

GAHC040004322024



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

Case No. : WP(C)/147/2024

Radek Romin
Son of Late Bomra Romin, resident of Lik Gumin Colony, Aalo, PO and PS Aalo,
West Siang District, Arunachal Pradesh

VERSUS

The State of AP and 2 Ors
through the Commissioner/ Secretary (Education) Govt of Arunachal Pradesh,
Itanagar

2:The Dirctor of Elementary Education
Age: 0
Occupation :

3:The Deputy Director Secondary Educcarion
Age: 0
Occupation

Advocate for the Petitioner : M Opo

Advocate for the Respondent : Taba Tagum

**BEFORE
HONBLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 15.07.2024

Heard Mr. M. Opo, learned counsel for the petitioner. Also heard Mr. T. Tagum, learned Standing Counsel for the Education Department.

2. The case of the petitioner is that he was serving as a Block Education Officer (BEO) in Officer of the Deputy Director of School Education (DDSE), Aalo, West Siang District, Arunachal Pradesh. By an order dated 01.12.2022 issued by the Commissioner (Education) Govt. of Arunachal Pradesh, Itanagar, he was placed under suspension by invoking powers under Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965 with effect from 25.11.2022 on the ground that there is a case against the petitioner which is under investigation in connection with SIC (VIG) PS C/No. 12/2022 under Section 120(B)/406/409/420 IPC R/w Section 7/8/13(2) of P.C Act, 1988 pertaining to paper leakage in the APPSCCE 2017 and other examination. Since then, the petitioner is under suspension.

3. The further case of the petitioner is that, he was arrested on 25.11.2022 in connection with the above SIC (VIG) PS C/No. 12/2022; however, by an order dated 27.02.2023 passed by the learned Special Judge, PC Act, Yupia in BA. No. 53/2023 in CBI Case No. RC0172023A0001, the petitioner was released on bail. And in the meantime, a departmental proceeding was initiated against

the petitioner by serving memorandum of charge on 07.01.2023.

4. The grievance of the petitioner in the instant writ petition is that the order of suspension issued by the respondent No. 1 on 01.12.2022 has neither been reviewed nor extended by the authorities till date by passing a reasoned order. As a result of which, serious prejudice has been caused to the interest of the petitioner.

5. Mr. M. Opo, learned counsel for the petitioner referring to the decision of the Hon'ble Supreme Court rendered in the case of ***Ajay Kr. Choudhury vs. UoI through its Secretary & Anr.*** reported in **(2015) 7 SCC 291** as well as a decision of the Division Bench of this Court rendered in the case of ***State of Assam & Anr. Vs. Ajit Sonowal & Ors.*** reported in **2023 (6) GLT 115**. The learned counsel for the petitioner has argued that the order of suspension, not having been reviewed on the expiry of 90(ninety) days, has automatically lost its force and therefore, the same is liable to be interfered with by this Court on such count alone. The learned counsel for the petitioner also referred to the order dated 18.03.2024 passed by the Coordinate Bench of this Hon'ble High Court in the similar nature of the case, in the case of ***Opet Mibang vs. the State of Arunachal Pradesh & 2(two) Ors.*** in **WP C No. 510(AP)/2023**. According to the learned counsel for the petitioner the case of the present petitioner is squarely covered by the decision of the Supreme Court rendered in the case of ***Ajay Kr. Choudhury (Supra)***, the decision of Division Bench of this Court in ***Ajit Sonowal (Supra)***, as well as the case of ***Opet Mibang*** as mentioned above; and therefore, the impugned order be quashed and the

petitioner be reinstated in service.

6. Mr. T. Tagum, learned Standing Counsel for the Education Department fairly submitted that although by an order dated 01.22.2022, the petitioner was placed under suspension. However, the said suspension order had neither been reviewed nor extended till date. And to that extend Mr. Tagum, learned Standing Counsel while conceding with the submission made by the learned counsel for the petitioner did not make any submission disputing the submission made by the learned counsel for the petitioner.

7. In the case of **Ajay Kr. Choudhury (Supra)**, the Hon'ble Supreme Court has held that an order of suspension should not extend beyond 3(three) months if within that period, memorandum of charges/charge-sheet is not served upon the delinquent officer and even if a memorandum of charge is served, a reasoned order must be passed for extension of the period of suspension.

Taking note of the law laid down in the case of **Ajay Kr. Choudhury (Supra)** as well as in the case of **UoI & Ors. vs. Dipak Mali** reported in **(2010) 2 SCC 222**, the Division Bench of this Court in the case of **Ajit Sonowal (Supra)** has held in paragraph 13 as follows:

"13. From careful analysis of the above decisions of the Supreme Court what follows is that unless review is held within 90(ninety) days, an order of suspension including one issued due to the detention of an employee in custody for 48 hours, would not survive nor can such an order be granted

fresh lease of life by carrying out a review after expiry of the period of 90 (ninety) days. In view of the law laid down in the case of Dipak Mali (supra) and Ajay Kumar Choudhury (supra) it is axiomatic that the order of suspension dated 07.12.2019 had lapsed after expiry of 90(ninety) days due to want of review of the same by the Disciplinary Authority. We, therefore, find ourselves in agreement with the findings recorded by the learned Single Judge in the impugned Judgment and Order dated 22.04.2021”.

8. In view of the law laid down by the Hon’ble Supreme Court as well as by the Division Bench of this Court, there can no manner of doubt that the order of suspension dated 01.12.2022, not having been reviewed nor extended by a reasoned order within 90(ninety) days of passing the same, the said order dated 01.12.2022 had lost its force upon expiry of 90(ninety) days. As such, the impugned order dated 01.12.2022 is hereby set aside with a direction upon the respondent authorities to reinstate the petitioner in service.

9. However, in view of the fact that a departmental proceeding has already been initiated against the petitioner, liberty is granted to the authorities to issue fresh order of suspension qua the petitioner, if so advised, after complying with the present order of this Court.

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

JUDGE

Comparing Assistant