

GAHC010042212023



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

Case No. : WP(C)/1297/2023

TARUN CH. MORANG
S/O- LATE NANDESWAR MORANG,
RESIDENT OF WARD NO-1, NAKARI,
P.S AND DIST- NORTH LAKHIMPUR, ASSAM, PIN-787001

VERSUS

THE STATE OF ASAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
WATER RESOURCES DEPARTMENT , DISPUR, GUWAHATI, ASSAM-06.

2:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
ASSAM WATER CENTRE
BASISTHA
GUWAHATI
ASSAM
PIN-781029

3:THE EXECUTIVE ENGINEER
NORTH LAKHIMPUR/DHEMAJI/ DHAKUAKHANA/ MAJULI
WATER RESOURCES DIVISION
ASSAM

4:THE SUPERINTENDING ENGINEER
LAKHIMPUR WATER RESOURCES CIRCLE
NORTH LAKHIMPUR
ASSAM
PIN-78700

Advocate for the Petitioner : MR F KHAN

Advocate for the Respondent : SC. WATER RESOURCE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner : Ms. K. Sumi, Advocate

For the Respondent : Mr. C. Sarma, SC,
(for respondent Nos. 1 to 4)

Date of Judgment & Order: **17.03.2023**

- 1.** Heard Ms. K. Sumi, learned counsel for the petitioner. Also heard Mr. C. Sarma, learned standing counsel for the respondent Nos. 1 to 4.
- 2.** The case of the petitioner is that the petitioner is that the petitioner was arrested on 04.11.2022 in connection with ACB PS case No. 52 of 2022. Subsequent thereto, vide an Office order dated 10.11.2022, the petitioner was put under suspension on the ground that he was arrested in connection with ACB PS case No. 52 of 2022. On 30.11.2022, the petitioner was released on bail by the Special Judge, Assam. This aspect of the matter was brought to the attention of the Appointing Authority i.e. the Superintending Engineer, Lakhimpur Water Resources Circle, North Lakhimpur by the communication dated 03.12.2022. As the petitioner was not re-instated pursuant to the communication dated 03.12.2022, the petitioner approached this Court by filing the present writ petition.
- 3.** This Court vide order dated 10.03.2023 issued notice making it returnable today. This Court further directed the respondents to obtain the necessary instructions in the matter as to whether the memorandum of charges/charge-sheet have been furnished to the petitioner. Further to that the respondents were also directed to inform this Court as to when the petitioner

herein had informed the Superintending Engineer, Lakhimpur Water Resources Circle, North Lakhimpur that he have been released on bail.

4. Today, the learned counsel appearing on behalf of the respondent Nos. 1 to 4 had submitted with all fairness that memorandum of charges/charge-sheet have not yet been served upon the petitioner. It has been brought to the notice of this Court that on 03.12.2022, the Superintending Engineer, Lakhimpur Water Resources Circle, North Lakhimpur was informed that the petitioner was released on bail vide order dated 30.11.2022.

5. The learned counsel appearing on behalf of the petitioner has submitted that the instant case is squarely covered by the Judgment dated 17.02.2023 of this Court in the case of **Rafed Ali Ahmed -Vs- the State of Assam and 3 Others [WP(C) No. 455/2023]**. The learned counsel submitted that taking into account that the petitioner had duly informed the respondent authorities that he have been released on bail on 03.12.2022, the further continuation of the suspension order beyond the period of 90 days after being duly intimated that the petitioner have been released on bail would be in violation of law laid down in **Ajay Kumar Choudhury (supra)** as well as **Rafed Ali Ahmed (supra)**. The learned counsel has relied upon the paragraph Nos. 16, 17, 18, 19 & 20 of the Judgment in the case of *Rafed Ali Ahmed (supra)*.

6. I have heard the learned counsels appearing on behalf of the parties and have also perused the materials on record.

7. This Court finds it relevant to refer to Paragraph Nos. 16, 17, 18, 19 & 20 of the Judgment in the case of **Rafed Ali Ahmed (supra)** and the same is reproduced hereinunder:-

“16. This Court, at this stage, would take note of the fact that the judgment

in the case of **Ajay Kumar Choudhury** (supra) did not deal with the issue of deemed suspension. However, the Division Bench of this Court in the case of **Rakibuddin Ahmed** (supra) opined that the case of deemed suspension also the principles as laid down in the case of **Ajay Kumar Choudhury** (supra) would be applicable. However, the Division Bench in the case of **Rakibuddin Ahmed** (supra) did not deal with the question as to how the judgment in the case of **Ajay Kumar Choudhury** (supra) would apply and from when the period of three months would be reckoned. This Court finds it relevant at this stage to take note of Rule 6 (2) of the Rules of 1964 which is quoted herein below:-

“6(2). A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

Provided that where the detention is made on account of any charge not connected with his position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.”

17. A perusal of the above Rules would show that the Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing

Authority and shall remain under suspension until further orders. The proviso to said Rule mandates that where the detention is made on account of any charge not connected with the delinquent officer's position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.

