

GAHC010106082023



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

Case No. : WP(C)/2990/2023

MOFIDUL ISLAM
S/O- LATE NAZIR HAQUE, R/O- SARAIGHAT APARTMENT, FLAT NO. - 2C,
JALUKBARI, GUWAHATI- 781014

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM, SOIL
CONSERVATION DEPTT. ETC, ASSAM, ASSAM SECRETARIAT (CIVIL)
BLOCK-D, 2ND FLOOR, DISPUR, GHY-06

2:THE SECRETARY
SOIL CONSERVATION DEPTT. ETC
ASSAM
ASSAM SECRETARIAT (CIVIL) BLOCK-H
1ST FLOOR
DISPUR
GHY-06

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
SOIL CONSERVATION DEPTT.
ASSAM
ASSAM SECRETARIAT (CIVIL) BLOCK-D
1ST FLOOR
DISPUR
GHY-06

4:THE DIRECTOR OF SOIL CONSERVATION
ASSAM
BHUMI SANGRAKSHAN BHAWAN
1ST FLOOR
R.G.BARUA ROAD

GUWAHATI
ASSAM- 781005

5:DIVISIONAL OFFICER
BAKSA SOIL CONSERVATION DIVISION
MUSHALPUR
ASSAM

6:THE STATE ENQUIRY OFFICER
SOIL CONSERVATION DEPTT.
DISPUR
GHY-0

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, SOIL CONSERVATION DEPTT.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 23-06-2023

1. Heard Mr. U.K Nair, learned counsel for the petitioner. Also heard Ms. P. Deuri, learned counsel appearing on behalf of all the respondents.
2. The case projected by the petitioner in a nutshell is that the petitioner has been serving as Soil Conservation Ranger under the Nagrijuli Division, Mushalpur since his appointment and joining on 21.12.2013. Thereafter in the year 2016 the petitioner was transferred and posted as a Soil Conservation Ranger in the Jalah Soil Conservation Range, Baksa. The petitioner was named in Special Case No.02/2017 corresponding to Dibrugarh PS Case No.936/2016 under sections 8/12/13 (2) of the Prevention of Corruption Act read with section 109/120(B)/420/436/468/471/201 IPC, wherein the petitioner

was asked to appear before the police in connection with the aforesaid case on 23.12.2016 and vide order dated 31.12.2016 the petitioner was placed under suspension. Thereafter the petitioner approached this Court by filing a petition under section 482 Cr.P.C., praying for setting aside the order dated 28.10.2019 issuing non bailable warrant of arrest issued against him and all the other subsequent orders passed by the learned Special judge. This Court vide order dated 07.07.2021 disposed of the said case by recalling the warrant of arrest issued against the petitioner.

3. Thereafter the respondent No.3 issued a show cause notice to the petitioner by notice dated 19.08.2021 and the petitioner submitted his reply by reply dated 10.09.2021 but since 31.12.2016 i.e., almost 7 years have elapsed but the petitioner is still under suspension without any review order 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***.

4. It is also submitted that the petitioner has submitted various representations dated 30.11.2021, 04.09.2022 and 05.11.2022 before the respondent No. 3 however no response was received by the petitioner in this regard but the respondent No. 3 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.

5. Refuting such contention, It is submitted by Ms. R.S. Deuri,

learned counsel for the respondent, that the petitioner has come to this court after 7 years of suspension and a criminal case is also pending and therefore, it is not a fit case to apply the ratio laid down in ***Ajay Kr. Choudhury Vs. Union Of India*** reported in **(2015) 7 SCC 291**. It is her further ground that the departmental proceeding is going on and the petitioner is participating in the said proceeding. A review was also done recently.

6. This court has given thoughtful considerations to the submissions made by the learned counsel for the parties and also perused the materials on record.

7. The petitioner coming to this court after 7 years having been under prolong suspension, itself is a ground to interfere with the suspension order, inasmuch as, till filing of the writ petition in year 2023, no review of the order was done. The petitioner was placed under suspension on 31.12.2016.

8. The ground of the respondent authorities that the criminal case is pending and not yet concluded, cannot be a ground for continuing with the suspension of the petitioner in terms of the aforesaid settled proposition of law inasmuch as, in the case of *Ajay Choudhury (supra)*, it was observed that protracted periods of suspension, repeated renewal thereof have regrettably become the norm and not the exception that they ought to be.

9. Under such circumstances, applying of law laid down in the case of ***Ajay Choudhury (supra)***, and considering the fact that the respondent authorities did not review the suspension order for almost

7 years though served the Memorandum of charges/charge-sheet upon the petitioner.

10. It is directed to the respondent authorities to forthwith reinstate the petitioner in service upon a copy of the instant order being served upon them.

11. 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.

12. Needless to say that the employer shall have right to exercise its power under Rule 6 (1)(c) of the Assam Service Discipline and Appeal Rules, 1964, if justification is available to take such course of action.

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

JUDGE

Comparing Assistant