

GAHC010186812023



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

Case No. : WP(C)/4850/2023

MD. JAKIR HUSSAIN @ ZAKIR HUSSAIN
S/O- LT. TARUN ALI VILL- SONAPUR, P.S. MUKALMUA, DIST.- NALBARI,
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, REVENUE AND
DM DEPARTMENT, ASSAM, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF LAND RECORDS AND SURVEY ETC
ASSAM
RUPNAGAR
GUWAHATI-32

3:THE DEPUTY COMMISSIONER OF NALBARI DISTRICT
NALBARI
ASSAM

4:THE ADDITIONAL DEPUTY COMMISSIONER OF NALBARI DISTRICT
NALBARI
ASSAM

5:THE CIRCLE OFFICER OF PASCHIM NALBARI REVENUE CIRCLE
CHAMATA
P.S. BELSOR
DIST.- NALBARI
ASSA

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : SC, REVENUE

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

15-09-2023

Heard Mr. A.T. Sarkar, learned counsel for the petitioner and Mr. S. Dutta, learned Standing counsel, Revenue and Disaster Management Department for the respondent Nos. 1 & 2. Also heard Mr. T. C. Chutia, learned Senior Government Advocate, Assam for the respondent Nos. 3 to 5.

2. Petitioner is the Lot Mondal of Paschim Nalbari Revenue Circle, Chamata under the Deputy Commissioner, Nalbari.

3. With regard to his unauthorized absence from duty since 22.02.2022 and his involvement in certain forged sale deeds within his jurisdiction, the Deputy Commissioner, Nalbari by order No. NPE-18/2022/26 dated 26.04.2022 placed the petitioner under suspension with immediate effect pending drawal of the departmental proceeding under the Assam Services (Discipline and Appeal) Rules, 1964.

4. For his such involvement in forged sale deeds, FIR was lodged before the Officer-in-Charge of Belsor Police Station and pursuant to the same, Belsor Police Station Case No. 40/2022 was registered against the petitioner under Sections 120(B)/468/471/420/ 472/474/466/34 IPC.

5. It is seen that by order dated 22.09.2022, the Court granted bail to the petitioner in said Belsor P.S. Case No. 40/2022 in I.A.(Crl.) No. 563/2022 arising out of Criminal Revision Petition No. 445/2022 (*Md. Jakir Hussain @ Zakir Hussain Vs. the State of Assam and Another*).

6. After placing him under suspension by the Deputy Commissioner, Nalbari vide order dated 26.04.2022, noted above, show cause notice under Rule 9 of said 1964 Rules read with Article 311 of the Constitution of India was served upon the petitioner vide No. NPE-18/2022/34 dated 20.09.2022 to which he submitted his reply on 06.10.2022 and thereby a disciplinary proceeding was initiated against the petitioner and the Deputy Commissioner, Nalbari also appointed an enquiry officer to enquire the charges framed against the said delinquent i.e., the petitioner.

7. It is submitted by Mr. Sarkar, learned counsel for the petitioner that in the meanwhile, the enquiry initiated against the petitioner pertaining to said show cause notice dated 20.09.2022, noted above, has been completed and that the petitioner informed him that the enquiry report has also been submitted by the concerned enquiry officer, but the petitioner has not been furnished with the enquiry report.

8. Since the petitioner was placed under suspension from service by the Deputy Commissioner, Nalbari vide order dated 26.04.2022 and show cause notice was issued to him only on 20.09.2022 that is after more than 90 (ninety) days, Mr. Sarkar, learned counsel for the petitioner submitted that pursuant to the decision of the Hon'ble Apex Court in the case of *Ajay Kumar Choudhary Vs. Union of India*, decided on 16.02.2015, reported in (2015) 7 SCC 291; the said order of suspension of the petitioner dated 26.04.2022, therefore, after 90 (ninety) days from its issuance on 26.04.2022 is illegal and as such, the petitioner should be reinstated in service, forthwith.

9. By order dated 01.09.2023, the respondent authorities in the Revenue Department and the Deputy Commissioner, Nalbari were asked to apprise the Court fixing the matter today, i.e., 15.09.2023 as to whether after placing the petitioner under suspension on 26.04.2022, any review regarding extension of his suspension period was held or not.

10. Mr. Chutia, learned Senior Government Advocate, Assam by placing a copy of the communication under No. D.P. No. 1/2022/58 dated 31.08.2023 issued by the District Commissioner, Nalbari apprised the Court that after placing the petitioner under suspension, the record does not indicate of any review regarding the order of his suspension dated 26.04.2022, noted above.

11. The State Government in its Personnel Department issued the Manual of Departmental Proceedings way back on 18.08.1981 wherein Chapter-II of the said Manual of Departmental Proceedings relates to "Suspension".

12. Clause 2.1.8. of said Manual of Departmental Proceedings of the State Government in the Personnel Department specifically provides that –

“2.1.8. The following principles and procedure with regard to suspension need strict compliance –

(i) suspension should be resorted to only in cases where a major punishment is likely to be imposed if the charges are proved;

(ii) *charges and the statement of allegations should be served within three months from the date of suspension failing which the Government Servant concerned should be reinstated; and*

(iii) *in cases where it is not reasonably practicable to prepare the charges for service within three months from the date of suspension and the continued suspension of the Government servant is considered necessary in the public interest, the authority concerned should move the Personnel Department through Administrative Department well before the expiry of the period of three months with a letter detailing the nature of the allegations and the reasons for which charges could not be prepared so that the Personnel Department could advise whether any further extension of the period of suspension should be permitted or not.*

Where the services of a Government servant are lent to the Central Government, any other State Government or to local or other Authority, the Borrowing Authority will have the powers of the Appointing Authority for the purpose of placing the officer under suspension and of the Disciplinary Authority for the purpose of initiating a disciplinary proceeding against him subject to the provisions of the Assam Services (Discipline and Appeal) Rules, 1964."

13. Considering the above as well as the decision of the Hon'ble Apex Court passed in the case of *Ajay Kumar Choudhury* (supra), the Court is of the view that the impugned order of suspension of the petitioner issued by the Deputy Commissioner, Nalbari vide No. NPE-18/2022/26 dated 26.04.2022 is not sustainable in law after 90 (ninety) days from the date of its issuance, i.e., w.e.f. 26.07.2022 since the Deputy Commissioner, Nalbari issued the show cause notice to the petitioner only on 22.09.2022, almost 5 (five) months after placing him under suspension vide order dated 26.04.2022, noted above.

14. Accordingly, the impugned order of suspension of the petitioner issued by the Deputy Commissioner, Nalbari vide No. NPE-18/2022/26 dated 26.04.2022, being not sustainable in law w.e.f. 26.07.2022, is hereby set aside and quashed.

15. It is made clear that regarding posting of the petitioner as Lot Mondal under the Deputy/District Commissioner, Nalbari on his reinstatement in service as directed above, is kept open with the concerned appointing and/or disciplinary authority.

16. It is also made clear that this order shall not have any bearing with regard to the disciplinary proceeding initiated against the petitioner vide show cause notice No. NPE 18/2022/34 dated 20.09.2022, noted above.

17. With the above observation and direction, this writ petition stands allowed to the extent above.

18. Copy of the communication under No. D.P. No. 1/2022/58 dated 31.08.2023 issued by the District Commissioner, Nalbari, be kept as a part of the record.

JUDGE

Comparing Assistant