

GAHC010218412022



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

Case No. : WP(C)/6991/2022

PARESH CH. DEKA
S/O- LATE DHARANIDHAR DEKA,
HEAD MASTER (UNDER SUSPENSION) OF PATIDARRANG VIDYAPITH
HIGH SCHOOL,
R/O- VILL. MUKTAPUR,
P.O.- LOCH, P.S.- BAIHATA CHARIALI,
DIST. KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
SECONDARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6,
DIST.- KAMRUP(M), ASSAM.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA GUWAHATI-19
DIST.- KAMRUP(M)
ASSAM.

3:THE INSPECTOR OF SCHOOL
KAMRUP DISTRICT CIRCLE
AMINGAON
P.O.- AMINGAON
DIST.- KAMRUP
ASSAM PIN- 781031.

4:THE HEAD MASTER OF PATIDARRANG VIDYAPITH HIGH SCHOOL
LOCH
DISTRICT- KAMRUP

Advocate for the Petitioner : Mr. M. J. Baruah, Advocate.

Advocate for the Respondents : Ms. D. Muchahary, Advocate.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 19.04.2023

Date of Judgment : 19.04.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. J. Baruah, the learned counsel for the petitioner and Ms. D. Muchahary, the learned counsel appearing on behalf of the respondent Nos.1 to 3.

2. The Office Note is not clear as to whether the service upon the respondent No.4 is complete. Be that as it may, as the learned counsel for the petitioner is only agitating the further continuation of the suspension order to be bad on the ground of law laid down by the Supreme Court in the case of *Ajay Kumar Choudhury vs. The Union of India*, reported in (2015) 7 SCC 291 as well as in the case of *Union of India & Others vs. Dipak Mali*, reported in (2010) 2 SCC 222, this Court is of the opinion that the instant writ petition can be disposed of in absence of the respondent No.4.

3. The facts involved in the instant case is that the petitioner was appointed as the Headmaster of Patidarrang Vidyapith High School, Kamrup vide an order dated 05.08.2017 by the Director of Secondary Education, Assam. Subsequent thereto, while the petitioner was rendering service as the Headmaster of Patidarrang Vidyapith High School, Kamrup, a FIR was filed by one Md. Mostafa Ali against the petitioner which was registered and numbered as Baihata P.S. Case No.106/2022, registered under Sections 354 (A)/509 of the IPC read with Section 10 of the Protection of Children from Sexual Offence Act, 2012. Thereupon, it appears that the Director of Secondary Education had vide an order dated 04.04.2022 placed the

petitioner under suspension pending drawal of Departmental Proceedings in exercise of powers under Rule 6 (1) of the Assam Service (Discipline & Appeal) Rules, 1964. It further transpires from the record that the petitioner had submitted a representation dated 04.07.2022 stating inter-alia that he had been released on bail by this Court and even after a lapse of 90 days from the date of his suspension, the Departmental Proceedings has not been initiated for which the petitioner ought to be reinstated.

4. Subsequent thereto, on 22.08.2022, the Disciplinary Authority-cum-the Director of Secondary Education had issued show cause notice/the Memorandum of Charges to the petitioner containing definitive charges against the petitioner. In terms with the statement of allegation which was enclosed to the show cause notice, the charges leveled against the petitioner was that while the petitioner was in service and serving as the Headmaster in Patidarrang Vidyapith High School, Kamrup, news were published in the print and electronic media with photograph regarding alleged involvement of sexual exploitation of the students. The local people also staged protest publicly in that regard. A case under Sections 354(A)/509/106 of the IPC was registered in Baihata Chariali Police Station against the petitioner, and accordingly, the petitioner was charged with breach of trust, a cognizable offence under the IPC, violation of Government guidelines/procedure. This Court, however, is surprised to take note of that in the show cause notice, the petitioner was only asked to show cause as to why penalty prescribed in Clauses (i) to (iii) of Rule 7 of the Rule of 1964 should not be inflicted upon the petitioner. It may be relevant to take note of that the penalties prescribed in Clause (i) to (iii) of Rule 7 in terms with Rule 9 (11) of the Rules of 1964 comes within the ambit of minor penalties. It further reveals that the petitioner has submitted the reply to the show cause notice on 31.08.2022. It further appears from the record that the school wherein the petitioner was serving as the Headmaster had adopted certain resolutions not to pay the subsistence allowance to the petitioner.

