

GAHC010047332023



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

Case No. : WP(C)/1217/2023

INAM AHMED
S/O LT. NAZIR AHMED R/O VILL. LANKA TOWN WARD NO. 4 P.O. LANKA
DIST NAGAON ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECRETARY TO THE GOVT OF ASASM DEPTT. OF URBAN
DEVELOPMENT ASSAM CIVIL SECRETARIAT DISPUR GUWAHATI 6

2:THE DIRECTOR OF MUNICIPAL ADMINISTRATION
ASSAM
RUKMINIGAON GUWAHATI 6

3:THE DEPUTY COMMISSIONER
NAGOAN DIST. NAGON ASSAM PIN 782001

4:THE EXECUTIVE OFFICER
LANKA MUNICIPAL BOARD LANKA DIST. NAGAON ASSAM PIN 78244

Advocate for the Petitioner : MR. I H BARBHUIYA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 10.03.2023

Heard Mr. I.H. Barbhuiya, the learned counsel appearing on behalf of the petitioner. Mrs. S. Baruah, the learned counsel appears on behalf of the respondent Nos. 1, 2, 3 & 4.

2. Taking into account the dispute involved, this Court proposes to dispose off the instant writ petition at the motion stage itself.

3. The case of the petitioner is that the petitioner was appointed as a Tax Collector on 7/9/1993 by the then Executive Officer, Lanka Town Committee(now Lanka Municipal Board). An FIR was filed by one Hasina Begum on 26/09/2022 before the Officer-in-Charge of Lanka Police Station wherein allegations have been made against the petitioner. Pursuant to the filing of the said FIR, a case being Lanka P.S. case No. 404/2022 under Sections 120(B)/153(a)/203/363/368 of the Indian Penal Code was registered. It further appears from the records that the petitioner was arrested thereupon and was produced before the Magistrate, Hojai on 27/9/2022. Subsequent thereto on 01/10/2022, the petitioner was suspended vide an office order in terms with Rule 6(2) of the Assam Service (Discipline and Appeal) Rules, 1964 (for short 'the Rules of 1964'). It further appears that on 02/11/2022 on the ground that the charge-sheet has been submitted, the petitioner was released on bail. It however appears that on 01/02/2023, the petitioner vide a representation informed the Executive Officer i.e. the appointing authority that he had been released on bail on 2/11/2022.

4. The petitioner is aggrieved by the inaction on the part of the respondent

authorities in not reinstating the petitioner and it is the specific case of the petitioner that in terms with the judgment in the case of **Ajay Kr. Choudhury –Vs- Union of India through its Secretary & Anr.** reported in (2015) 7 SCC 291 as well as the judgment of the Division Bench of this Court laid in down in the case of **Rakibuddin Ahmed Vs. The State of Assam** reported in 2020 (2) GLR 621 whereby the Division Bench of this Court held that the law laid in Ajay Kr. Choudhury(supra) should also be applicable in cases of deemed suspension. The petitioner therefore submits that he is to be reinstated inasmuch as on date the period of three months is over and there has been no memorandum of charges/charge-sheet served upon the petitioner.

5. I have heard Mr. I.H. Barbhuiya, the learned counsel appearing for the petitioner and Mrs. S. Baruah, the learned counsel appearing on behalf of the State.

6. Mrs. S. Baruah, the learned counsel appearing on behalf of the State submitted that the judgment in the case of Ajay Kr. Choudhury(supra) did not deal with the case of deemed suspension. However, the Division Bench of this Court in the case of Rakibuddin Ahmed(supra) had held that the principles of Ajay Kr. Choudhury duly applies to deemed suspension also. The learned further submitted that as by virtue of Rule 6(2) of the Rules of 1964 the petitioner till he is not released on bail or not otherwise in custody or imprisonment the petitioner cannot claim to be reinstated. The learned counsel for the respondent therefore submitted this aspect of the matter has been dealt with by this Court vide judgment dated 17/02/2023 rendered in the case of Rafed Ali Ahmed Vs. State of Assam and 3 Ors. (W.P.(C) No. 455/2023) wherein this Court had held that unless the delinquent officer/the employee brings the fact that he/she had 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, the period prescribed in Ajay Kr. Choudhury(supra) shall not apply. The learned counsel therefore relied upon paragraph Nos. 16 to 20 of the said judgment. Taking in account that it was only on 1/2/2023 that the petitioner had duly informed the appointing authority, this Court finds it relevant to reproduce paragraph Nos. 16 to 20 of the judgment in Rafed Ali Ahmed (supra) as herein under : -

“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/charge-sheet 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/charge-sheet 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/charge-sheet 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/charge-sheet 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.”

7. Now coming to the instant case, it would be seen that it was only on 02/11/2022 that the petitioner was released on bail. It further appears from Annexure-7 to the writ petition that the petitioner had intimated his appointing authority that he had been released on bail vide the representation dated 01/02/2023.

8. Taking into account that the appointing authority was only informed on 01/02/2023, the respondent authorities has time till 30/04/2023 i.e. 3 months to take appropriate steps in terms with the observations made in the case of Rafed Ali Ahmed (supra) as well as paragraph No. 21 of the judgment in Ajay Kr. Choudhury(supra). This Court therefore at this stage cannot direct reinstatement of the petitioner. However, it is observed that the observations made herein above shall not preclude the appointing authority to reinstate the petitioner to his office, if during this period upto 30/04/2023 the appointing authority deems it proper to reinstate the petitioner.

9. It is further made clear that if within 30/4/2023 the memorandum of charges/the charge-sheet is not served upon the petitioner, the further

continuation of the suspension vide order dated 01/10/2022 would be in violation to the order passed by the Supreme Court in the case of Ajay Kr. Choudhury(supra). Consequently, the concerned appointing authority would have to reinstate the petitioner forthwith thereafter.

10. With the above observations and directions, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant