

GAHC010244092023



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

Case No. : WP(C)/6572/2023

BOZLUL BASIT SARKAR
S/O- MONSUR RAHMAN SARKAR,
R/O- HALUAPARA WARD NO. 8,
LAKHIPUR, P.S.- LAKHIPUR,
P.O.- LAKHIPUR, DISTRICT- GOALPARA,
ASSAM, PIN- 783129.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
GUWAHATI-6.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

4:THE DEPUTY COMMISSIONER
GOALPARA
PIN- 783121.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DISTRICT- GOALPARA
ASSAM
PIN- 782002

Advocate for the Petitioner : MR T H HAZARIKA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 17-11-2023

1. Heard Mr. TH Hazarika, learned counsel for the petitioner, who submits that the petitioner was placed under suspension on 06.03.2023 as he had been arrested on 03.03.2023 in connection with ACB P.S. Case No. 09/2023 under Section 7(a) of the Prevention of Corruption Act, 1988. The petitioner was released on bail on 03.05.2023 vide Bail Application No. 1407/2023 and the show cause notice was issued to the petitioner on 07.07.2023.

2. The petitioner's counsel submits that in terms of the judgment of the Supreme Court in ***Ajay Kumar Choudhary vs. Union of India through its Secretary & Anr.***, reported in ***(2015) 7 SCC 291*** and the Division Bench judgment of this Court in ***Rokibuddin Ahmed vs. State of Assam***, reported ***2020 (2) GLR 621***, the review for extension of the suspension order made on 06.03.2023, not having been undertaken within 90 days from the date of the suspension order, the suspension order cannot survive and has to be set aside.

3. Mr. PN Sarma, learned counsel for the Elementary Education Department,

on the other hand submits that in terms of the judgment of this Court in ***Rafed Ali Ahmed vs. State of Assam & Ors.*** in ***WP(C) No. 455/2023***, which has dealt with the effect of the judgment of the Supreme Court in ***Ajay Kumar Choudhary (supra)*** and the Division Bench judgment of this Court in ***Rokibuddin Ahmed (supra)*** coupled with Rule 6(2) of the Assam Services (Disciplinary and Appeal) Rules, 1964, the Government servant would have to be considered to be under suspension during the entire period he is in custody. As such, the time limit given for review of the suspension order for extension of the same pursuant to the judgment of the Supreme Court in ***Ajay Kumar Choudhary (supra)*** and the Division Bench judgment of this Court in ***Rokibuddin Ahmed (supra)*** would only be applicable from the date the Government servant is released on bail and the same is intimated to the authorities.

4. In terms of the judgment of this Court in ***Rafed Ali Ahmed (supra)***, the period of 90 days given for review of a suspension order in cases involving deemed suspension in terms of ***Ajay Kumar Choudhary (supra)*** and ***Rokibuddin Ahmed (supra)*** is to be counted from the date the Government servant informs the authorities of his release on bail. In the present case, the authorities were apparently informed of the release of the Government servant on bail on 15.05.2023. Even otherwise, the Government servant/petitioner having been released on bail on 03.05.2023 and the show cause notice initiating the departmental proceeding having been issued on 07.07.2023, i.e., within 90 days from the date of his release on bail, there is no ground for setting aside the suspension order, in terms of the judgment of the Supreme Court in ***Ajay Kumar Choudhary (supra)*** and the Division Bench judgment of this Court in ***Rokibuddin Ahmed (supra)***. Consequently, the writ petition fails and is

dismissed.

JUDGE

Comparing Assistant