5. Being aggrieved by such action of the respondent authorities of continuation of

suspension order which was in violation to the judgment of the Supreme Court in the case of *Ajay Kumar Choudhury* (supra), a writ petition was filed by the petitioner before this Court which was registered and numbered as WP(C) No.5209/2022. This Court, vide an order dated 20.09.2022 disposed of the said writ petition with a direction upon the respondent No.2, i.e. the Director of Secondary Education Department, Assam to review the order of suspension of the petitioner dated 04.04.2022 and pass appropriate order within a period of 7 (seven) days from the date of receipt of the copy of the order. It was further mentioned that if the Competent Authority deems it necessary that the suspension order of the petitioner should be extended, reasons should be recorded for such extension and a copy of the same should be furnished to the petitioner. It was also observed that in the event the Competent Authority finds that the petitioner should be reinstated back in service, appropriate order to that effect should be passed.

6. Subsequent thereto, on 29.09.2022, the in-Charge Director of Secondary Education passed a speaking order whereby the period of suspension of the petitioner was extended for the period of another 90 days. In other words, in terms with the speaking order dated 29.09.2022, the period of suspension of the petitioner would end on 28.12.2022.

7. Being aggrieved by the order dated 29.09.2022 issued by the respondent No.2 herein and the further continuation of the suspension order by the respondent authorities, the petitioner has approached this Court by filing the instant writ petition on 01.11.2022.

8. This Court vide an order dated 04.11.2022 issued notice and further directed that the petitioner be paid the arrear subsistence allowances from August, 2022 within one month from the date of the said order and to continue the payment of the subsistence allowance to the petitioner. Thereafter, the matter came up before this Court on 12.04.2023 wherein this Court made a specific query upon the learned Standing Counsel appearing on behalf of the Secondary Education Department as to

whether there has been any extension to the suspension order dated 29.09.2022 after 29.12.2022.

9. Today when the instant writ petition was taken up, the learned counsel appearing on behalf of the Secondary Education Department has placed on record an order passed by the Director of the Secondary Education Department dated 12.04.2023 whereby the period of suspension of the petitioner was extended w.e.f 05.09.2022 till the finalization of the Departmental Proceedings. The said order is kept on record and marked with the letter "X".

10. This Court further enquired during the course of the hearing as regards the status of the Departmental Proceedings, the learned counsel appearing on behalf of the Secondary Education Department with all fairness submitted that as per her instructions an Enquiry Officer was duly appointed and during the continuation of the Departmental Proceedings, the said Enquiry Officer has been transferred to some other Department, and as such, as per her instructions there would be a necessity for appointing a fresh Enquiry Officer to conduct the Departmental Proceedings. She further stated that it is not known to her when the Enquiry Officer would be appointed. But she submits that the Respondent Authorities are taking appropriate steps in the matter.

11. I have heard the learned counsels for the parties and perused the materials on record.

12. This Court expresses its surprise and anguish in the manner in which the respondent authorities have been dealing with the Departmental Proceedings of the petitioner as well as the suspension of the petitioner. Starting from the issuance of the show cause notice wherein the petitioner has been only asked to show cause as regards the minor penalties as envisages under Clause (i) to (iii) of Rule 7 of the Rules of 1964.

13. At this stage, this Court finds it relevant to refer to Clause 2.1.8 of the Manual

of Departmental Proceedings wherein at Sub-Clause (i) it has been mentioned that suspension should be resorted to only in cases where a major punishment is likely to be imposed, if the charges are proved. This Court further finds it relevant to refer to the order dated 29.09.2022 wherein the period of suspension was only extended for a period of 3 (three) months ending on 28.12.2022 and thereafter there has been a complete silence on the part of the respondent authorities to do the needful for extension of the suspension or reinstatement of the petitioner. It was only pursuant to the order passed by this Court on 12.04.2023, the in-Charge Director of the Secondary Education Department felt it was necessary to extend the period of suspension of the petitioner w.e.f. 05.09.2022 till finalization of the Departmental Proceedings. In fact it surprises this Court to note that in the order which has been kept on record and marked with the letter “X” the Authority concerned does not even take into consideration that on 29.09.2022, the period of suspension was extended for the period of 3 (three) months, i.e. ending on 28.12.2022 and the in-Charge Director of the Secondary Education Department in a perfunctory manner and that too without proper application of mind extended the period of suspension w.e.f. 05.09.2022 till finalization of the Departmental Proceedings without even taking note of when such Departmental Proceedings would culminate in as much as it is also the stand of the respondents that till date there is no fresh Enquiry Officer appointed.

14. Now the question, therefore, arises that is it the mandate of the judgment of the Supreme Court in the case of *Ajay Kumar Choudhury* (supra) that the extension of suspension order should be in such mechanical manner. This aspect of the matter can be seen from the paragraph No.21 of the said judgment which is reproduced herein under:-

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As

in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

15. A perusal of the above quoted paragraph would categorically show that the currency of a suspension order should not be more than 3 (three) months, if within this said period the memorandum of charges/charge-sheet have not been served on the delinquent officer/employee. It has been further mandated that if in the circumstance the memorandum of charges/charge-sheet have been served then a reasoned order must be passed for the extension of the suspension. At this stage, this Court finds it relevant to take note of the Office Memorandum bearing No.ABP.13/2018/Pt/35 dated 04.02.2020 of the Government of Assam wherein it has been mentioned the requirement of Senior Most Secretaries to undertake a review within 6 months as regards the desirability to the further continuance of the Suspension Order and the further requirement of submitting periodical review reports every 3 months to the Chief Secretary. This Court is of the opinion that when the suspension period ends, to extend it, there is a requirement to record reasons why such extension is necessary in as much as though suspension is not a punishment but continuation of the suspension is neither in the interest of the delinquent officer nor the Government.

16. At this stage, this Court takes note of the order dated 29.09.2022 whereby the period of suspension was only extended by three months. There has been no order thereafter thereby extending the period of suspension after 28.12.2022 save and except the order passed on 12.04.2023 wherein the Director of Secondary Education Department without taking note of the order dated 29.09.2022 had extended the period of suspension from 05.09.2022 till the finalization of the Departmental proceedings.

17. This Court further deems it appropriate to take note of another judgment of the Supreme Court as relied upon by the learned counsel for the petitioner, i.e. the judgment in the case of *Dipak Mali* (supra) wherein the Supreme Court while interpreting Sub-Rule (6) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and held that order of suspension would not survive after the period of 90 days unless it is extended. It was further observed in the said judgment that since no review was held within the period of 90 days nor was there an order of extension issued within the said period, the subsequent review and extension of the order of suspension would not sustain the order which has already become invalid after the expiry of 90 days from the date of suspension.

18. In the instant case as the respondent No.2 who is the Disciplinary Authority failed to extend the period of suspension after 28.12.2022 and in the most mechanical manner have extended the suspension period of the petitioner w.e.f. 05.09.2022 till finalization of the Departmental Proceedings that too without recording any reasons for which this Court is therefore of the opinion that the further continuation of the suspension of the petitioner would be contrary to the law laid down by the Supreme Court in the case of *Ajay Kumar Choudhury* (supra) as well as *Dipak Mali* (supra).

19. Accordingly, this Court directs the respondent No.2, i.e. the Director of Secondary Education Department, Assam to reinstate the petitioner forthwith upon a certified copy of the instant order being served upon the Director of the Secondary Education Department, Assam. This Court further would observe that taking into

account the allegation against which the petitioner has been charged and the Departmental Proceedings is yet to reach its logical conclusion so soon, the Director of the Secondary Education Department, Assam is given the liberty to transfer the petitioner to any of its office within the Secondary Education Department so as to sever any personal or local contact that the petitioner may have and which he may misuse from obstructing the investigation against him. The respondent No.2 is also given the liberty to prohibit the petitioner from contacting any person or handling any records or documents till the completion of investigation/Departmental Proceedings.

20. Before concluding, this Court like to take note of the submission made by the learned counsel for the petitioner that the petitioner would superannuate in the later part of this year, and as such, submits that a direction be issued to the respondent authorities to complete the Departmental Proceedings as expeditiously as possible.

21. On the other hand, the learned counsel appearing on behalf of the Secondary Education Department, Assam submits that the Director of the Secondary Education Department is taking appropriate steps for appointment of a new Enquiry Officer. Be that as it may, this Court deems it proper that the said Departmental Proceedings needs to be brought to a logical conclusion as expeditiously as possible and preferably within a period of 6 (six) months from the date of the instant judgment.

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

JUDGE

Comparing Assistant