

GAHC010073562023



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

Case No. : WP(C)/1946/2023

SADHANA TIMUNGPI
W/O- LATE DURNA HANSE,
RESIDENT OF RANGHANG 2,
WARD NO. 7,
P.O. AND P.S.- DIPHU, PIN-782460,
DIST.- KARBI ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE SECRETARY TO THE ENVIRONMENT AND FOREST DEPARTMENT
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU
KARBI ANGLONG
ASSAM

PIN- 782460.

3:THE SPL. PRINCIPAL CHIEF CONSERVATOR OF FOREST (PCCF)
KARBI ANGLONG AUTONOMOUS COUNCIL
KARBI ANGLONG
DIPHU
ASSAM

PIN- 782460.

4:THE DIVISIONAL FOREST OFFICER

KARBI ANGLONG WEST DIVISION
DIPHU
KARBI ANGLONG
ASSAM

PIN- 782460.

5:THE RANGE FOREST OFFICER
CENTRAL RANGE
DIPHU
KARBI ANGLONG WEST DIVISION

DIPHU
KARBI ANGLONG
ASSAM

PIN- 782460

Advocate for the Petitioner : MR. P BORDOLOI

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 17.05.2023

Heard Mr.P. Bordoloi, the learned counsel appearing on behalf of the petitioner. Ms. S. Kemprai, the learned counsel appears on behalf of the respondent Nos.2, 3, 4 and 5 and Ms. M. Kalita, the learned counsel appears for the respondent No.1- Forest Department.

2. The case of the petitioner herein is that the petitioner was put under suspension vide an order dated 21/12/2022 in pursuance to the KAAC Department of Environment and Forest letter dated 19/12/2022. It is the case of the petitioner that the respondent No. 3, who is also the disciplinary authority of the petitioner, till date has not issued the memorandum of charge/the

chargesheet under the provisions of the Assam Service (Discipline and Appeal) Rules, 1964.

3. The learned counsel appearing on behalf of the petitioner referring to the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India** reported in **(2015) 7 SCC 291** and further relying on paragraph No. 21 of the said judgment submitted that the currency of the suspension order should not exceed more than three months if the memorandum of charge/the chargesheet has not been served upon the delinquent employee.

4. This Court while issuing notice on 4/4/2023 had directed the respondents to apprise this Court as to whether the memorandum of charge/the chargesheet has been served upon the petitioner as well as also to obtain instructions as to whether the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary**(supra) has been followed.

5. Today Ms. S. Kemprai, the learned counsel appearing on behalf of the respondent Nos.2, 3, 4 and 5 submitted that till date no departmental proceedings have been initiated as well as no memorandum of charge/the chargesheet has also been served upon the petitioner.

6. Taking into account that the petitioner was suspended on 21/12/2022 and more than 148 days is over, but no memorandum of charge/the chargesheet has been served upon the petitioner, this Court holds that the further continuation of the suspension would be contrary to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary**(supra).

7. Accordingly, this Court therefore directs the respondent No. 3 upon production of a certified copy of the instant order to forthwith reinstate the

petitioner. This Court further taking into account the observations of the Supreme Court in paragraph No. 21 of the said judgment in the case of **Ajay Kumar Choudhary(supra)**, grants the liberty to the respondent No. 3 to transfer the petitioner to any of its offices so that to sever any local or personal contact that the petitioner may have and which he may misuse for obstructing the investigation against him. The respondent No. 3 is further given the liberty to prohibit the petitioner from contacting any person or handling records and documents till the stage of his preparing his defence.

8. This Court further taking into account the observations of the learned Division Bench of this Court in the case of **State of Assam Vs. Ajit Sonowal & Others** reported in **(2023) SCC Online Gau 731**, this Court further grants the liberty to the respondent authorities upon service of the memorandum of charge/the chargesheet to the petitioner and for reasons to be recorded, to exercise the power under Rule 6(1) of the Rules of 1964, if deemed necessary in public interest.

9. The instructions so submitted by Ms. S. Kemprai, the learned counsel appearing on behalf of the respondent Nos.2, 3, 4 and 5 is kept on record and marked with the letter "X".

10. The instant writ petition stands disposed off.

JUDGE

Comparing Assistant