GAHC040011032023

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

Case No. : WP(C)/388/2023

Nima Tondrang,S/O Lt. O. Tondrang
presently Joint Secretary,AP Civil Secretariat,Itanagar-791111

VERSUS

THE STATE OF AP and 4 Ors
through the Chief Secretary,Govt. of AP,Itanagar-791111 2:The Chief Secetary
Age: 0
Occupation :

3:The Secretary(Personnel)
Age: 0
Occupation :

4:The Undersecrtetary(Personnel)
Age: 0
Occupation :

5:The Secretary
Age: 0
Occupation

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : GA (AP)

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: Mr. D. Panging, Adv
For the Respondent	: Mr. A. Apang, Standing Counsel for the APPSC,
	: Mr. S. Tapin, Senior Govt. Adv. Arunachal Pradesh
Date of hearing	: 09.11.2023
Date of judgment	: 09.11.2023

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. A. Apang, learned Standing Counsel for the APPSC representing the respondent No. 5 and Mr. S. Tapin, learned Senior Govt. Advocate for the State of Arunachal Pradesh representing the respondent Nos. 1, 2, 3 and 4.

2. By way of filing the present writ petition, the petitioner has assailed an order dated 29.10.2022 (Annexure-1) issued by the Secretary, Arunachal Pradesh Public Service Commission (for short APPSC), whereby the petitioner was placed under suspension purportedly in exercise of power under Article 371H of the Constitution of India. The further challenges are two orders dated 25.04.2023 (Annexure-5) and 24.07.2023 (Annexure-6), by way of which the suspension of the petitioner was extended for a period of three months on each occasion in purported exercise of power under Rule 10 (6) of the CCS

(Classification, Control and Appeal) Rules, 1965 (for short (CCS (CCA), Rules, 1965). A further prayer for issuance of a writ of mandamus is made to direct the respondent State to reinstate the petitioner in service.

3. The basic ground of such challenge is that no memorandum of charges has been framed till date against the petitioner though the suspension order was issued in contemplation of a departmental proceeding and therefore, such prolonged suspension is not sustainable under law as declared by the Hon'ble Apex Court in the case of ***Ajay Kr Choudhary Vs. Union of India and another*** reported in ***(2015) 7 SCC 291***.

4. It is the further contention of the petitioner that though the period of suspension has been extended after purported review, however, such review is not supported by any reason and the affidavit filed by the respondent authorities also do not disclose any reason for reviewing the order of suspension and extending the same and therefore, such exercise is in derogation of law laid down by the Hon'ble Apex Court in ***Ajay Kr Choudhary*** (supra).

5. The respondent State though has filed an affidavit, however, except stating that the period of suspension has been extended in public interest under exigencies of circumstances, no other reason for requirement of extension of such suspension has been disclosed in the affidavit-in-opposition. It is the precise case of the respondent that the Rule 10 of the CCS (CCA), Rules, 1965 has been amended and after such amendment, the employer is empowered under proviso to Sub Rule 7 of Rule 10 of the CCS (CCA), Rules, 1965, to continue such suspension for maximum 270 days from the date of suspension when the Government servant is placed under suspension in terms of Clause-"a" of Sub Rule 1 of Rule 10 of the CCS (CCA), Rules, 1965.

6. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the materials available on

record.

7. The Hon'ble Apex Court in the case of ***Ajay Kr Choudhary*** (supra) observed that protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. On the basis of such consideration, the Hon'ble Apex Court mandated the maximum period of three months for continuation of suspension, if memo of charge is not filed within the period of 90 days and also mandated that for recording of reasons for extension of suspension. While mandating the aforesaid, the Hon'ble Apex Court concluded that such mandate shall adequately safeguard the universally recognized principle of human dignity.

8. Coming to the case in hand, the impugned order dated 29.10.2022, reflects that the suspension order was issued in contemplation of disciplinary proceeding and subsequent to this, by an order dated 31.10.2022, all Group-A, B and C post under the establishment of APPSC were merged and encadred into a common cadre of Arunachal Pradesh Civil Secretariat. The service of the petitioner also comes under such order.

9. Thereafter, by order dated 25.01.2023, the order of suspension dated 29.10.2022 was reviewed by Suspension Review Committee (SRC) and it was decided that the suspension of the petitioner be extended for another three months. However, the reasons and requirement for extension of such suspension is neither discernible from the order nor from the affidavit filed by the respondent authorities inasmuch as it is an admitted fact that till date, no departmental proceeding has been initiated either by issuing any show cause or by issuing any memorandum of charges.

10. Similar order of extensions were also issued on 25.04.2023 and on 24.07.2023. It is stated that subsequently, another order of extension of suspension was issued on expiry of last period of suspension on 31.10.2023,

however, no such documents has been produced before this Court though the affidavit was filed on 08.11.2023. The learned counsel for the petitioner has also submitted that no such order extending the period of suspension beyond 31.10.2023 has been served upon the petitioner.

11. The settled proposition of law as discussed hereinabove and the admitted fact of non-issuance of charge memo in the present case, leads to an unhesitant view that this is a case of protracted suspension and repeated renewal without there being any recorded reason. Though, more than one year has elapsed from the date of suspension till date, admittedly, no departmental proceeding has been initiated as contemplated in the initial order of suspension dated 29.10.2022. Therefore, in the considered opinion of this Court, the action on the part of the respondent authority is not permissible under the aforesaid settled proposition of law as enunciated by the Hon'ble Apex Court in ***Ajay Kr Choudhary*** (supra).

12. Yet another facet of the issue is that the extension of suspension were ordered in exercise of power under Rule 10 (6) of the CCS (CCA) of the Rules, 1965 and therefore, in view of the amendment of the Proviso to Rule 10(7) of the CCS (CCA) Rules, 1965, the employer is no more vested with the power to continue the suspension inasmuch as such provision mandates that in a case, where no charge sheet is issued under the CCS (CCA) Rules, 1965, total period of suspension or deem suspension including any extended period in terms of Rule 10 (6) of the CCS (CCA) Rules, 1965, cannot be exceeded beyond 270 days from the date of order of suspension, if the order of suspension is in contemplation of departmental proceeding and in the case in hand, the petitioner has been under suspension for more than 270 days as on today. Therefore, any order of extension of the suspension beyond 270 days is a nullity being in derogation of the aforesaid mandate of Proviso to Rule 10 (7) of the

CCS (CCA) Rules, 1965.

13. In view of the forgoing discussions, reasons and decisions, the present writ petition stands allowed by setting aside the impugned order of suspension dated 29.10.2022 and the respondents are directed to reinstate the petitioner in service forthwith. While parting with the record, it is made clear that the employer is free to transfer the petitioner to any department in any office in terms of the extant service rules.

JUDGE

Comparing Assistant