such charge. Not only that, even the explanation submitted by the writ petitioners have not been properly dealt with. Moreover, it has also been noticed that the impugned order of termination of service had addressed issues which were not a part of the show-cause notice, thus denying the employee of any opportunity to submit his response in that regard. An order of termination on the allegation of misconduct cannot be issued based on circumstances which did not form part of the show cause notice. Under such circumstances, merely because a show cause notice was served, can it be said that the principles of natural justice has been complied with in these cases ? In other words, did the petitioners get a reasonable opportunity of being heard ? Was there a genuine hearing of the petitioners' version before an adverse decision was taken in the matter? The answer to the said questions, in the opinion of this Court, has to be in the negative in the facts and circumstances of this case.

26. The rule of *audi alteram partem* signifies that "no man should be condemned unheard". In other words, this Latin phrase denotes that the other side must be heard. The principle underlying this legal maxim is that no person should be judged without a fair hearing. Fairness in administrative action and/or fair play in action are the invariable tenets of the *audi alteram partem* rule. Therefore, the same would undoubtedly constitute the fundamental basis of the concept of principles of natural justice.

27. The core postulates of the concept of "natural justice" has been lucidly explained in the case of **Swadeshi Cotton Mills Vs. Union of India** reported in **(1982) 2 SCC 664**. Speaking for the majority in the three Judge Bench R. S. Sarkaria, J. has observed as follows :-

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo iudex in re sua.

The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

28. In the case of **Canara Bank Vs. V. K. Awasthy** reported in **(2005) 6 SCC 321** the Supreme Court has observed as follows :-

“8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a

commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants. defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate

and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. ``Adam" (says God), ``where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

29. In the aforesaid decision the Supreme Court has further observed that the concept of natural justice has undergone a great deal of change in the recent years. Rules of natural justice are not rules always embodied expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty performed under a statute. What particular rule of natural justice should be implied and what should be its context in a given case would depend to a great extent on the facts and circumstances of each case.

30. While examining the grievance pertaining to the violation of principles of natural justice, the Courts would also have to examine as to what prejudice has been caused to the affected party and also as to whether, adherence to the principles of natural justice in a given fact situation, would amount to "useless formality". In the ultimate analysis, unless failure of justice would occasion due to non-adherence to the principles of natural justice, the Court may in a given case, refuse to grant relief particularly when public interest so demands.

31. Coming to the facts of this case, it is no doubt correct that before issuing the

orders of termination, a show-cause notice was served upon each of the writ petitioners thus, giving them an opportunity to submit their reply. It is also apparent that after the show-cause replies were received, the order(s) of termination had been issued. However, none of the order(s) of termination, impugned in the present batch of writ petitions, even remotely indicate as to in what manner, the reply submitted by the individual writ petitioners have been dealt with before arriving at the conclusion that they were negligent in discharging their duties.

32. The purpose of serving a show-cause notice upon an employee before initiating any adverse action is to elicit a response from the employee as regards the allegation brought against him/her. However, in order to comply with the principles of natural justice, mere giving of an opportunity to submit a show-cause reply would not be enough. Once a show cause notice is served, the reply furnished by the employee, must be dealt with in a fair and transparent manner, before arriving at a decision as otherwise, the very exercise of serving a show cause would be rendered as an empty formality. Since the essence of the principles of natural justice is fairness, equity and absence of bias in administrative action, unless the person sought to be condemned gets a reasonable opportunity of being heard and his version is ostensibly taken into consideration before arriving at a decision, which is adverse to his interest, it cannot be said that there has been proper and substantive compliance of the principles of natural justice.

33. It is no doubt correct that the employment of the petitioners being contractual in nature, their conditions of service would be strictly governed by the terms and conditions of the contract agreement. As long as the impugned decision lies purely within the four corners of the contract agreement, the same must be treated to be one falling within the realm of the contract. In such cases, remedy, if any, would ordinarily be in the form of a civil action for breach of contract. However, when action of the State or its instrumentality is assailed on the ground of arbitrariness, unfairness and for being in violation of principles of natural justice, power of judicial review of the Writ Court under Article 226 of the Constitution would certainly be available so as to examine the legality, reasonableness, fairness of the State's action,

even if the matter lies in the realm of a contract. Law in this regard has been firmly settled by the Supreme Court in the case of **GRIDCO Limited and another** (*supra*). The observations made in paragraphs 38 and 39 of the said decision are reproduced herein below for ready reference :-

“38. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/ compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.”

34. In **U.P. State Road Transport Corporation and others** (*supra*) the Supreme Court has categorically held that termination order issued solely on the ground of

misconduct but without holding a regular enquiry or affording any opportunity of hearing to the employee, particularly when the same is stigmatic in nature, could not have been passed without following the principles of natural justice.

35. In the case of **Mrigen Kalita Vs. North East Regional Institute of Parliamentary Studies, Training and Research and others** reported in **2012 (4) GLT 686** a coordinate Bench of this Court has held that even if an employment is temporary in nature, the principle of natural justice cannot altogether be given a go bye, more so when the order is founded on circumstances carrying a stigma against the employee.

