

GAHC010118012023



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

Case No. : WP(C)/3258/2023

HITESH DEKA
SON OF LATE KALIRAM DEKA,
RESIDENT OF VILL- RAJGARH, SUALKUCHI,
P.O.- SUALKUCHI, PIN- 781103,
DIST- KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
HEALTH AND FAMILY WELFARE,
DISPUR, ASSAM.

2:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
GAUHATI MEDICAL COLLEGE AND HOSPITAL
GUWAHATI- 781032

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : SC, HEALTH

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioner : Mr. P Mahanta, Advocate

For the Respondents : Mr. B Gogoi, Advocate.

Date of Hearing :21.06.2023

Date of Order

:21.06.2023

JUDGMENT AND ORDER(ORAL)

Heard Mr. P Mahanta, the learned counsel appearing on behalf of the petitioner and Mr. B Gogoi, the learned counsel appearing on behalf of the respondents.

2. The case of the petitioner is that the petitioner was arrested on 11.01.2022 in connection with ACB PS Case No. 02/2022, registered under Sections 7(a)/13(2) of the Prevention of Corruption Act, 1988. Thereupon the petitioner was released on bail by the Special Judge, Guwahati vide the order dated 19.02.2023. The petitioner was placed under suspension pending drawal of disciplinary proceeding on 12.01.2022 but till date neither the order of suspension has been revoked nor the respondent authorities has passed reasoned order extending the same. .

3. The case of the petitioner herein is that three months have already elapsed from the date the petitioner has been put under suspension, but till date, neither any Memorandum of charge/charge-sheet has been served upon the petitioner, and as such, by virtue of the law laid down by the Supreme Court in the case ***Ajay Kumar Choudhary vs. The Union of India***, reported in ***(2015) 7 SCC 291***, the further continuation of the suspension of the petitioner would in contravention to the law declared by the Supreme Court in the case ***Ajay Kumar Choudhary (supra)***.

4. The learned counsel appearing on behalf of the petitioner, Mr. P Mahanta has also drawn the attention of this Court to the judgment rendered in the case of ***Rakibuddin Ahmed Vs. The State of Assam*** reported in ***2020 (2) GLR 621*** and submitted that the principles as laid down by the Supreme Court in the

case of the **Ajay Kr Choudhury (supra)** would also be applicable in the case of a deemed suspension done in exercise of the powers under Rule 6(2) of the 1964 Rules. The learned counsel therefore referred to paragraph Nos.15, 16 and 17 of the said judgment which are reproduced herein below:-

“15. We have consciously applied our mind to the query raised by the learned Single Judge. Though the case of Ajay Kumar Choudhury(Supra) is a case where suspension order was issued pending drawal of Disciplinary Proceeding and not a case of deemed suspension, the observation made by the Hon’ble Supreme Court in paragraph-20 whereby, the analogy of Section 162(2) Cr.P.C.,1976 has been brought in, we are persuaded to hold that the principles laid down in the said case cannot be restricted to an order of suspension issued only on contemplation of drawal of Disciplinary Proceeding and not for deemed suspension.

In our view, the issue should be seen from the perspective of the consequence and effect of suspension which is the same in both the cases. We also feel that no prejudice, whatsoever, would be caused to the Department by such interpretation inasmuch as no blanket order of revocation of suspension is passed and it is left to the Department to make periodic review within a period of 3(three) months and decide as to whether such suspension is required to be extended or not by assigning reasons. Whether such reasons are justified and germane can be the subject matter of a separate challenge.

In view of the aforesaid discussion, we answer the reference by holding that the principles laid down in the case of Ajay Kumar Choudhury(Supra) would also be applicable in case of deemed suspension under Section 6(2) of the 1964 Rules.

16. Further, in the instant case, it is seen that the order of suspension is also on account of pending drawal of Disciplinary Proceeding in which case, periodic review within 3(three) months is otherwise held to be mandatory.

17.Since we have already answered the reference holding that periodic review in the case of deemed suspension is mandatory, the requirement of remanding the matter to the learned Single Judge would be a meaningless exercise and as agreed by the

parties, while answering the reference, as above, we are of the opinion that a case for interference of the impugned order dated 16.02.2019 is made out.

Accordingly, the order of suspension dated 16.02.2019 issued by the Divisional Forest Officer, Guwahati Wildlife Division is hereby set aside and quashed. We. However, hasten to add that the Department would be at liberty to post the petitioner in any non-sensitive post."

5. This Court, upon filing of the instant writ petition, had issued notice on 07.06.2023 thereby directing the respondents to apprise this Court as regards the compliance to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhury (supra)**.

6. It is submitted by Mr. Gogoi that though the allegations are serious in nature, neither any departmental proceeding has been initiated nor any review has been made.

7. In the instant case, it would be seen that the Appointing Authority on 12.01.2022 issued the suspension order on the ground that the petitioner was arrested on 11.01.2022 by applying Rule 6 (2) of the Rules of 1964. Thereupon, on 19.02.2023, the petitioner was released on bail. The respondent authorities having not served the Memorandum of charges/charge-sheet upon the petitioner and having not reviewed the order of suspension, could not have continued to place the petitioner under suspension after the lapse of three months from 12.01.2022, on which date the petitioner was suspended.

8. Under such circumstances, applying of law laid down in the case of **Ajay Choudhury (supra)**, and **Rakibuddin Ahmed (supra)** it is directed that the respondent authorities shall forthwith reinstate the petitioner in service upon a certified copy of the instant order being served upon them.

9. 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.

10. Needless to say that the employer can 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.

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

JUDGE

Comparing Assistant