

GAHC010072152023



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

**Case No. : WP(C)/2247/2023**

RANJIT CH. MAHANTA  
S/O- LATE ARUN CH. MAHANTA, VILL.- AFALIABORI, P.O. GOSAIBORI, P.S.  
JAJORI, DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM,  
REVENUE AND DISASTER MANAGEMENT DEPTT.,  
ASSAM SECRETARIAT (CIVIL),  
DISPUR, PIN- 781006, ASSAM.

2:THE DEPUTY COMMISSIONER  
DIST.- NAGAON  
ASSAM.

3:THE CIRCLE OFFICER  
NAGAON SADAR REVENUE CIRCLE  
DIST- NAGAON  
ASSAM

**Advocate for the Petitioner : MR. R GOSWAMI**

**Advocate for the Respondent : MR. S. DUTTA**  
**: MS. M. D. BORAH**

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT AND ORDER (ORAL)**

**Date : 26-05-2023**

Heard Mr. R. Goswami, the learned counsel appearing on behalf of the petitioner and Mr. S. Dutta, the learned Standing counsel appearing on behalf of the respondent No.1. I have also heard Ms. M. D. Borah, the learned Standing counsel appearing on behalf of the respondent Nos. 2 and 3.

2. The case of the petitioner herein is that the petitioner was arrested on 23.09.2022 in connection with ACB P.S. Case No.42/2022 under Section 7(a) of the Prevention of Corruption Act, 1988. Thereupon, the Deputy Commissioner cum Disciplinary Authority vide an order dated 26.09.2022 put the petitioner under suspension in exercise of power under Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964. The petitioner was released on bail vide an order dated 07.10.2022 by this Court in Bail Appln. No.2604/2022. Thereupon, on 21.02.2023, the petitioner submitted a representation to the Deputy Commissioner, Nagaon intimating that he has been released on bail and in terms with the judgment of the Supreme Court in the case of ***Ajay Kumar Choudhary Vs. Union of India and Another reported in (2015) 7 SCC 291***, the petitioner ought to have been reinstated. Thereafter, the petitioner filed the instant writ petition on 25.04.2023 challenging the continuation of the said suspension order being in violation to the judgment of the Supreme Court in the case of ***Ajay Kumar Choudhary (supra)***, the Division Bench Judgment in the case of ***Rekibuddin Ahmed Vs. State of Assam and Others reported in 2020 (2) GLR 621*** as well as the Office Memorandum dated 04.02.2020 issued by the Chief

Secretary to the Government of Assam and Clause 2.1.8 of the Manual of the Departmental Enquiry issued by the Government of Assam in its Personnel Department.

3. The instant writ petition came up before this Court on 28.04.2023. On the said date, this Court enquired with the learned counsel for the petitioner as to whether a period of 3 (three) months have elapsed from the date of informing the Disciplinary Authority that he has been released on bail and/or otherwise not in custody or in imprisonment. Under such circumstances, the learned counsel submitted that the period of 3 (three) months from the date of the communication would be over on 21.05.2023 and accordingly, this Court therefore directed that the instant writ petition to be listed on today i.e. on 26.05.2023.

4. In the meantime, Ms. M. D. Borah, the learned Standing counsel appearing on behalf of the respondent Nos. 2 and 3 had also apprised the respondent authorities about the filing of the instant writ petition. Today, Ms. M. D. Borah, the learned Standing counsel appearing on behalf of the respondent Nos. 2 and 3 placed on record a communication issued by the Additional Deputy Commissioner (Revenue), Nagaon wherein it has been mentioned that the petitioner is yet to be reinstated due to non-receipt of the detail report from the CM's Vigilance Cell till date. She further submitted that the Departmental Proceedings and extension of the suspension against the petitioner is under process. The learned Standing counsel further on enquires apprised this Court that till date, the Memorandum of Charge/Charge Sheet has not been served upon the petitioner.

5. Taking into account the judgment of the Supreme Court in the case of **Ajay**

**Kumar Choudhary (supra)** wherein it has been specifically mentioned that the Show Cause Notice/the Memorandum of Charge has to be served upon the delinquent employee within a period of 3 (three) months from the date of the suspension order, the judgment of the Division Bench of this Court in the case of the **Rekibuddin Ahmed (supra)** wherein the Division Bench applied the principles of the case of **Ajay Kumar Choudhary (supra)** to a deemed suspension done under Rule 6(2) of the Rules of 1964 and further the judgment of this Court in the case of **Rafed Ali Ahmed Vs. State of Assam and Others reported in 2023 SCC Online Gau 547** wherein it has also been mentioned that if within 3 (three) months from the date of intimation that the petitioner has been released on bail and/or otherwise not in custody or in imprisonment, the Memorandum of Charge/charge sheet if not submitted within 3 (three) months therefrom, the delinquent employee would be entitled to reinstatement, this Court therefore in view of the law laid as mentioned hereinabove is of the opinion that the further continuation of the suspension of the petitioner would be in violation to the law laid down by the Supreme Court as well as this Court.

6. Accordingly, this Court therefore directs the Deputy Commissioner, Nagaon to forthwith reinstate the petitioner upon a certified copy of the instant order being served upon the Deputy Commissioner, Nagaon. However this Court grants the liberty to the Deputy Commissioner, Nagaon to appoint the petitioner in a non-sensitive post so that the petitioner is not in a position to interfere or tamper with the investigation as well as the enquiry proceedings proposed. It is further observed that upon service of the Memorandum of Charge/charge sheet upon the petitioner, the Disciplinary Authority can resort to the powers under Rule 6(1) of the Rules of 1964 upon reasons to be recorded in writing.

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

**JUDGE**

**Comparing Assistant**