36. The decision in the case of **Mrigen Kalita** (*supra*) has been quoted with approval in the subsequent decision of this Court rendered in the case of **Partha Pratim Saikia** (*supra*) wherein also, a stigmatic order of termination of service of a contractual employee, issued in violation of the principles of natural justice had been interfered with by this Court. A direction was accordingly issued upon the respondents to reinstate the petitioners in service. Liberty was, however, granted to the department to proceed against the petitioners afresh after due adherence to the principles of natural justice, if so advised.

37. Clause-9 of the Contract Agreement relied upon by the departmental authorities for terminating the service of the petitioner in WP(C) No.1093/2024 is reproduced herein below for ready reference :-

“9. **Termination of contract**

The employer shall reserve the right to terminate the contractual agreement any point of time if it is found that the services rendered by the employee is not satisfactory, or if it is found that any declaration of information furnished by her/him proves to be false, or willfully suppressed, or if there is any breach of any of the terms and condition of this contract, or if the employee is found to be involved in any act of indiscipline or misconduct or if the employee is found to be involved in any act that may become embarrassing to the employer, the employer may, at its option, pay one month salary in lieu of notice but nothing in these terms and conditions of employment shall prevent

the employer from terminating the case of employee, the employee shall give the employer minimum 30 days' notice of his/her intention to terminate this employment."

38. Clause-9 of the contract agreement, no doubt permits the employer to terminate the service of the employee on any of the grounds mentioned therein including the grounds of indiscipline and misconduct. However, whether the employee is guilty of indiscipline or misconduct cannot depend on the mere *ipse dixit* of the employer. Such allegation of misconduct, particularly, if the same is stigmatic in nature, would have to be established in an enquiry proceeding, based on cogent materials, after giving sufficient opportunity to the employee of being heard so as to defend his interest. This is for the simple reason that the stigma attached to the order of termination, apart from having far reaching implication on the employee, would also have an adverse bearing in the prospect of his future employment and therefore, would be highly prejudicial to the interest of the employee. Therefore, it is only when the charge of misconduct is established based on materials brought on record that it would be permissible for the employer to issue the order of termination from service based on allegation of misconduct/ misdemeanour.

39 From a reading of the impugned orders of termination, I find that those are based on allegation of negligence and/or misconduct. The projections made in the respective orders of termination undoubtedly carries an element of disgrace for the concerned employee thus, depicting a qualitative shortcoming in performance of duty by him. Such observations, are likely to have an adverse bearing in the prospect of future employment of each of the petitioners. If that be so, it is apparent that there is implied stigma on the face of the impugned orders. Notwithstanding the same, the departmental authorities have failed to conduct any enquiry so as to give the petitioners any opportunity to establish their innocence. Viewed from that angle, this Court is of the unhesitant opinion that this is a clear case of violation of the principles of natural justice having a vitiating effect on the impugned orders of termination from service. As such, I am of the opinion that the core issue involved in these proceedings are covered by the decision rendered in the case of **Ali Ahmed Barbhuiyan (Supra)**.

40. For the reasons stated above, the impugned orders of termination from service involved in this batch of writ petitions are hereby set aside. The respondents are directed to reinstate each of the writ petitioners in service within two weeks from the date of receipt of a certified copy of this order. Upon such reinstatement, it would be open for the departmental authorities to initiate fresh proceeding against the petitioners for establishing the charge(s) of misconduct brought against them if so advised. In doing so, the departmental authorities would, however, be duty bound to frame specific charges, containing statement of allegations, so as to afford proper opportunity to the delinquent employee, to rebut the same. If, upon receipt of reply of the employee a decision is taken to press the charge, then in that event, a proper proceeding, in consonance with the principles of natural justice, preferably in the line of a proceeding conducted under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 be conducted so as to establish the charge. If the charge brought against the respective petitioners are established in accordance with law, in that event, it would be open for the respondents to terminate the service of the petitioners on the ground of misconduct. During such period it would also be open for the employer to place the employee under suspension, subject to payment of subsistence allowance.

41. Having observed as above, this Court is also conscious of the fact that engagement of each of the writ petitioners is on contract basis and the period of their employment is prescribed by the terms and conditions of the contract. Although the petitioners have urged that the respective contracts have been renewed/extended by the authorities beyond the original period and they have been allowed to continue till date, yet, no such documentary evidence showing that the competent authorities had extended the period of contract of employment in case of each of the writ petitioners, had been placed on record in these proceedings. As such, this Court is not in a position to express any opinion in the matter. It is, therefore, clarified that if the period of contract pertaining to each of the petitioners have come to an end and/or is coming to an end in near future and the authorities are not inclined to renew the contract any further for any reason

whatsoever, then in that event, the present order would not preclude the departmental authorities from discharging the writ petitioners from service by issuing a non-stigmatic order of discharge on the ground of non-renewal and/or non-extension of their service contract, in which event, holding of departmental enquiry on the allegation of misconduct, as mentioned above, would not be necessary. The respondents would be at liberty to take appropriate action as may be permissible under the respective contractual agreements, in the light of the observations made herein above. However, it is made clear that even in order to issue an order of discharge from service on the ground of non-renewal of the contract agreement, the departmental authorities would first have to reinstate the respective writ petitioners, as per the directions passed by this Court.

With the above observations, these writ petitions stand allowed to the extent indicated herein above.

The parties to bear their own cost.

JUDGE

Comparing Assistant