

GAHC010265442022



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

Case No. : WP(C)/8332/2022

RAM BABU VERMA
S/O- LATE PROHLAD PROSAD VERMA,
RESIDENT OF VILL. RANGABAK PART-I,
P.O. AND P.S.- KATLICHERRA,
DIST.- HAILAKANDI, ASSAM
PIN- 788161.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO GOVT. OF
ASSAM,
EDUCATION DEPARTMENT (ELEMENTARY),
DISPUR, GUWAHATI- 6.

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

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

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

Advocate for the Petitioner : MR. S B LASKAR
Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

17-01-2023

Heard Mr. H. A. Laskar, learned counsel for the petitioner and Mr. N. J. Khataniar, learned Standing Counsel, Department of School Education (Elementary) for all the respondent Nos. 1 to 4.

Petitioner is the Head Teacher of 725 Swarnamoyee L. P. School, a provincialised L.P. School of the State in the Katlicherra Education Block of District Hailakandi. He joined the said School in the year 1993 as an Assistant Teacher and later he was promoted to the post of Head Teacher.

By an order under Memo No.DEH/Sus/2021-22/1981-85/2154-58 dated 09.09.2022 the District Elementary Education Officer, Hailakandi placed the petitioner under suspension with immediate effect on the ground of negligence in duty, misappropriation of Government fund, inefficiency and incapability towards management of the School, providing that during the period of his suspension, the petitioner will get the subsistence allowance as admissible under the Rules.

As the petitioner did not receive any show-cause notice till December, 2022, he on 20.12.2022 preferred this writ petition challenging the said suspension order dated 09.09.2022 and prayed to reinstate him in service as Head Teacher of said 725 Swarnamoyee L. P. School.

Pursuant to the order dated 22.12.2022 Mr. N. J. Khataniar, learned Standing Counsel, Department of School (Elementary) Education on specific telephonic information received from the Directorate of Elementary Education,

Assam submitted that after placing the petitioner under suspension on 09.09.2022, noted above, the District Elementary Education Officer, Hailakandi till date have not issued any show-cause notice to him in that regard.

Rule 6 of the Assam Services (Discipline and Appeal) Rules, 1964, a statutory Rule under Article 309 of the Constitution of India relates to the disciplinary and appeal rules of a government employee of the State.

The Personnel Department of the State have notified the Manual of Departmental Proceedings to aid such disciplinary and appeal proceedings. Chapter II of the said Manual relates to 'Suspension' – 'By whom and when a Government Servant may be suspended'. Rule 6(1)2.1.8 of said Chapter-II, Suspension of the Manual of the Departmental Proceedings, reads as follows-

“2.1.8. The following principles and procedure with regard to suspension need strict compliance-

- (i) Suspension should be resorted to only in cases where a major punishment is likely to be imposed if the charges are proved;
- (ii) Charges and the statement of allegations should be served within three months from the date of suspension failing which the Government Servant Page No.# 4/5 concerned should be reinstated; and
- (iii) in cases where it is not reasonably practicable to prepare the charges for service within three months from the date of suspension and the continued suspension of the Government servant is considered necessary in the public interest, the authority concerned should move the Personnel Department through Administrative Department well before the expiry of the period of three months with a letter detailing the nature of the allegations and the reasons for which charges could not be prepared so that the Personnel Department could advise whether any further extension of the period of suspension should be permitted or not.

Where the services of a Government servant are lent to the Central Government, any other State Government or to local or other Authority, the Borrowing Authority will have the powers of the Appointing Authority for the purpose of placing the officer under suspension

and of the Disciplinary Authority for the purpose of initiating a disciplinary proceeding against him subject to the provisions of the Assam Services (Discipline and Appeal) Rules, 1964.

(O.M. No. ABP. 284/79/1, dated 5th September, 1979)”

Further, the Hon’ble Apex Court in the case of *Ajay Kumar Choudhary –Vs- Union of India* reported in (2015) 7 SCC 291 have held that –

“The currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Charge-sheet is served a reasoned order must be passed for the extension of the suspension.”

The DEEO, Hailakandi failed to place any relevant information before the Court regarding serving of show-cause notice to the petitioner after placing the petitioner under suspension by its order dated 09.09.2022 and the said authority also failed to show as to when it reviewed the matter of suspension of the petitioner as required under the provisions of the Assam Services (Discipline & Appeal) Rules, 1964.

Considering the entire aspect of the matter and the decision of the Hon’ble Apex Court in the case of *Ajay Kumar Choudhary (Supra)* as well as the provisions of Rule 6(1)2.1.8., of the Chapter-II, ‘Suspension’ of the Manual of Departmental Proceedings, Assam, noted above, the impugned suspension order of the petitioner issued by the DEEO, Hailakandi under No.DEH/Sus/2021-22/1981-85/2154-58 dated 09.09.2022 being not tenable in law is set aside and quashed.

In view of the above, the DEEO, Hailakandi shall reinstate the petitioner in service forthwith.

However, it is made clear that if the respondent authorities in the Elementary Education Department decide to initiate any Departmental

proceeding against the petitioner, in that case, it will be upto the said authority regarding posting of the petitioner.

With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant