

GAHC040005862024



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

Case No. : WP(C)/184/2024

Posi Gamlin
Son of Late Mipo Gamlin, Tego Village, PO and PS Yomcha, 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
Age: 0 Occupation :

Advocate for the Petitioner : T T Tara
J Jini
B Picha
A T Tara
Tao Tarin

Advocate for the Respondent : Taba Tagum

BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 15.07.2024

Heard Mr. J. Jini, learned counsel for the petitioner. Also heard Mr. Taba Tagum, learned standing counsel, Education Department, 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, by which, he was placed under suspension w.e.f. 14.11.2022, with a further prayer for his reinstatement in service.

3. The petitioner, herein, while working as a Block Education Officer(BEO), came to be placed under detention in connection with SIC(Vig.) PS Case No. 12/2022 registered under Sections 406/409/420/120(B) of the Indian Penal Code *read with* Section 7/8/13(2) of the Prevention of Corruption Act, 1988.

4. The petitioner having remained under detention for 48 hours and the same coming to the notice of the departmental authorities; the Commissioner, Education Department, Government of Arunachal Pradesh, vide order, dated 01.12.2022, proceeded to place the petitioner under suspension invoking the provisions of Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, w.e.f. 14.11.2022 i.e. the date of his detention. After issuance of the said order of suspension; the petitioner was served with a memorandum of charge, dated 05.01.2023, instituting a departmental proceeding against him. The petitioner submitted his written statement against the said memorandum of charge on 23.01.2023.

5. It is to be noted that at the relevant point of time; the petitioner continued to be under detention.

6. The petitioner was thereafter, vide order, dated 13.02.2023, passed by the learned Special Judge(PCA), Yupia, in BA No. 36/2023; enlarged on bail on having completed the mandatory period of detention and the charge sheet not having been filed in the matter. On being so enlarged on bail; the petitioner vide communication, dated 16.02.2023, approached the Commissioner, Education Department, Government of Arunachal Pradesh, intimating the authorities about his such release from detention.

7. It is the case of the petitioner that inspite of the petitioner being released from detention and the same being intimated by him to the respondent authorities; the authorities have not

carried-out any review with regard to the necessity of continuation of the order of suspension.

8. Mr. Jini, learned counsel for the petitioner, has submitted that the respondent authorities having not carried-out the mandatory review of the order of suspension after completion of 90 days of the issuance of the same; the same cannot be held to be valid and has automatically lost its force in view of the decision of the Hon'ble Supreme Court in the case of *Ajay Kr. Choudhury v. Union of India through its Secretary & anr.* reported in (2015) 7 SCC 291. Accordingly, it was prayed that the order of suspension be interfered with by this Court, directing the reinstatement of the petitioner in his service.

9. Mr. Tagum, learned standing counsel, Education Department, on the basis of the instructions received by him, has fairly contended that after issuance of the order of suspension against the petitioner; no meeting of the review committee has been conducted to examine the necessity for extension of the said order of suspension. Accordingly, he does not dispute the submission of the learned counsel for the petitioner that the instant case is covered by the decision of the Hon'ble Supreme Court in the case of *Ajay Kr. Choudhury*(supra).

10. I have heard the learned counsels appearing for the parties and also considered the materials available on record.

11. The petitioner on being placed under detention in connection with the criminal case instituted against him; was, vide order, dated 01.12.2022, placed under suspension, w.e.f. 14.11.2022 i.e. the date on which he was so placed under detention in connection with the criminal case. Memorandum of charge was issued in the matter on 05.01.2023. Thereafter, the petitioner was enlarged on bail in connection with the criminal case instituted against him vide an order, dated 13.02.2023; passed by the learned Special Judge(PCA), Yupia.

12. What is to be noted here is that the respondent authorities although at the time of issuing the memorandum of charge, dated 05.01.2023, had not passed a reasoned order with regard to the continuance of the order of suspension, probably, in view of the fact that the petitioner, at the relevant point of time, was under detention, however, on the petitioner being released on bail on 13.02.2023, and the same being brought to the notice of the respondent authorities vide the communication, dated 16.02.2023; the respondent authorities were duty bound to carry-out a review of the order of suspension as issued in respect of the petitioner, herein.

13. In the case of *Ajay Kr. Choudhury*(supra), the Hon'ble Supreme Court has held that an order of suspension should not extend beyond 03 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.

14. Applying the decision of the Hon'ble Supreme Court in the case of *Ajay Kr. Choudhury*(supra) to the facts of the present case, it is seen that the memorandum of charge having been issued to the petitioner; the respondent authorities, on being intimated by the petitioner of he being enlarged on bail, were duty bound to examine as to whether further extension of the order of suspension in case of the petitioner, was necessitated and thereafter, pass a reasoned order thereon. The respondent authorities have admittedly failed to carry out the said exercise; rendering the order of suspension as issued in respect of the petitioner, unsustainable.

15. As submitted by Mr. Tagum, learned standing counsel, Education Department, no review having been so carried out by the respondent authorities in respect of the order of suspension against the petitioner; following the decision of the Hon'ble Supreme Court in the case of *Ajay Kr. Choudhury*(supra); it can be safely concluded that the order of suspension has lost its validity upon expiry of 90 days from the date of the release of the petitioner on bail and accordingly, the same cannot be permitted to be continued any further.

16. Accordingly, in view of the above position; the impugned order, dated 01.12.2022; is hereby set aside with a further direction to the respondent authorities to reinstate the petitioner in his service against a post equivalent to the one held by him prior to his suspension.

17. The interference as made by this Court with the order of suspension, shall not, in any manner, bar the respondent authorities from proceeding with the disciplinary proceedings as instituted against the petitioner and conclude the same in a manner known to law.

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

JUDGE

Comparing Assistant