

GAHC010146202023



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

Case No. : WP(C)/3998/2023

DIPAK DAS
S/O LATE SARAT DAS, R/O NABADOY APARTMENT, SINAKI PATH,
GEETANAGAR, GUWAHATI-21

VERSUS

THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY AND 6 ORS.
MAIDAN GARHI, NEW DELHI-110068, REPRESENTED BY ITS REGISTRAR

2:THE REGISTRAR (ADMN)
INDIRA GANDHI NATIONAL OPEN UNIVERSITY
MAIDAN GARHI
NEW DELHI-110068

3:THE DEPUTY REGISTRAR (ADMN)
INDIRA GANDHI NATIONAL OPEN UNIVERSITY
MAIDAN GARHI
NEW DELHI-110068

4:THE DEPUTY REGISTRAR (ESTT.)
INDIRA GANDHI NATIONAL OPEN UNIVERSITY
MAIDAN GARHI
NEW DELHI-110068

5:THE NATIONAL HIGHWAY AUTHORITY OF INDIA
G-5 AND 6
SECTOR 10
DWARKA
NEW DELHI-110075
REPRESENTED BY ITS CHAIRMAN

6:THE MEMBER (ADMN) -CUM- DISCIPLINARY AUTHORITY

NATIONAL HIGHWAY AUTHORITY OF INDIA
G-5 AND 6
SECTOR 10
DWARKA
NEW DELHI-110075

7:THE GENERAL MANAGER (HR/ADMN)-IIC
THE NATIONAL HIGHWAY AUTHORITY OF INDIA
G-5 AND 6
SECTOR 10
DWARKA
NEW DELHI-11007

Advocate for the Petitioner : MR. J PATOWARY

Advocate for the Respondent : SC, NHAI

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. J. Patowary, Adv

For the Respondent : Mr. P. P. Dutta, Adv
Mr. D. Borah Adv.

Date of hearing : 15.12.2023

Date of judgment : 15.12.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. J. Patowary, learned counsel for the petitioner. Also heard Mr. P. P. Dutta, learned counsel appearing on behalf of the respondent Nos. 1, 2, 3 and 4 and Mr. D. Borah, learned counsel appearing on behalf of the respondent Nos. 5, 6 and 7.

2. The case projected by the Petitioner in a nutshell is that he was appointed as Section Officer at Indira Gandhi National Open University (hereinafter referred to as IGNOU) vide order dated 15.03.2012. While serving at IGNOU, petitioner was offered appointment as Accounts Officer on deputation basis at National Highway Authority of India (hereinafter referred to as NHAI) vide order dated 02.06.2017. During his period of deputation at NHAI, an FIR No. RC 216 2022 A0007 dated 12.06.2022 was lodged by the Central Bureau of Investigation, inter alia alleging that he has indulged himself in corrupt and illegal activities by demanding and accepting bribe for passing bills and release of Bank Guarantee in respect of certain contractual works. He was arrested on 13.06.2022 in connection with above mentioned FIR and he was sent to judicial custody by the learned Court below. Since he was put behind custody beyond 48 hours, the Member (Admin) & Disciplinary Authority, NHAI put him under suspension vide order dated 20.06.2022 with effect from the date of arrest, in exercise of power under Rule 10 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as CCS (CCA) Rules, 1965. Therefore, the petitioner was repatriated to his parent department (IGNOU) vide order dated 17.08.2022 issued by GM (HR/Admin) IIC of NHAI. Therefore, another suspension order was issued by the IGNOU under order dated 21.08.2022.
3. The Petitioner was subsequently released on bail by order dated 14.09.2022 passed in Misc. (CBI) Case No. 19/22 arising out of Special Case No. 05/22 by the Learned Special Judge, CBI, Assam. It is the further case of the Petitioner that after release from the jail on

14.09.2022, he submitted representation on 25.09.2022 for his reinstatement into the service which was not considered by the Departmental Authority. It has further been stated that the Departmental Authority neither has initiated a Departmental Proceeding (DP) by framing charge against the Petitioner nor he has been re-instated into the service, which according to the Petitioner is against the settled propositions of law.

4. The learned counsel appearing on behalf of the petitioner, Mr. J. Patowary has also drawn the attention of this Court to the judgment rendered in the case of **Ajay Kr Choudhary Vs. Union of India and another** reported in **(2015) 7 SCC 291** and **Union of India and Others –VS- Dipak Mali** reported in **2010 2 SCC 222**.
5. It is submitted that the petitioner still remained under suspension and such suspension has not been reviewed by the competent authority within the prescribed period of 90 days.
6. Per contra, learned counsel for the respondent employer Mr. P. P. Dutta, submits that the Reviewing Authority in it's meeting held on 30.11.2023 decided to extend the order of suspension for another period of 180 days w.e.f. 11.09.2022 to 09.03.2023 and extension of further period of 180 days w.e.f. 10.03.2023 to 05.09.2023 and therefore, the suspension order shall not be interfered with in exercise of power of judicial review, inasmuch as a serious offence was committed by the petitioner.
7. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the

materials available on record.

8. From the aforesaid facts pleaded by the parties, it is clear that the petitioner was arrested on 13.06.2022 and he was put under suspension on 20.06.2022 by the NHAH and on 21.08.2022 by the IGNOU and the petitioner was released on bail on 14.09.2022. The petitioner submitted his representation before the employer intimating the fact of his release on bail and requested for his reinstatement. When nothing was done by the authorities, he approached this Court by filing this writ petition in the month of June, 2023 and admittedly in the meantime, 90 days period in terms of Rule 10(2) of the Rules 1965 prescribed for taking a review of the decision was over and review was done only on 30.11.2023, i.e. after filing of the writ petition. Therefore, there is no doubt or dispute to the fact that the review was done beyond the prescribed period of 90 days.
9. In the case of **Union of India and Others –Vs- Dipak Mali** reported in **2010 2 SCC 222** relied on by Mr. Patowary, learned counsel for the petitioner, the Hon'ble Apex Court in no unambiguous term held that by operation of Sub Rule 6 of Rule 10 of the Rules, 1965, the order of suspension would not survive after the period of 90 days unless it was extended after review.
10. It was further held by the Hon'ble Apex Court in **Dipak Mali** (supra) that an order of suspension would not survive and becomes invalid when neither any review was conducted nor any extension of the suspension order thereof is passed within the prescribed period of 90 days and that such invalid suspension order cannot be revived by conducting review

beyond the period of 90 days.

11. That being the position, in the given facts of the case as discussed hereinabove, the suspension order dated 20.06.2022 issued by the NHAI and suspension order dated 21.08.2022 issued by the IGNOU and subsequent review dated 30.11.2023 have become invalid. Accordingly, the argument advanced by Mr. P. P. Dutta, learned counsel for the respondent in the backdrop of settled propositions of law stands rejected.
12. Accordingly, it is directed that the petitioner be reinstated in his service forthwith upon receipt of the certified copy of this Court passed today to be furnished by the petitioner before the authorities. While parting with the record, it is made clear that the employer is free to transfer the petitioner to any department in any office in terms of the extant service rules.
13. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant