

GAHC010258532022



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

Case No. : WP(C)/8162/2022

SANJIT KUMAR DAS
SON OF LATE SUDHIR KUMAR DAS,
RESIDENT OF MAULANA AZAD ROAD,
NAGAON TOWN, P.O. AND P.S.- NAGAON SADAR,
DISTRICT- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS .
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
GENERAL ADMINISTRATION DEPARTMENT, ASSAM,
DISPUR, GUWAHATI- 06.

2:THE DEPUTY COMMISSIONER
HOJAI
SANKARDEV NAGAR
DISTRICT- HOJAI
ASSAM.

3:THE CIRCLE OFFICER
DABAKA REVENUE CIRCLE
HOJAI
ASSAM

Advocate for the Petitioner : MR. J M A CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

25.01.2023

Heard Mr. J.M.A. Choudhury, learned counsel appearing on behalf of the petitioner and Mr. R. Dhar, learned counsel appearing on behalf of all the respondents.

2. The petitioner's grievance in this case is that though the petitioner was suspended on 03.02.2022 as the petitioner was arrested in connection with Dabaka P.S. Case No.43/2022 registered under Section 12B/384/409/420 IPC pending departmental proceedings being initiated but till date the petitioner is still kept under suspension though the respondent authorities have neither reviewed the suspension order nor have extended the suspension.

3. The learned counsel appearing on behalf of the petitioner has submitted in terms of the judgment of the Apex Court in the case of ***Ajay Kumar Choudhary Vs Union of India & Another***, reported in ***(2015) 7 SCC 291***, that as there has been no review of the original suspension order dated 03.02.2022, after the period of 3 (three) months, the said suspension on the face of it is contrary to the law laid down by the Apex Court in Ajay Kumar Choudhary (supra). He further submitted that even in the case of deemed suspension, the Division Bench of this Court have also reiterated that the law as laid down by the Supreme Court in the case of Ajay Kumar Choudhary (supra) would be applicable.

4. Mr. R. Dhar, learned counsel appearing on behalf of the respondents has submitted that admittedly pursuant to the initial order of suspension dated 03.02.2022 though the departmental proceedings have been initiated but the charge-sheet has not yet been filed.

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

6. The Apex Court in the case of Ajay Kumar Choudhary (supra) had held that the currency of suspension order should not extend beyond three months, if within the said period, the Memorandum of Charges/charge-sheet is not served on the delinquent officer or the employee. It was further observed that if the Memorandum of Charges/charge-sheet is served, a reasoned order must be passed for extension of the suspension.

7. In the present case as no charge-sheet has been filed in the criminal case against the petitioner. The Inquiry Officer and the Presenting Officer have only been appointed on 03.06.2022 and the petitioner has not served the Memorandum of Charges/charge-sheet till date. Therefore, the question of continuance with the said suspension order dated 03.02.2023 is on the face of it contrary to the law laid down in the Ajay Kumar Choudhary (supra).

8. In that view of the matter, the impugned suspension order dated 03.02.2022 have lost it's force by virtue of the law laid down by the Supreme Court in the case of Ajay Kumar Choudhary (supra) and accordingly the same is set aside and quashed.

9. There is a further relief sought for to the effect that the Mandamus be issued directing the respondent authorities to allow the petitioner to rejoin his duties. Taking into account that the suspension order has been set aside by this Court, as the petitioner is entitled to be reinstated. Taking into consideration that the Respondent Authorities are in the best position to know where the petitioner's services is utilised, the respondents are given the liberty to assign the petitioner in any of its offices within the State of Assam so as to sever any local or personal contact that the petitioner may have and which he may misuse for obstructing the enquiry proceedings against him. The respondents are also given the liberty to prohibit the petitioner from contacting any person, or handling records and documents which have a bearing on the said enquiry proceedings.

10. Accordingly, the petition stands disposed of on the basis of the observations and directions made hereinabove.

JUDGE

Comparing Assistant