

GAHC040006882024



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

Case No. : WP(C)/213/2024

Chow Pintika Mannow
Son of Late Chow Longni Mannow, 2nd Namsai, Near JK Tayer, PO Namsai, District
Namsai, Arunachal Pradesh

VERSUS

The State of AP and 3 Ors
through the Chief Secretary, Govt of Arunachal Pradesh, Itanagar 2:The Director of
Elementary Educaiotn
Age: 0
Occupation :

3:The Deputy Director of School Education
Age: 0
Occupation :

4:The Principal
Age: 0
Occupation

Advocate for the Petitioner : Debo Kumar Deori

Advocate for the Respondent : GA (AP)

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. D. K. Deori, Advocate.

For the Respondents : Mr. T. Tagum,,
Standing Counsel, Education Deptt.

Date of Hearing : 06.08.2024

Date of Judgement : 06.08.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. D. K. Deori, learned counsel for the petitioner. Also heard Mr. T. Tagum, learned Standing Counsel for the Education Department, appearing for the respondents.
2. The case projected by the Petitioner in a nutshell is that while he was serving as Peon in Government Higher Secondary School, Namsai, District Namsai, Arunachal Pradesh, was placed under suspension vide the impugned Suspension Order dated 08.12.2021 passed by the Director Elementary Education, with effect from 20.10.2021, as the petitioner was detained in custody for a period exceeding 48 hours after the petitioner was arrested by Namsai Police on executing the Non Bailable Warrant of Arrest issued by the learned Court of Judicial Magistrate First Class cum District & Sessions Judge, Tezu, Lohit District, Arunachal Pradesh in connection with Complaint Case No. 02(L)/2021 initiated under Section 138 of the Negotiable Instrument Act, 1881.

3. Since he was put behind custody beyond 48 hours, the Director, Elementary Education, put him under suspension vide order dated 08.12.2021 with effect from the date of arrest, in exercise of power under Rule 10 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as CCS (CCA) Rules, 1965.

4. The Petitioner was subsequently released from the custody on 03.11.2021 after execution of bail bond in compliance with the order dated 22.10.2021 passed by the learned Court of Judicial Magistrate First Class cum District & Session Judge, Tezu, Lohit District in Bail Application No. 176(Nms)/2021.

5. It is the further case of the Petitioner that after release from the jail on 03.11.2021, he appeared before the Principal, Government Higher Secondary School, Namsai and verbally inform about his release from the custody and also to report for his joining in the service. It has further been stated that the Departmental Authority neither has initiated a Departmental Proceeding (DP) by framing charge against the Petitioner nor he has been re-instated into the service, which according to the Petitioner is against the settled propositions of law.

6. The learned counsel appearing on behalf of the petitioner, Mr. D. K. Deori, has also drawn the attention of this Court to the judgment rendered in the case of **Ajay Kr Choudhary Vs. Union of India and another** reported in **(2015) 7 SCC 291** and **Union of India and Others –VS- Dipak Mali** reported in **2010 2 SCC 222**.

7. It is submitted that the petitioner still remained under suspension and such suspension has not been reviewed by the competent authority within the prescribed period of 90 days.

8. Per contra, learned counsel for the respondent employer Mr. T. Tagum, fairly submits that the reviewing authority has neither reviewed the suspension nor any proceeding has been drawn till date.

9. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.

10. From the aforesaid facts pleaded by the parties, it is clear that the petitioner was arrested on 20.10.2021 and he was put under suspension on 08.12.2021 by the Director of Elementary Education, Government of Arunachal Pradesh and the petitioner was released on bail on 03.11.2021. The petitioner submitted his representation before the employer intimating the fact of his release on bail and requested for his reinstatement. When nothing was done by the authorities, he approached this Court by filing this writ petition in the month of May, 2024 and admittedly in the meantime, 90 days period in terms of Rule 10(2) of the Rules 1965 prescribed for taking a review of the decision was over and no review was done.

11. In the case of **Dipak Mali** (supra) relied on by Mr. Deori, learned counsel for the petitioner, the Hon'ble Apex Court in no unambiguous term held that by operation of Sub Rule 6 of Rule 10 of the Rules, 1965, the order of suspension would not survive after the period of 90 days unless it was extended after review.

12. It was further held by the Hon'ble Apex Court in **Dipak Mali** (supra) that an order of suspension would not survive and becomes invalid when neither any review was conducted nor any extension of the suspension order thereof is passed within the prescribed period of 90 days and that such invalid suspension order cannot be revived by conducting review beyond the period of 90 days.

13. That being the position, in the given facts of the case as discussed hereinabove, the suspension order dated 08.12.2021 issued by the Director of Elementary Education, Government of Arunachal Pradesh become invalid.

14. Accordingly, it is directed that the petitioner be reinstated in his service forthwith upon receipt of the certified copy of this Court passed today to be furnished by the petitioner before the authorities. While parting with the record, it is made clear that the employer is free to transfer the petitioner to any department in any office in

terms of the extant service rules.

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

JUDGE

Comparing Assistant