

GAHC010262052022



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

Case No. : WP(C)/8268/2022

DIPANKAR DEHINGIA
S/O LATE DONDIRAM DEHINGIA, R/O HOUSE NO. 1138, DR. ZAKIR
HUSSAIN PATH, SARUMOTORIA, DISPUR, GUWAHATI-6, DIST- KAMRUP
(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY, POWER (ELECTRICITY)
DEPARTMENT, D-BLOCK, 1ST FLOOR, ASSAM SECRETARIAT, DISPUR,
GUWAHATI-06

2:THE CHAIRMAN
ASSAM ELECTRICITY GRID CORPORATION LIMITED (AEGCL)
BIJULEE BHWAN
PALTANBAZAR
GUWAHATI-1

3:THE MANAGING DIRECTOR
AEGCL
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-1

4:THE GENERAL MANAGER (HR) I/C
AEGCL
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 29.03.2023

Heard Mr. A. Chakraborty, the learned counsel appearing on behalf of the petitioner. Mr. S. Katoki, the learned counsel appears for the respondent Nos. 2, 3 and 4, Ms.S. Baruah, the learned counsel appears for the respondent No. 1.

2. The instant writ petition has been filed by the petitioner challenging the order dated 26/9/2021 whereby the Managing Director, AEGCL has suspended the petitioner with immediate effect under Rule 3(i) (a) , Rule 3(1) (b) and Rule 3 (i) (c) of Rule 10 of the ASEB General Service Regulations(For Officers), 1960 pending drawal of departmental proceedings. It appears on record that in connection with Vigilance P.S. Case No. 4/2021 registered under Sections 120(B)/420/468/471 of the Indian Penal Code, 1860 read with Section 7(c)/13(2) of the Prevention of Corruption Act, 1988. The petitioner was arrested on 24/9/2021. Thereupon the petitioner was produced before the Court of the Special Judge, Assam on 25/9/2021. As stated above on 26/9/2021 on the ground that the petitioner was arrested for a period of more than 48 hours, he was put under suspension vide the order dated 26/9/2021. It further appears on record that on 18/11/2021 in Bail Application No. 2940/2021, the petitioner was granted bail. The petitioner thereupon submitted a representation dated 24/11/202 before the respondent No. 3 i.e. the Managing Director, AEGCL for revoking his suspension and allow him to resume his duties.

3. It appears on record that the respondent Nos. 2,3 and 4 who is the disciplinary authority have not served the memorandum of charges/ the charge-

sheet upon the petitioner till date but have been continuing with the said suspension order thereby extending it periodically every 90 days. It is under such circumstances, the petitioner had initially approached this Court by filing a writ petition, which was registered and numbered as W.P.(C) No. 7483/2022. This Court disposed off the said writ petition directing the Chairman of the Assam Electricity Grid Corporation Limited to pass a reasoned order upon examination of the claim of the petitioner for vacating the suspension order. It further appears that on 12/12/2022 the respondent/Managing Director of the AEGCL had instead of considering the case of the petitioner for reinstatement have further extended the suspension order for another period of 90 days or until further orders. Being aggrieved the petitioner is therefore before this Court.

4. This Court have perused Rule 10 of the ASEB General Service Regulations(For Officers), 1960. A perusal of Rule 10 shows that the same is in parametaria to Rule 6 of the Assam Service (Discipline and Appeal) Rules,1964. Rule 10(3) (ii) is similar to Rule 6(2) of the Rules of 1964.

5. This Court had made a specific query upon Mr. S. Kotoki, the learned counsel appearing on behalf of the respondent Nos. 2, 3 and 4 as to whether any memorandum of charges/the charge-sheet has been served upon the petitioner in the meantime. The learned counsel appearing on behalf of the said respondents with all fairness submitted that that memorandum of charges/the charge-sheet has not been served upon the petitioner on the ground that the same could not be prepared in view of the fact that the documents on the basis of which the authorities would be issuing the memorandum of charges/the charge-sheet is lying with the police.

6. This Court would further like to take note of the judgment of the Supreme Court in the case of **Ajay Kr. Choudhury Vs. Union of India** reported in

(**2015**) **7 SCC 291** wherein in paragraph 21 the Supreme Court had categorically mandated that the currency of a suspension order should not exceed more than three months unless and until the memorandum of charges, chargesheet is not served upon the delinquent employee and if served then there has to be a review for by reasons to be recorded.

7. The Division Bench of this Court in the case of **Rakibuddin Ahmed Vs. State of Assam** and Ors. reported in (**2020**) **2 GLR 621** had categorically observed that the principles as laid down in Ajay Kr. Choudhury(supra) duly applies to a case of deemed suspension under Rule 6(2) of the Rules of 1964 which is parametaria to Rule 10(3) (ii) of the Assam State Electricity Board General Service Regulations(For Officers), 1960. Subsequently thereto, this Court had also vide a judgment and order dated 17/2/2023 in **Rafed Ali Ahmed Vs. The State of Assam & Ors. (W.P.(C) No. 455/2023)** have also categorically held that the law laid down by the Supreme Court in Ajay Kr. Choudhury(supra) to the effect that the period of three months shall be counted from the date on which the representation has been submitted that the petitioner has been released on bail or otherwise is not in custody or imprisonment.

8. It appears on record that the respondent authorities are aware of the fact that the petitioner was released on bail on 18/11/2021 as the same was duly intimated on 24/11/2021.

9. I have also perused the order dated 12/12/2022 by which the petitioner's request for being reinstated has been turned down. In doing so, the authorities concerned have not taken into account the judgment of the Supreme Court in the case of Ajay Kumar Choudhury(supra). Taking into account that the further continuation of the suspension order dated 26/9/2021 and the various extension to the said suspension order after every 90 days and the order dated 12/12/2022

being contrary to the law laid down by the Supreme Court in Ajay Kr. Choudhury(supra), this Court therefore directs the respondents to forthwith reinstate the petitioner. As submitted by the learned counsel appearing on behalf of the petitioner that the petitioner is going to retire on 31/3/2023. Consequently, the respondent authorities are directed to reinstate forthwith the petitioner to a non-sensitive post taking into account the contemplation of the departmental proceedings.

10. With the above, the petition stands disposed.

JUDGE

Comparing Assistant