*18. The said provision, therefore, would show that if a Government servant who is in custody for a period exceeding 48 hours shall be deemed to be suspended with effect from the date of such detention by an order of the Appointing Authority and the Government servant shall continue to remain in suspension until further orders. Therefore, till the Government servant remains in custody or imprisonment after the initial period of 48 hours he/she shall continue to remain under suspension. The judgment of the Supreme Court in the case of **Ajay Kumar Choudhury** (supra) neither dealt with a case of suspension under Rule 6 (2) of the Rules of 1964 nor dealt with the issue of deemed suspension which was on account of person remaining in custody or imprisonment after the initial period of 48 hours. The said judgment of the Supreme Court also do not deal with the question as how a person in custody or imprisonment can be served with the Memorandum of charges/chargesheet or for the matter whether the delinquent employee would have a reasonable opportunity as required under Article 311 (2) of the Constitution when the delinquent officer is in custody or imprisonment.*

19. The above aspect of the matter can also be seen from another angle. By virtue of Section 6 (2) of the Rules of 1964, a Government servant, upon

*being detained in custody for a period of exceeding 48 hours, would be deemed to have been suspended with effect from the date of such detention by an order of the Appointing Authority and shall remain under suspension until further orders. The said Sub-Rule, therefore, mandates that till the Government servant who had been suspended is not released on bail or not otherwise in custody or imprisonment, shall remain suspended. The question of setting aside the suspension till the Government servant remains in custody or imprisonment cannot arise and if it is held that such Government servant is to be reinstated for not serving the Memorandum of charges/chargesheet upon completion of 3 (three) months from the date of suspension, it would be contrary to Rule 6 (2) of the Rules of 1964 which continues to hold the field. Now coming to the judgment of the Supreme Court in the case of **Ajay Kumar Choudhury** (supra), it would be seen that reasons behind the directions in paragraph Nos.20 & 21, as quoted above, have been spelt out in paragraph Nos.11 & 12 of the said judgment. In the opinion of this Court, the directions in paragraph No.21 of the said judgment in **Ajay Kumar Choudhury** (supra) can only be applied when the Government servant is released on bail or otherwise not in custody or imprisonment.*

*20. A very pertinent question, therefore, arises as to from which period the directions in paragraph No.21 of the judgment of the Supreme Court in the case of **Ajay Kumar Choudhury** (supra) shall apply in the case of Deemed Suspension. It would be seen that the judgment of the Division Bench of this Court in the case of **Rakibuddin Ahmed** (supra), however, with due respect, did not deal with this question. An insight to the same can be unraveled from the proviso to Rule 6 (2) of the Rules of 1964. The proviso speaks upon the following conditions upon which the Appointing Authority*

may vacate the suspension order when the Government servant is released on bail or is not otherwise in custody or imprisonment. They are:-

- (i) Where the detention is made on account of any charge not connected with the Government servant's position; or*
- (ii) Where the detention is not likely to embarrass the Government or the Government servant in discharge of his duties; or*
- (iii) Where the charge does not involve moral turpitude.*

However, upon applying the judgment of the Supreme Court in the case of **Ajay Kumar Choudhury** (*supra*) and the judgment of the Division Bench of this Court in the case of **Rakibuddin Ahmed** (*supra*), a fourth condition can be culled out, i.e.:-

- (iv) Where the Memorandum of charges/ chargesheet is not served upon the delinquent officer/employee within 3 (three) months from the date of release on bail or released from any custody or imprisonment and if the Memorandum of charges/chargesheet is served, a reasoned order must be passed for the extension of suspension.*

Now the question, therefore, arises that when the above mentioned conditions can be taken into consideration by the Appointing Authority. In the opinion of this Court, the conditions above noted can only be taken into consideration when the delinquent officer/employee brings the fact that he/she has been released on bail or otherwise not in any custody or imprisonment to the Appointing Authority who has the power to vacate the suspension order."

8. Now coming to the facts of the instant case, it would be seen that the petitioner was released on bail on 30.11.2022. Thereupon on 03.12.2022,

admittedly, the Superintending Engineer, Lakhimpur Water Resources Circle, North Lakhimpur were duly informed that the petitioner was released on bail. It is admitted that as on today the memorandum of charges/charge-sheet had not been served upon the petitioner. Consequently, this Court, therefore, is of the opinion that the further continuation of the suspension of the petitioner on the basis of the order dated 10.11.2022 would be in violation to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhury** (*supra*) as well as **Rafed Ali Ahmed** (*supra*). Accordingly, this Court, therefore, directs the Superintending Engineer, Lakhimpur Water Resources Circle, North Lakhimpur i.e. the respondent No. 4 herein to forthwith re-instate the petitioner on the basis of the a certified copy of the present order being served upon the said authority.

9. Before concluding, this Court would further like to observe that the respondent authorities would be at liberty to transfer the petitioner to any of its offices so as to sever any local or personal contact that the petitioner may have and which he may misuse for obstructing the investigation against him. The respondents may also prohibit the petitioner from contacting any person, or handling records and documents till the stage of his having to prepare his defence.

10. With the above observation and directions, the petition stands disposed of.

JUDGE

Comparing Assistant