

GAHC040004562024



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

Case No. : WP(C)/156/2024

Iken Bagra
Son of Shi Dagi Bagra, Resident of Gaur Hill, Aalo, Po and PS Aalo, West Siang
District, Arunachal Pradesh

VERSUS

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

2:The Director of Elementary Education, Govt of Arunachal Pradesh, Itanagar.

Advocate for the Petitioner : Kamal Saxena
M. Pertin
E Payeng

Advocate for the Respondent : Taba Tagum SC(Edn)

BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 22.07.2024

Heard Mr. Kamal Saxena, learned counsel for the petitioner. Also heard Mr. Taba Tagum, learned standing counsel, Department of Education, appearing on behalf of all the respondents.

2. The petitioner, by way of instituting the present proceeding, has presented a challenge to an order, dated 01.12.2022, issued by the Commissioner(Education), Government of Arunachal Pradesh, Itanagar, placing him under suspension with effect from the date of his detention i.e. 25.11.2022 in connection with a criminal case.

3. As projected in the writ petition, the petitioner, herein, was placed under detention in connection with SIC(Vig.) PS Case No. 12/2022 under Sections 406/409/120(B)/420 of the Indian Penal Code *read with* Section 7/8/13(2) of the Prevention of Corruption Act, 1988, on 25.11.2022. The information of his detention in connection with the said case on coming to the knowledge of the departmental authorities; the order of suspension, dated 01.12.2022, came to be so issued against the petitioner, herein. The said order of suspension was followed by a memorandum of charge, dated 05.12.2022 issued against the petitioner, herein, initiating a departmental proceeding against him. The petitioner, thereafter, on 23.01.2023, submitted his written statement in pursuance to the said memorandum of charge, dated 05.12.2022. The petitioner was enlarged on bail vide order, dated 04.05.2023, issued by the learned Special Judge(CBI), Yupia. The order of suspension having not been reviewed, although the petitioner was enlarged on bail vide order, dated 04.05.2023; the petitioner submitted a representation, dated 23.08.2023, praying for revocation of his order of suspension and the same not being considered, the present proceeding has been so instituted by the petitioner, herein.

4. It is an admitted position that the petitioner was placed under detention in connection with SIC(Vig.) PS Case No. 12/2022 under Sections 406/409/120(B)/420 of the Indian Penal Code *read with* Section 7/8/13(2) of the Prevention of Corruption Act, 1988. The petitioner, was thereafter, enlarged on bail by the learned Special Judge(CBI), Yupia, on 04.05.2023.

5. It is seen from the materials brought on record that the petitioner on being enlarged on bail; was required to appear before the Deputy Director of School Education, East Siang District, Pasighat, for an inquiry on 19.05.2023, and the petitioner contends to have appeared before the said authority on the said date i.e. 19.05.2023, and also on subsequent occasions as called for.

6. The petitioner has further contended that a copy of the bail order was also placed before the said authority on his such appearance in the said inquiry. However, it is seen that the petitioner on being enlarged on bail; the departmental authorities had not carried-out a review to ascertain if there exists any necessity for continuation of the suspension of the petitioner.

7. The Central Civil Services (Classification, Control and Appeal) Rules, 1965, were amended in the year 2022 and the proviso to sub-rule 7 of Rule 10, was substituted as follows:

"Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under detention and in such case the ninety days' period shall be computed from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later:

Provided further that in a case where no charge sheet is issued under these rules, the total period under suspension or deemed suspension, as the case may be, including any extended period in terms of sub-rule (6) shall not exceed,-

(a) two hundred seventy days from the date of order of suspension, if the Government servant is placed under suspension in terms of clause (a) of sub-rule (1); or

(b) two years from the date of order of suspension, if the Government servant is placed under suspension in terms of clause (aa) or clause (b) of sub-rule (1) as the case may be; or

(c) two years from the date the Government servant detained in custody is released or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later, in the case of deemed suspension under sub-rule (2)."

8. On a consideration of the substituted provisions of sub-rule 7 of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, coming into force in terms of the amendment effected in the year 2022; it is seen that the review of suspension in respect of a government servant placed under detention shall not be mandated to be carried out till the date such government servant remains under detention and the period of 90 days as mandated for carrying out the review of the order of suspension in respect of such government servant, would be so computed from the date the government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever, is later.

9. In the present case; it is seen that the fact that the petitioner was enlarged on bail on 04.05.2023, had come to the knowledge of the respondent authorities on 19.05.2023 when the petitioner had appeared before the Deputy

Director of School Education, East Siang District, Pasighat, in the inquiry being so conducted against him. In the facts as involved in the present case, it is the date i.e. 19.05.2023, which has to be reckoned for the purpose of imputing knowledge to the respondents about the fact of the petitioner being enlarged on bail in connection with the criminal case so instituted against him and accordingly, the period of 90 days prescribed for carrying-out of the review of the order of suspension of the petitioner would so begin from the said date i.e. 19.05.2023.

10. It is seen, in the present case, that even after a lapse of 90 days from 19.05.2023; the respondent authorities have not carried-out any review with regard to the necessity of continuing with the order of suspension as issued against the petitioner vide order, dated 01.12.2022.

11. In this connection, Mr. Tagum, learned standing counsel, Education Department; has fairly submitted that the respondent authorities have not carried-out any review in respect of the order of suspension as issued against the petitioner vide the order, dated 01.12.2022. Accordingly, the respondent authorities having knowledge of the enlargement of the petitioner on bail on 04.05.2023, at least on 19.05.2023; it is to be held that in terms of the Rules governing the field, no review having been carried-out within the said period of 90 days therefrom, the order of suspension has already lost its validity.

12. In view of the above position; the order of suspension, dated 01.12.2022, as issued in respect of the petitioner, herein, having lost its validity on the same

not being reviewed in terms of provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as well as in the light of the decision rendered by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary & anr.**, reported in **(2015) 7 SCC 291**; the said order of suspension, dated 01.12.2022, cannot be now permitted to be continued. Accordingly, the impugned order of suspension, dated 01.12.2022; is hereby set aside.

13. This Court having interfered with the order of suspension, dated 01.12.2022; the respondent authorities are hereby directed to reinstate the petitioner, herein, in his service as a Block Education Officer(BEO) in the Department of Education, Government of Arunachal Pradesh.

14. However, liberty is granted to the respondent authorities to transfer the petitioner, herein, to any other place, other than the place wherein he was working at the time he was placed under detention and consequently, placed under suspension, as provided for in paragraph No. 21 of the decision of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary**(supra). For ready reference, the paragraph No. 21 of the judgment in the said case, is extracted hereinbelow:

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet 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. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest

of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

15. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant