GAHC010110432023

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

Case No. : WP(C)/2888/2023

PRADIP KUMAR SARMA
SON OF LATE PANCHANAN DEV SARMA,
ASSISTANT EXECUTIVE ENGINEER (U/S),
GUWAHATI MUNICIPAL CORPORATION,
RESIDENT OF BORSAJAI,
GHORAMARA, BELTOLA,
GUWAHATI- 28, DIST- KAMRUP(M),
ASSAM.

VERSUS

THE GUWAHATI MUNICIPAL CORPORATION AND ANR
REPRESENTED BY ITS COMMISSIONER,
BHANGAGARH, GUWAHATI- 781005.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF HOUSING AND URBAN AFFAIRS

DISPUR
DIST.- KAMRUP(M)

GUWAHATI
781006

Advocate for the Petitioner : MR. A K SARMA

Advocate for the Respondent : SC, GMC

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 24.05.2023

Heard Mr. A.K. Sarma, the learned counsel appearing on behalf of the petitioner. Mr. S. Bora, the learned counsel appears for the respondent No. 1 and Mr. M. D. Borah, the learned counsel appears on behalf of the respondent No. 2.

2. Taking into account the issue involved in the instant writ petition, the matter is taken up for disposal at the motion stage itself.

3. The petitioner herein has challenged the order of suspension dated 18/11/2022 as well as also the departmental proceedings initiated on the basis of the memorandum of charge dated 29/12/2022. It is the contention of the petitioner that the order dated 18/11/2022 whereby the petitioner was put under suspension, is contrary to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India** reported in **(2015) 7 SCC 291** and more particularly paragraph 21 wherein it has been mentioned that even after the memorandum of charge has been served upon the delinquent employee, the disciplinary authority has to pass a reasoned order for extending the suspension period which had not been done in the instant case and as such, the petitioner is entitled to reinstatement.

4. It is the further submission of the petitioner that the instant disciplinary proceedings should be quashed on the ground that there is a criminal proceedings pending before the Criminal Court.

5. On the other hand, Mr. S. Bora, the learned counsel appearing on behalf the GMC, submits that in the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)**, directions were issued to the effect that upon serving the memorandum of charge upon the delinquent employee, a reasoned order has to be

passed for extending the suspension period. The learned counsel referred to the Office Memorandum dated 4/2/2020 issued by the Chief Secretary to the Government of Assam in the Personnel Department wherein it has been mentioned that a review has to be made within a period of six months from the date of submission of the memorandum of charge. The learned counsel appearing on behalf of the respondent No. 1 submits that the memorandum of charge was served upon the petitioner on 29/12/2022 and as on date, the period of six months is not over.

6. Be that as it may, it is the further submission of the learned counsel appearing on behalf of the respondent No. 1 that in compliance to the Office Memorandum dated 4/2/2020 as well as the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary(supra),** steps would be taken within 15 days from today, if such steps have not yet been taken. On the submission as regards quashing of the disciplinary proceedings on the basis that a criminal proceedings are presently in process, the learned counsel appearing for the respondent No. 1 submits that the same is contrary to the well settled principles of law inasmuch as a disciplinary proceedings can very well continue side by side with the criminal proceedings and it is only in extreme cases where the criminal proceedings relates to charges of grave nature, the departmental proceedings at best, can be stayed, not quashed.

7. Upon hearing the learned counsels for the parties and taking into account that the memorandum of charge was issued on 29/12/2022 and the petitioner has also submitted a reply on 6/1/2023 and the disciplinary proceedings is presently going ahead with the criminal proceedings, this Court does not find any justifiable ground for interference with the suspension order. However, it is made clear that it is the mandate of law that there has to be extension of the suspension order by a reasoned order, which as per the Office Memorandum dated 4/2/2020 is to be done within a period of six months. Taking into account that the learned counsel appearing on behalf of the respondent No. 1 submits that the same would be done within a period of 15 days from today, this Court is not inclined to interfere with the order of suspension or

the further continuation of the suspension subject to the respondent authorities passing a reasoned order within 15 days from the date a certified copy of this order is served upon the Commissioner, GMC.

8. In respect to the question pertaining to the quashing of the disciplinary proceedings on the ground that there is a criminal proceedings initiated, it is no longer res integra that a criminal proceedings as well as the disciplinary proceedings can run side by side and it is only in the case of offences of grave nature, the disciplinary proceedings can be stayed pending disposal of the criminal proceedings. Under such circumstances, the question of interfering with the disciplinary proceedings does not arise in the facts and circumstances of the instant case.

9. Accordingly, the instant petition stands disposed off in terms with the observations made herein above.

JUDGE

Comparing Assistant