

GAHC010198952023



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

Case No. : WP(C)/5576/2023

SISIR BHATTA
SON OF LATE DEBEN BHATTACHARYYA,
RESIDENT OF S.C. GOSWAMI ROAD,
LATE BEBEN BHATTACHARYYA,
PANBAZAR, P.O.- PANBAZAR, DISTRICT- KAMRUP(M),
PIN CODE- 781001, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE HOME AND
POLITICAL DEPARTMENT,
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI-6, ASSAM.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007
ASSAM.

3:THE DEPUTY INSPECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007
ASSAM.

4:THE SUPERINTENDENT OF POLICE
(BORDER)
KOKRAJHAR
ASSAM
PIN CODE- 783370

ASSAM

Advocate for the Petitioner : MR. B SHARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

22.09.2023

Heard Mr. B Sharma, learned counsel for the petitioner and Mr. T Chutia, learned Senior Government Advocate, Assam for all the official respondent Nos. 1 to 4.

2. The petitioner, Deputy Superintendent of Police (Border), Kokrajhar, Assam, while he was discharging his duty as an Inspector-cum-Officer-in-Charge at GRPS Police Station, Paltanbazar at Guwahati was found demanding money from one of the person therein. On the basis of the same, ACB P.S. Case No. 06/2015 was registered and he was arrested and detained.

3. The petitioner was suspended from service pending drawal of departmental proceeding vide order dated 08.07.2015 issued by the Director General of Police (DIG), Assam.

4. By an order dated 10.01.2017 issued by the DIG, Assam, the petitioner was reinstated in his service, without prejudice to the departmental proceeding pending against him.

5. In the departmental proceeding against the petitioner, the petitioner was found guilty and the Director General of Police, Assam, the concerned disciplinary authority by order dated 18.01.2019 imposed the punishment of stoppage of one increment with cumulative effect upon the petitioner treating the period of his suspension for the period from 08.07.2015 to 10.01.2017 as on duty with the further observation that the period of judicial custody for his involvement in said ACB P.S. Case No. 06/2015 registered under Sections 120(B)/387 IPC read with Section 7(13)(I)(d)/13(2) of the Prevention of Corruption Act, 1988 shall be considered as dies-non on the principle of No Work No Pay.

6. In the Special Case No. 02/2018 arising out of said ACB P.S. Case No. 06/2015, the learned Special Judge, Assam vide Judgment and Order dated 05.01.2021 convicted the petitioner with rigorous imprisonment for a period of 3 years with fine of Rs. 7,000/-, in default of payment of fine rigorous imprisonment for a period of 1 month under Section 7 of the Prevention of Corruption Act, 1988 with further rigorous imprisonment for a period of 4 years and fine of Rs. 10,000/-, in default of payment of fine rigorous imprisonment for a period of 2 months under Section 13 (2) of the Prevention of Corruption Act, 1988, where the sentences were to run concurrently.

7. Against the said Judgment and Order dated 05.01.2021 passed in Special Case No. 02/2018 arising out of said ACB P.S. Case No. 06/2015 by the learned Special Judge, Assam, the petitioner preferred Criminal Appeal No. 24/2021 before this High Court along with an Interlocutory Application being I.A.(Crl.) No. 54/2021 seeking bail in said ACP P.S. Case.

8. The Court by order dated 18.03.2021 admitted said Criminal Appeal No. 24/2021 of the petitioner and granted bail to him in said ACB P.S. Case No. 06/2015.

9. As the petitioner was released on bail in said ACB P.S. Case No. 06/2015, he on 23.03.2021 submitted his Rejoining Report before the Superintendent of Police (Border), Kokrajhar.

10. It is stated that though the Superintendent of Police (Border), Kokrajhar sought necessary directions regarding the reinstatement/rejoining of the petitioner in service from the Director General of Police, Assam, but the said authority till date did not pass any order in that regard.

11. As such, the Superintendent of Police (Border), Kokrajhar could not accept the Rejoining Report of the petitioner in service as Deputy Superintendent of Police (Border), Kokrajhar.

12. The Superintendent of Police (Border), Kokrajhar issued reminder to the Deputy Inspector General of Police, Assam regarding as to whether the petitioner should be allowed to join his service as Deputy Superintended of Police (Border), Kokrajhar or not after the bail granted to him by the High Court in said Criminal Appeal No. 24/2021.

13. Mr. Sharma, learned counsel for the petitioner relied on a decision passed by a Co-Ordinate Bench of this Court on 10.11.2021 in WP(C) No. 5858/2021 (Phulendra Kalita -Vs-

the State of Assam & 3 Others), where said petitioner, Phulendra Kalita, Inspector of Schools who was convicted under the Prevention of Corruption Act, 1988 and was later released on bail by the High Court in the appeal preferred by him against such conviction inflicted upon him by the learned Special Judge, Assam.

14. In the said order dated 10.11.2021 passed in WP(C) No. 5858/2021 (Phulendra Kalita -Vs- the State of Assam), noted above, the Court directed the concerned appointing authority to take a decision regarding as to whether – (i) the detention of the petitioner was on account of any charge not connected with his position as a Government servant or continuance in office is not likely to embarrass the Government or the Government Servant or (iii) the charge does not involve moral turpitude and regarding re-joining of the petitioner therein in service after his release on bail, though he was convicted by the learned Trial Court under the Prevention of Corruption Act, 1988

15. Considering the same and after hearing the learned counsels for the parties, the petitioner is directed to submit a fresh representation before the Superintendent of Police (Border), Kokrajhar regarding his rejoining in service on granting bail to him by the Court in ACB P.S. Case No. 06/2015 in Criminal Appeal No. 24/2021 preferred by him, along with a certified copy of this order, which in turn shall forward the same to the Director General of Police, Assam, respondent No. 2.

16. Thereafter, the said authority, i.e., the Director General of Police, Assam shall consider the representation of the petitioner within a period of 45 days from its receipt taking into consideration as to whether (i) the detention of the petitioner was on account of any charge not connected with his position as a Government servant or continuance in office is not likely to embarrass the Government or the Government Servant or (iii) the charge does not involve moral turpitude and shall pass necessary order in that regard, taking a decision as to whether the petitioner can be allowed to re-join/reinstate in service as Deputy Superintendent of Police (Border), Kokrajhar, Assam after his release on bail in said ACB P.S. Case No. 06/2015 or not, intimating him about the outcome of the same.

17. The entire process, as noted above, shall be completed on or before 15.12.2023.

JUDGE

Comparing Assistant