

GAHC010236102022



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

Case No. : WP(C)/7459/2022

SHAMS UDDIN BARBHUIYA
S/O- LT. ABDUL KAYUM BARBHUIYA, R/O- WARD NO.1, HAILAKANDI
TOWN, P.O. VICHINGCHA, P.S. HAILAKANDI, DIST.- HAILAKANDI, ASSAM,
PIN- 788152

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO GOVT. OF ASSAM, EDUCATION DEPTT.
(ELEMENTARY), DISPUR, ASSAM, GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
ASSAM
GHY-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
DIST.- HAILAKANDI
ASSAM
PIN- 788151

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
HAILAKANDI
DIST.- HAILAKANDI
ASSAM
PIN- 788161

5:HIRALAL BORA
S/O- RAMNAL BORA
R/O- H.NO. 9
SHIV MANDIR PATH

BAGHARBARI
GHY-3

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 09.02.2023

Heard Mr. S.B. Laskar, the learned counsel appearing on behalf of the petitioner and Mr. P.K. Bora, the learned counsel appearing on behalf of the respondent Nos. 1, 2, 3 & 4.

2. Taking into account the ground on which the instant proceedings is instituted, the presence of the respondent No. 5 is not necessary and accordingly the name of the respondent No. 5 is struck off.

3. The instant writ petition is taken up for disposal at the motion stage itself.

4. The petitioner herein has approached this Court assailing the order bearing No. DEH-7/SUS/2021-22/785-90 dated 21/06/2022 issued by the District Elementary Education Officer, Hailakandi, whereby the petitioner was placed under suspension in terms with the provisions of the Assam Services (Discipline and Appeal) Rules, 1964 (for short "the Rules of 1964") pending drawal of departmental proceedings.

5. The case in brief is that the petitioner herein is the Assistant Teacher of Bokrihowar MV School under the Hailakandi Education Block. In the month of June, 2022 the petitioner visited Guwahati along with some other middle school teachers for the purpose of filing a writ petition relating to regular promotion to

the post of Headmaster of MV/ME School. In order to come to Guwahati the petitioner on 13/6/2022 submitted a prayer before the Headmaster seeking causal leave with station leave permission w.e.f. from 14/6/2022 to 17/6/2022. The said leave was sanctioned by the Headmaster. Accordingly the petitioner along with 6 others filed a writ petition being W.P.(C) No. 4268/2022 wherein the petitioner herein was the petitioner No. 4. However at the time when the petitioner was at Guwahati there was a heavy rainfall resulting in landslide in Meghalaya and all rail and road communications from Guwahati to Barak valley were blocked after 16/02/2022. The petitioner under such circumstances could return to Hailakandi only on 18/6/2022. It further appears from the record that the District Elementary Education officer made a surprise visit in the school on 18/6/2022 and found that the petitioner was absent. Consequently on 21/6/2022 the District Elementary Education Officer vide the impugned order placed the petitioner under suspension pending drawal of departmental proceedings against the petitioner. A perusal of the writ petition also shows that there is a denial to the various allegations made in the said order dated 21/6/2022. However, taking into account, any discussion on the same at this stage may affect the departmental proceedings which is pending initiation for which this Court refrains from dealing with the same for the present.

6. The petitioner being aggrieved by the said suspension order dated 26/6/2022 has approached this Court by filing the instant writ petition. This Court vide an order dated 9/1/2023 directed the counsel appearing on behalf of the Director of Elementary Education as well as the District Elementary Education Officer to place the relevant instructions/informations with regard to the status of suspension of the petitioner.

7. Today Mr. P.K. Bora, the learned counsel appearing on behalf of the

Elementary Education Department had placed on record a communication issued by the Deputy Director of Elementary Education dated 8/2/2023 wherein it has been mentioned that the District Elementary Education Officer, Hailakandi had submitted a report for approval of the suspension period of the petitioner vide a letter dated 19/1/2023. However, the approval of the suspension period as well as the reinstatement of the petitioner is under process with pending departmental proceedings. This Court had made a specific query as to whether any departmental proceedings has been initiated. It is submitted that as of now no departmental proceedings has been initiated in terms with the Rules of 1964.

8. The learned counsel appearing on behalf of the petitioner has drawn the attention of this Court to the judgment of the Supreme Court in the case of **Ajay Kumar Choudhury Vs. Union of India through its Secretary & Anr.** reported in **(2015) 7 SCC 291** and submitted that as per the law laid down by the Supreme Court in the said judgment, 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. He further submitted even in a case where the memorandum of charges/charge sheet is served, a reasoned order must be served for the extension of the suspension period. In the instant case, it would be seen that the petitioner was suspended as far back as on 21/6/2022.

9. As per the instructions so produced by Mr. P.K. Borah, the learned counsel appearing on behalf of the Elementary Education Department, the said suspension has not yet been approved and the process of reinstatement is also pending before the department pending drawal of departmental proceedings. This court would like to take note of the paragraph No. 21 of the judgment in the case of Ajay Kr. Choudhury (supra) which is reproduced herein below :-

“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 served 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize 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.”

10. Applying the law laid down in the case of Ajay Kr.Choudhury(supra) which stipulates 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/the employee this Court is of the opinion that the said ratio squarely applies to the facts of the instant case inasmuch as in the instant case, the petitioner though suspended on 21/6/2022, till now even after a passage of more than 8 months has not yet been served with any memorandum of charges/charge sheet.

11. Considering the above, this Court therefore interferes with the continuation of the impugned order dated 21/6/2022 on being contrary to the law laid down by the Supreme Court in the case of Ajay Kr. Choudhury(supra) and accordingly directs the Respondent Authorities to forthwith reinstate the petitioner.

12. This Court further would also like to take note that in the said judgment the Government has been given the liberty to transfer the person concerned to any department in any of its offices within the State so as to sever any local or personal contact that he may have and which the delinquent may misuse for obstructing the investigation against him and also the Government may also prohibit the delinquent officer from contacting any person or handling records and documents till the stage of the delinquent having to prepare his defence.

13. Considering the above, this Court therefore gives liberty to the respondent authorities to take such action as deemed fit in terms with paragraph No. 12 hereinabove.

14. With the above observations and directions, the petition stands disposed off.

JUDGE

Comparing Assistant