GAHC010061592025

2026:GAU-AS:229

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

Case No. : WA/361/2025

THE STATE OF ASSAM AND ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY-CUM-CHIEF EXECUTIVE OFFICER, ASSAM STATE DISASTER MANAGEMENT AUTHORITY TO THE GOVT. OF ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI - 781006

2: THE JOINT SECRETARY AND STATE PROJECT COORDINATOR
ASSAM STATE DISASTER MANAGEMENT AUTHORITY
DISPUR
GUWAHATI-781006

3: THE DISTRICT COMMISSIONER -CUM- CHAIRMAN
DISTRICT DISASTER MANAGEMENT AUTHORITY
HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN-788151

VERSUS

IKBAL HUSSAIN LASKAR
S/O KABIR UDDIN LASKAR R/O VILL- AND P.O. KANAKPUR, PART-II P.S. SILCHAR, DIST. CACHAR, ASSAM, PIN - 788005.

Advocate for the Petitioner : JOGEN HANDIQUE,

Advocate for the Respondent : , MD. A J ATIA,MS A H ATIA

BEFORE

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

07.01.2026

(A.D.Choudhury, J).

1. We have heard Mr. J. Handique, learned State Counsel for the appellants. Also heard Mr. P. K. Roychoudhury, learned counsel for the respondent.

2. By this intra-court appeal, a challenge has been made against the judgment and order dated 10.09.2024, passed in WP(C) No. 3/2019, wherein the learned Single Judge has interfered with the order of termination of service of the respondent dated 17.11.2018, impugned in the said writ petition. The learned Single Judge further directed the appellants to reinstate the respondent within two weeks from the date of passing of the judgment with a liberty to the appellants to proceed against the writ petitioner afresh in accordance with law, or to take a fresh decision on the renewal of his contract, if so advised.

3. The fact, in a nutshell, is that the respondent/writ petitioner, a Project Officer (Disaster Management) working on a fixed-term contractual basis under the Assam State Disaster Management Authority (ASDMA) since December 2000, was posted at Hailakandi

DDMA. In August 2018, his father fell seriously ill. The respondent verbally informed his superiors and left for home, intending to submit a formal leave application later. He remained absent from 21st August 2018. The appellants/authorities treated the same as unauthorised absence. A show-cause notice was issued on 04.09.2018, asking as to why his contract should not be terminated for gross indiscipline. His reply was found unsatisfactory, and his contract was terminated with effect from 11.11.2018 under the order impugned in the writ petition dated 17.11.2018.

4. The respondent challenged the termination order dated 17.11.2018 before the learned Single Judge by filing the writ petition being WP(C) No. 3/2019, claiming that although he was working on a contractual basis, his engagement letter specifically made him subject to the Assam Services (Discipline & Appeal) Rules, 1964 (**hereinafter referred to as Rules, 1964**). It was further contended that termination, being a major penalty under Rules, 1964, could only be imposed in terms of Rule 9 by initiating a departmental inquiry, which was never conducted.

5. Thereafter, the learned Single Judge under its order dated 10.09.2024, allowed the aforesaid writ petition by holding that, since the contract itself incorporated a clause making the Rules, 1964, applicable, the authorities were bound to follow the procedure for imposing a major penalty before terminating him from service. Simple termination by treating it as an end-of-contract was not permissible in the given facts of the case. Accordingly, the direction as recorded

hereinabove was issued.

6. The State/ASDMA has now filed this writ appeal against the judgment impugned, basically arguing that the employee was purely engaged on a contractual basis and that the Rules, 1964, do not apply in full rigour to contractual employees, and therefore, the termination was perfectly valid under the terms of the contract and settled proposition of law in this regard.

7. Mr. J. Handique, learned counsel for the appellants, submits that the learned Single Judge has completely ignored the contractual nature of the employment. Even if the Service Rules are made applicable in the contract, the full rigour of Rule 9 of the Rules, 1964, is not applicable to contractual employees.

8. Mr. Handique, learned counsel, further submits that the renewal of the contract every year was discretionary and based on performance and satisfaction of the concerned authority. The employee was a habitual absentee and insincere, and therefore, termination was bona fide. He, relying on the judgments of the Hon'ble Apex Court **GRIDCO Ltd. –Vs- Sabananda Doloi & Ors** reported in **(2011) 15 SCC 16**, contends that, in pure contractual employment, no disciplinary enquiry is required before termination. Accordingly, he contends that the direction of reinstatement passed by the learned Single Judge is erroneous because the contract has naturally come to an end.

9. Having given our anxious consideration to the rival submissions,

we are unable to persuade ourselves to take a view different from that taken by the learned Single Judge.

10. At the outset, it is not in dispute that the respondent was engaged on a fixed-term contractual basis. Equally undisputed, however, is the fact that the very terms of engagement expressly subjected the respondent to the Rules 1964.

11. Once the employer, by a conscious contractual stipulation, chooses to incorporate Statutory Service Rules governing discipline and penalties, it cannot thereafter be heard to contend that such Rules would apply only selectively or in a truncated manner.

12. Incorporation of Rules, 1964, into the contract is not an empty formality; it has binding legal consequences for both the contracting parties.

13. Rule 9 of the Rules, 1964 clearly contemplates that imposition of a major penalty can only be preceded by a regular departmental enquiry, which includes framing of definite charges affording reasonable opportunity of defence and adherence to the principles of natural justice.

14. Termination of service, on the ground of "gross indiscipline" or "unauthorised absence" howsoever is, worded, is punitive in nature and carries civil consequences; such termination cannot be camouflaged as a mere non-renewal or secession of the contract, particularly when the foundation of the action is alleged misconduct.

15. The contention advanced on behalf of the appellants that the Rules 1964, do not apply in their full rigour to contractual employees cannot be accepted in the given facts of the present case. The issue here is not whether contractual employees, as a class, are entitled to protection of statutory Service Rules, but whether the employer, having voluntarily extended the applicability of those Rules by contract, can unilaterally resile from them when it comes to imposing a major penalty. In our considered view, the answer must be in negative.

16. The reliance placed by the appellants on the decision holding that no enquiry is required for pure contractual employment is misplaced. Those authorities apply to situations where the contract permits termination simpliciter without attributing misconduct and where no statutory or contractual obligation to follow disciplinary rules exists.

17. In the present case, the termination was based on an allegation of unauthorised absence and indiscipline and hence, the governing contract expressly attracted the Rules, 1964. The factual and legal matrix is therefore clearly distinguishable.

18. We also find no substance in the submission that reinstatement ought not to have been directed as the contract period has expired. The learned Single Judge has carefully balanced the equities by granting reinstatement with liberty to the authorities to either initiate disciplinary proceedings strictly in accordance with law or take a fresh decision regarding the renewal of the contract. Such a

direction neither confers any indefeasible right of continuation nor forecloses the employer's legitimate authority. It merely ensures that adverse action is taken in a manner consistent with the contractual terms and the principle of fairness.

19. In any view of the matter, we find no infirmity, legal or otherwise, in the judgment and order dated 10.09.2024 passed by the learned Single Judge in WP(C) No. 3/2019. The reasoning adopted is sound, the conclusions drawn are well supported by the record, and no case for inference in intra-court appellate jurisdiction is made out.

20. Accordingly, the writ appeal is dismissed. The impugned judgment and order dated 10.09.2024, passed in WP(C) No. 3/2019 by the learned Single Judge, is affirmed.

21. There shall be no order as to cost.

JUDGE **CHIEF JUSTICE**

Comparing Assistant