

GAHC010065752023



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

Case No. : WP(C)/1807/2023

SHAHID ALI MONDAL
S/O- LATE JOMSED ALI,
VILL- SALMARA PT-VI,
P.O.- CHOUDHURY CHAR,
P.S.- FAKIRGANJ,
DIST.- DHUBRI, ASSAM,
PIN- 783349.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GHY-06.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE (ESTT-A) DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
(ASSAM)
PIN- 783301.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
BILASIPARA

DHUBRI (ASSAM)
PIN

Advocate for the Petitioner : MR. A F N U MOLLAH

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. A. F. N. U. Mollah, Adv.

For the Respondents : Mr. P. N. Sarma, Adv. R.1, 3, 4 & 5,
Mr. R. Borpujari, Adv. R.2.

Date of Hearing : 14.06.2023

Date of Judgement : 14.06.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. A. F. N. U. Mollah, learned counsel for the petitioner. Also heard Mr. P. N. Sarma, learned counsel appearing on behalf of the respondent Nos. 1, 3, 4 & 5 and Mr. R. Borpujari, learned counsel appearing on behalf of the respondent No. 2.
2. The case projected by the petitioner in a nutshell is that the petitioner has been serving as Had Master of Maslapara M.E. Madrassa under Bilasipara Elementary Education Block of Dhubri district since his appointment and joining on 01.01.2013. The respondent No. 4 vide order dated 01.03.2022 placed the petitioner under suspension on the basis of some allegation made by the SMC members and since then, almost 13 (thirteen) months have elapsed but till date neither any show cause notice

is served upon the petitioner nor any review has been done for extension of the said suspension of the petitioner as required under the law laid down by the Hon'ble Apex Court in the case of ***Ajay Kumar Choudhury –vs- The Union of India & Ors*** reported in ***2015 (7) SCC 291***.

3. It is also submitted that the petitioner has submitted a representation dated 20.10.2022 before the respondent No. 4 requesting to withdraw the aforesaid impugned suspension order dated 01.03.2022 but the respondent No. 4 has neither taken any positive action nor passed any reasoned order on the aforesaid representation. Accordingly, the petitioner has filed this writ petition before this court.
4. This Court, upon filing of the instant writ petition, had issued notice on 09.06.2023 thereby directing the respondents to apprise this Court as regards the compliance to the law laid down by the Supreme Court in the case of ***Ajay Kumar Choudhury (supra)***.
5. It is submitted by Mr. P. N. Sarma, learned counsel for the respondent, that though the allegations are serious in nature, neither any departmental proceeding has been initiated nor any review has been made.
6. In the instant case, it would be seen that the Appointing Authority on 01.03.2022 issued the suspension order on the ground that the petitioner had misappropriated Govt. money by manipulating the signature of SMC Members. Three months have already elapsed from the date, the petitioner has been put under suspension, but till date admittedly, neither any Memorandum of charge/charge-sheet has been served upon the petitioner nor the order of suspension has been reviewed, and as such, by virtue of the law laid down by the Supreme Court in the case ***Ajay Kumar***

Choudhary vs. The Union of India, reported in ***(2015) 7 SCC 291***, the further continuation of the suspension of the petitioner would in contravention to the law declared by the Supreme Court in the case ***Ajay Kumar Choudhary (supra)***.

7. Considering the above, this Court, therefore, directs the respondent authorities to forthwith reinstate the petitioner upon a certified copy of the instant order being served upon them.
8. 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.
9. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant