

GAHC010013932023



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

Case No. : WP(C)/781/2023

RAJU SEAL
S/O- MONINDRA KUMAR SEAL,
R/O- SILCHAR TOWN, WARD NO. 23,
P.S.- SILCHAR SADAR,
DISTRICT- CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
THROUGH-
THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
GENERAL ADMIRATION DEPARTMENT,
DISPUR, GUWAHATI,
PIN- 781006.

2:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
DISTRICT- CACHAR
ASSAM
PIN- 788001

Advocate for the Petitioner : MR. R MAJUMDAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 23-06-2023

Heard Mr. R Mazumder, the learned counsel appearing for

the petitioner. Also heard Mr. D Borah, learned counsel for respondent No.2.

2. The case projected by the Petitioner is that he was appointed as Office Peon in the Revenue Branch, Deputy Commissioner's Office Cachar Silchar. He was arrested on 10.01.2022 in connection with Silchar PS Case No.3720/2021 u/s 120(B)/420/468/471 IPC and was put under suspension from the same date i.e., 10.01.2022 and was sent to judicial custody. A show cause notice was issued to the respondent authorities. This Court under its order dated 19.05.2023 sought for an instruction that whether any review of the suspension order was carried out pursuant to show cause notice dated 05.07.2022.

3. Mr. D Borah, learned counsel for the respondent No.2 on instruction submits that the suspension order was reviewed and an order was passed on 24.05.2023 reviewing such suspension order. Perusal of the said order dated 24.05.2023, which has been passed pursuant to order of this Court dated 19.05.2023, reveals that the employer has decided to continue the order of suspension till completion of the departmental proceeding/outcome of the police case. Such course of action is not permissible for more than one reason, firstly, the petitioner was suspended on 10.01.2022 and the review was done on 24.05.2023 i.e., after more than a year of the order of suspension. The show cause notice (annexure – 5) which the respondent authorities claimed to be memorandum of charge/charge sheet do not contain any definitive charges or an statement of allegation against the petitioner. Further, the decision that petitioner

shall remain on suspension till finalisation of the criminal proceeding is also not sustainable under law, more particularly, in view of the ratio laid down in ***Ajay Kr. Choudhury Vs. Union of India*** reported in **(2015) 7 SCC 291**, inasmuch as, it was observed in *Ajay Choudhury* (supra) that protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be and on the basis of such consideration, the period of three months for continuation of suspension and the mandate of review thereof was issued.

4. Considering the above, this Court, therefore, directs the respondent authorities to forthwith reinstate the petitioner in service upon a certified copy of the instant order being served upon them.

5. It is also made clear that the respondent authorities would be at liberty to transfer the petitioner to any of its offices within the State so as to sever any local or personal contacts that the petitioner may have and which he may misuse for obstructing the investigation against him. Further, the Government is also given the liberty to prohibit the petitioner from contacting any person or handling records. Needless to say that the employer can have right to exercise its powers under Rule 6 (1)(c) of the Assam Services (Discipline and Appeal) Rules, 1964, if justification is available to take such course of action.

6. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant