

GAHC010219252023



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

Case No. : WP(C)/5717/2023

KAKHESWAR BARO
S/O- BABUL CHANDRA BARO,
R/O- VILLAGE KACHARI SOLMARI, P.O- KACHARI SOLMARI,
P.S- RANGIA,
DIST- KAMRUP (R), PIN-781354
PRESENTLY SERVING AS SENIOR ASSISTANT AT DIRECTORATE OF
MUSEUMS,
ASSAM, GUWAHATI-01

VERSUS

THE STATE OF ASSAM AND 4 ORS. B
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
INDIGENEOUS AND TRIBAL FAITH AND CULTURE DEPARTMENT , ASSAM,
DISPUR, GUWAHATI-06

2:THE DIRECTOR OF MUSEUMS
ASSAM
GUWAHATI-01

3:THE CURATOR
ASSAM STATE MUSEUM
GUWAHATI
PIN-781001

4:THE ASSISTANT CURATOR
ASSAM STATE MUSEUM
GUWAHATI
PIN-781001

5:THE SUPERINTENDENT
DIRECTOR OF MUSEUMS
ASSAM

GUWAHATI
PIN-78100

Advocate for the Petitioner : MR. A MOBARAQUE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 15-11-2023

- 1.** Heard Mr. A Mobaraque, learned counsel for the petitioner. Also heard Mr. A Chakraborty, learned counsel for the State respondents.
- 2.** The petitioner is a Senior Assistant, who was working in the Directorate of Museums, Assam and was placed under suspension on 19.06.2023. The aforesaid order of suspension was however revoked by an order dated 18.09.2023 and the petitioner, on being reinstated, has been temporarily attached to the Office of the District Museum Officer, Dhubri in the same capacity.
- 3.** Shri Mobaraque, learned counsel for the petitioner has submitted that there is no post of Senior Assistant in the Office of the District Museum Officer, Dhubri and therefore has challenged the part of the order dated 18.09.2023, by which he has been attached to the office of the District Museum Officer, Dhubri. He submits that the departmental proceeding is nearly complete, inasmuch as, the enquiry report has been made by the enquiry officer and the petitioner has made a representation against the enquiry report made by the Enquiry Officer.

4. Mr. A Chakraborty, learned counsel for the State respondents however submits that in terms of the judgment of the Supreme Court in the case of ***Ajay Kumar Choudhary vs. Union of India through its Secretary & Anr.***, reported in ***(2015) 7 SCC 291***, the Government is free to transfer the delinquent officer to 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. He submits that though the suspension of the petitioner has been revoked, there is no infirmity with the transfer of the petitioner to one of the offices of the respondents, in terms of the judgment of the Supreme Court in ***Ajay Kumar Choudhary (supra)***.

5. I have heard the learned counsels for the parties.

6. It is not the case of the petitioner that he is not getting his monthly salary. His only case is that he cannot be posted in an office where there is no post of Senior Assistant. Be that as it may, the fact remains that the departmental proceeding initiated against the petitioner only requires the disciplinary authority to take a decision on the enquiry report and the reply made by the petitioner to the same. As such, in view of the fact that the departmental proceeding is at its tail end, this Court is of the view that the posting/attachment of the petitioner in the office of the District Museum Officer, Dhubri should not be disturbed at this stage. However, the same would be subject to the final decision to be taken by the disciplinary authority. As the only requirement left for completion of the

disciplinary proceeding is a decision to be taken by the disciplinary authority, the disciplinary authority is directed to take a final decision with regard to the departmental proceedings initiated against the petitioner, on the basis of the enquiry report and the reply made by the petitioner on 19.09.2023, within a period of 1 (one) month from the date of receipt of a certified copy of this order.

7. The writ petition is disposed of accordingly.

JUDGE

Comparing Assistant