

GAHC010078762023



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

Case No. : WP(C)/2136/2023

DR. JAHER ALI
S/O LATE LALCHAN MIAH, R/O VILL-SONPURA, P.O.-JANIA, P.S.-
KALGACHIA, DIST-BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:AS PER HON'BLE COURT ORDER DATED 26.04.2023
RESPONDENT NO.3 IS STRUCK OFF

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

17.05.2023

Heard Mr. M. K. Choudhury, the learned senior counsel assisted by Mr. A. U. Ahmed, the learned counsel for the petitioner and Mr. D. Upamanyu, the learned counsel appearing on behalf of the respondent Nos.1 & 2.

2. The case of the petitioner herein is that the petitioner was arrested in connection with Barpeta P.S. Case No.1058/2022 on 30.12.2022. Pursuant thereto, the petitioner was put under suspension on 04.01.2023 by the Director of Higher Education in exercise of the powers under Rule 6 (2) of the Assam Service (Discipline and Appeal) Rules, 1964 (for short the "Rules of 1964"). Subsequent thereto, on 09.01.2023, the petitioner was released on bail by the Judicial Magistrate, First Class, Barpeta. It further appears on record that the bail order was brought to the attention of the respondent No.2 vide the communication dated 10.01.2023. However, in spite of the same, the respondent authorities have neither taken any decision in terms with the proviso to Rule 6 (2) of the Rules of 1964 nor have submitted any Memorandum of Charge/Charge sheet upon the petitioner. It is under such circumstances that the petitioner has approached this Court on the ground that further continuation of the suspension of the petitioner would be contrary to the law laid down by the Supreme Court in the case of *Ajay Kumar Choudhary Vs. Union of India and Another* reported in **(2015) 7 SCC 291**.

3. This Court vide an order dated 26.04.2023 had issued notice and

directed the learned counsel appearing on behalf of the respondent Nos. 1 and 2 to apprise this Court as to whether there has been compliance to the law declared by the Supreme Court in the case of **Ajay Kumar Choudhary**(supra).

4. This Court further fixed the matter on 12.05.2023. However, when the matter was listed on 12.05.2023, there were no instructions received by the learned counsel appearing on behalf of the Higher Education Department. Accordingly, the matter has been listed today.

5. Today, Mr. D. Upamanyu, the learned counsel appearing on behalf of the Higher Education Department submitted with all fairness that as per his instructions there is no Memorandum of Charge/Charge sheet issued or served upon the petitioner till date.

6. Taking into account that a period of more than 90 days has already elapsed from the date the petitioner had intimated the respondent No.2 that he has been released on bail, this Court is therefore of the opinion that further continuation of the suspension order would be contrary to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary** (supra).

7. Accordingly, the instant petition stands disposed of with the following observations and directions:-

- (i) The further continuation of the suspension of the petitioner on the basis of the order dated 04.01.2023 is contrary to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary** (supra), and as such, the respondent No.2 is directed to forthwith reinstate the petitioner upon a certified copy of the instant order is

served upon the respondent No.2.

(ii) This Court further grants liberty to the Director of Higher Education to transfer the petitioner to any of its offices or colleges under its authority 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.

(iii) The Respondent No.2 is further given the liberty to prohibit the petitioner from contacting any person or handling records and documents till the stage of preparing his defence.

(iv) Further to that, in view of the law laid down by 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 Memorandum of Charge/Charge sheet to the petitioner and for reasons to be recorded, to exercise the power under Rule 6 (1) of the Rules of 1964.

JUDGE

Comparing Assistant