

GAHC010192982023



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

Case No. : WP(C)/5091/2023

DEEP BANIA
S/O- LATE ANNANDA CH. BANIA,
ULUBARI IRRIGATION COLONY , NEAR DGP OFFICE ,
P.S- PALTAN BAZAR,
DIST- KAMRUP (M), ASSAM, PIN-781007

VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
IRRIGATION DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE CHIEF ENGINEER
ASSAM
IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI-3.

3:THE DEPUTY CHIEF ADMINISTRATOR CUM DDO
CENTRAL MONITORING CELL

IRRIGATION
CHANDMARI
GUWAHATI-3

Advocate for the Petitioner : MR A SARANIA

Advocate for the Respondent : SC, IRRIGATION

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

22/09/2023

Heard Mr. M Sarania, learned counsel for the petitioner and Mr. N Upadhayay, learned Standing counsel, Irrigation Department for the respondent Nos. 1 to 3.

2. Petitioner, a Senior Assistant in the office of the Central Monitoring Cell, Irrigation Department, Chandmari, Guwahati was arrested on 06.02.2023 in connection with ACB P.S. Case No. 03/2023 for taking bribe. As such, the Chief Engineer, Irrigation, Assam by Office Order dated 16.03.2023 suspended him from service under the provisions of Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964. After his release on bail in said ACB P.S. Case No. 03/2023, the petitioner on 03.07.2023 submitted a representation before the Chief Engineer, Irrigation Department for revocation of his suspension order dated 16.03.2023. As the said representation of the petitioner for revocation of his suspension order dated 16.03.2023 has not yet been considered by the Chief Engineer, Irrigation Department, being aggrieved with the same, the petitioner has preferred this writ petition.

3. On instructions, Mr. Upadhayay, learned Standing counsel, Irrigation Department submitted that on 29.08.2023 after submission of the representation by the petitioner on 03.07.2023, a show cause notice was issued to him with the relevant charges/statement of allegations, lists of documents, lists of witnesses etc. to which the petitioner on 05.09.2023 prayed for 15 days' time to submit his reply.

4. The contention of the petitioner is that following the judgment of the Hon'ble Supreme Court in the case of *Ajay Kumar Choudhury Vs. Union of India*, reported in (2015) 7 SCC 291, the impugned order of suspension of the petitioner from service dated 16.03.2023 is not maintainable and accordingly, as it has lapsed, he should be reinstated in service. In terms of the judgment of the Hon'ble Apex Court in the case of *Ajay Kumar Choudhury* (supra), show cause notice should be issued to the concerned employee after placing him under suspension within a period of 90 days from the date of filing of representation/application after releasing him/her from judicial custody.

5. Mr. Upadhayay, learned Standing counsel, Irrigation Department submitted that as the petitioner submitted a representation on 03.07.2023 after being released on bail and since show cause notice was issued to him on 29.08.2023, it is much within the time of 90 days. However, the

respondent authorities in the Irrigation Department failed to place anything before the Court regarding its review allowing the petitioner to remain under suspension.

6. After considering the entire aspects of the matter, this writ petition is disposed of with a direction to the Chief Engineer, Irrigation Department to dispose of the said representation of the petitioner dated 03.07.2023 in accordance with law, more particularly, if the authority concerned during the deliberation find that there was no such review regarding keeping the petitioner under suspension after the order dated 16.03.2023 and after the representation dated 03.07.2023, it shall consider to reinstate the petitioner in service.

7. However, it is made clear that if the authority concerned decide to reinstate the petitioner in service subject to the review of the order of suspension dated 16.03.2023 within time, the said authority is at liberty to decide his posting as show cause notice has already been issued to him on 29.08.2023. Such decision shall be taken by the Chief Engineer, Irrigation Department on or before 31.10.2023, communicating the petitioner about the same.

8. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant