

GAHC010266922022



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

Case No. : WP(C)/8401/2022

ABDUL MATLEB MAZUMDAR
S/O LATE MOHIR UDDIN, P/R/O VILL-CHANDANPUR, P.S.-BARPETA, P.O.-
BORGUL, PIN-781304, DIST-BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, SECONDARY EDUCATION DEPARTMENT,
DISPUR-781006

2:TEH DIRECTOR CUM DISCIPLINARY AUTHORITY
SECONDARY EDUCATION DEPARTMENT
KAHILIPARA
GUWAHATI-19
KAMRUP (M)
ASSAM

3:THE DEPUTY COMMISSIONER
BARPETA
PIN-781301
ASSAM

4:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
DIST-BARPETA
PIN-781314
ASSA

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

10/01/2023

Heard Mr. P Mahanta, learned counsel for the petitioner. Also heard Mr. U Sarma, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1, 2 & 4 and Ms. D Das Barman, learned Government Advocate, Assam for respondent No. 3.

Petitioner, a Headmaster of G.C.R. High School, Rahampur in the district of Barpeta, a provincialised Secondary School of the State, was arrested on 31.08.2022 in connection with Barpeta Police Station Case No. 869/2022 registered under Sections 406/417/409/379/468/471 IPC. Later, this Court by order dated 19.09.2022 passed in Bail Application No. 2377/2022, that was preferred by him, released the petitioner on bail.

The Director-cum-Disciplinary Authority of Secondary Education, Assam vide its order under No. GB-EST/Allegation/50/2022/4 dated 08.09.2022 placed the petitioner under suspension w.e.f. 31.08.2022 following the provisions of Rule 6 (2) of the Assam Services (Discipline & Appeal) Rules, 1964.

As the respondent authorities did not serve him any Show Cause Notice after placing him under suspension by order dated 08.09.2022 w.e.f. 31.08.2022, the petitioner on 10.10.2022 submitted a representation before the Director of Secondary Education-cum-Disciplinary Authority praying to re-instate him in service by revoking the impugned order of suspension dated 08.09.2022 and to exonerate him from any such fault that he might have committed. As nothing progressed, the petitioner has filed this writ petition on 21.12.2022 praying amongst others for setting aside the impugned order of his suspension from service dated 08.09.2022.

By order dated 02.01.2023, the Court directed the concerned Director-cum-Disciplinary Authority of Secondary Education Department to apprise the Court as to when the said authority reviewed the order of suspension of the petitioner dated 08.09.2022 and as to when, the petitioner was furnished with the Show Cause Notice in terms of the said suspension order dated 08.09.2022,

fixing the matter today.

During the deliberation of the matter, Mr. U Sarma, learned Standing counsel, Department of School (Secondary) Education, Assam placed a copy of the show cause notice under No. GB-EST/Allegation/50/2022/33 dated 29.12.2022 issued by the Director-cum-Disciplinary Authority of Secondary Education, Assam before the Court that contains the charges, statement of allegations, list of documents and list of witnesses.

Mr. Mahanta, learned counsel, on instruction submitted that the petitioner received the said Show Cause Notice dated 29.12.2022 on 05.01.2023.

It is seen that pursuant to the arrest of the petitioner on 31.08.2022 in connection with Barpeta Police Station Case No. 869/2022, the Director-cum-Disciplinary Authority by the impugned order dated 08.09.2022 suspended the petitioner from service w.e.f. 31.08.2022 and the said authority issued the show cause notice to him only on 29.12.2022.

Rule 6 of the Assam Services (Discipline and Appeal) Rules, 1964, a statutory Rules 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 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 Director-cum-Disciplinary Authority failed to show as to when it reviewed the matter of suspension of the petitioner from service as required under the provisions of the Manual of Departmental Proceedings framed under the said 1964 Rules. Moreover, the said authority after placing the petitioner on suspension from service vide order dated 08.09.2022 w.e.f. 31.08.2022 issued the Show Cause Notice to him only on 29.12.2022 after more than 3 months from the date of placing him under suspension.

After hearing the learned counsels for the parties, considering the entire aspects of the matter and the decision of the Hon'ble Apex Court in the case of *Ajay Kumar Choudhury (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 Court found that the impugned order of suspension of the petitioner from service issued by the Director-cum-Disciplinary Authority of Secondary Education, Assam under No. GB-EST/Allegation/50/ 2022/4 dated 08.09.2022 is not sustainable in law and accordingly, the said impugned order of suspension of the petitioner dated 08.09.2022 is set aside and quashed.

Since the said impugned order of suspension of the petitioner under No. GB-EST/Allegation/50/ 2022/4 dated 08.09.2022 issued by the Director-cum-Disciplinary Authority of Secondary Education, Assam is now set aside and quashed, the said authority shall now reinstate the

petitioner in service forthwith.

As the Director-cum-Disciplinary Authority of Secondary Education, Assam on 29.12.2022 have issued Show Cause Notice to the petitioner, thereby initiating a disciplinary proceeding against him under the provisions of the Assam Services (Discipline and Appeal) Rules, 1964, therefore, it is up to the said Director-cum-Disciplinary Authority of Secondary Education, Assam regarding posting of the petitioner after his reinstatement in service.

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

Copy of the communication of the Disciplinary Authority-cum-Director of Secondary Education, Assam placed before the Court today by Mr. U Sarma, learned Standing counsel, Department of School (Secondary) Education, Assam be kept as a part of the record.

JUDGE

Comparing Assistant