

GAHC040006062023



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

Case No. : WP(C) 224/2023

1:Suraj Gurung
S/o Lt. Dal Bahadur Gurung,
Village Mazbat, PO/PS Mazbat, District Udalguri, Assam.
Phone No. 8178283488

VERSUS

1:THE STATE OF AP and Anr.
Through the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.

2:The Commissioner/Secretary (Personnel)
Govt. of Arunachal Pradesh
Itanaga

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE S.K.MEDHI

ORDER

16.05.2023

Heard Shri TT Tara, learned counsel for the petitioner. Also heard Shri S Tapin, learned Senior Government Advocate, AP.

2. Considering the fact and circumstances of the case and the challenge made, this writ petition is taken up for disposal at the motion stage. However, to appreciate the issue, the facts of the case may be briefly narrated in the following manner.

3. The petitioner, who was serving as a Joint Secretary-cum-Controller of Examination in the State of Arunachal Pradesh, vide order dated 12.10.2022 issued by the Chief Secretary of the State, was placed under suspension with immediate effect in connection with an incident of paper leakage of the APPSC AE (Civil) Examination, 2022.

4. It is the specific case of the petitioner that no memorandum of charge was served upon him within the specified period of 90 days. The petitioner, however, admits that vide orders dated 10.01.2023 and 06.04.2023, the suspension of the petitioner was reviewed and extended.

5. Shri Tara, learned counsel for the petitioner submits that it is the mandatory requirement of law that memorandum of charge/charge sheet is to be issued within a period of 90 days from the date of suspension, failing which, the order of suspension automatically becomes otiose. He submits that any subsequent orders passed for extending the suspension after the period of 90 days in a case where charge sheet has not been filed would not revive the order of suspension which, according to him, would spent its force after expiry of 90 days. The learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India**, reported in **(2015) 7 SCC 291**. Reliance has also been placed on an Hon'ble Division Bench order of this Court in the case of **Mirpetato Vs. State of Arunachal Pradesh &Anr.**, reported in **2021 (3) GLT 189**. The petitioner has also pressed into service a decision in the case of **Rakibuddin Ahmed Vs. State of Assam &Ors.**, reported in **(2020) 2 GLR 621**.

6. On the other hand, Shri Tapin, learned Senior Government Advocate submits that in the instant case, the review order was passed prior to expiry of 90 days and therefore, the submissions made on behalf of the petitioner would not be applicable to the present case. He further submits that the case laws relied upon on behalf of the petitioner would not come to the aid of the petitioner.

7. The rival contentions advanced by the parties have been duly considered.

8. The records make it clear that the order of suspension was issued on 12.10.2022 on the basis of a contemplated disciplinary proceeding in connection with the paper leakage case of the APPSC AE (Civil) Examination, 2022. Though the contentions advanced by Shri Tara, learned counsel for the petitioner would be a correct proposition of law, in the instant case, it is seen that the facts do not support the case of the petitioner inasmuch, as the order of review of the suspension and the decision to extend the same was taken prior to expiry of 90 days from the date of the suspension order. In fact, the first order of extension of the suspension after review is dated 10.01.2023 followed by the second order dated 06.04.2023 which is also within the period of 90 days from the first order of extension. This Court is unable to accept the contention that all subsequent orders are to be reckoned from the initial order of suspension as that is not the meaning and object of having a periodic review.

9. The case laws, so cited by Shri Tara, learned counsel for the petitioner, namely, **Ajay Kumar Choudhary** (*supra*) and **Rakibuddin Ahmed** (*supra*) will not come to the aid of the petitioner and rather, this Court is of the opinion that the impugned action appears to be in consonance with the law laid down. So far as the case of **MirpeTato** (*supra*) is concerned, the interference with the order of suspension was based on the fact that the memorandum of charge was not submitted within 90 days.

However, from the observations made in paragraph 8 of the judgment, it is not discernible as to when the review of such suspension order was made and therefore, the facts of the instant case are distinguishable from the facts of ***MirpeTato*** (*supra*).

10. Under those circumstances, this Court is of the considered opinion that no case for interference is made out and accordingly, the writ petition is dismissed. However, it is observed that the Departmental proceeding be initiated expeditiously and the matter be brought to its logical end.

JUDGE

Comparing Assistant