GAHC040008002024 2024:GAU-AP:906

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

Case No. : WP(C)/251/2024

Lomkam Rekhung
Age: 48
Occupation :
Address:Son of Late Langtang Rekhung
resident of Changlang
PO
PS and District Changlang
Arunachal Pradesh

VERSUS

The State of AP and 3 Ors
Age: 0
Occupation :
Address:represented by the Commissioner (Education)
Govt of Arunachal Pradesh
Itanagar
2:The Commissioner (Education)
Age: 0
Occupation :
Address:Govt of Arunachal Pradesh
Itanagar

3:The Director of Elementary Education
Age: 0
Occupation :
Address:Govt of Arunachal Pradesh
Itanagar

4:The Deputy Director of School Education
Age: 0
Occupation :
Address:Govt of Arunachal Pradesh

Changlang District.

Advocate for petitoner : D. Panging, D. Tamuk, M. Doji, D. Lona, K. Ado, T. Darin
Advocate for respondents : Taba Tagum appearing for The State of AP and 3 Ors:

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

03.10.2024

Heard Mr. D. Panging, learned counsel, for the petitioner. Also heard Mr. T. Tagum, learned Standing counsel, Education Department, for the respondents.

2. By filing this writ petition, the petitioner has put to challenge the order No. EED-12015/3/2024/447, dated 19.02.2024 passed by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar, by which, the petitioner has been placed under suspension w.e.f. 09.02.2024 (from the date of arrest) by providing that the order of suspension shall remain in force during the period of trial.

3. The case, in brief, is that the petitioner was working as a Lower Division Clerk (LDC) in the Office of the Deputy Director of School Education (DDSE), Changlang. Sometime in the year 2022, it surfaced that various appointment orders were issued by the then Director of Elementary Education, Government of Arunachal Pradesh, in connivance of few officers/officials of the Education Department and had issued appointment orders to various persons in the District of Longding by showing that the candidates have been regularized by particular DPC which was, subsequently, found to have been not true,

inasmuch as the said DPC never recommended the regularization/appointment of the candidates. Accordingly, investigations were carried out by the SIC (Vig.) leading to arrest of many officers/officials of the Department of Education.

4. Thereafter, on the hue and cry by the public, investigations were enlarged to other districts of the State including the Changlang District, whereby, a report was sought regarding the appointments made in the District of Changlang by not following the relevant Recruitment Rules. The report suggested that there were various appointments made in the District of Changlang dehors the Rules. Accordingly, on the approval of the competent authority, a case being SIC (Vig.) Case No. 03/2023 was registered under Sections 120(B)/420/468/471/409 IPC read with Section 13(2) of the Prevention of Corruption Act, 1988, on 17.08.2023, on the ground that as many as 77 (seventy-seven) teachers and other staffs were appointed under the establishment of the Deputy Director of School Education (DDSE), Changlang District. It was revealed that name of the daughter of the petitioner, namely, *Ms. Adma Rekhung* was shown to have been appointed as Multi-Tasking Staff in the Department of Education, Changlang.

5. The petitioner was summoned to appear before the SIC (Vig.) on various dates and accordingly, the petitioner appeared on 2 (two) occasions and got his statement recorded. Thereafter, the petitioner was summoned by the SIC on 09.02.2024 and on appearance, he was taken into custody.

6. Consequent to the arrest of the petitioner, the Commissioner (Education), Government of Arunachal Pradesh, has passed the impugned order dated 19.02.2024 in exercise of powers conferred under Sub-Rule (1) of Rule 10 of *the Central Civil Services (Classification, Control and Appeal) Rules, 1965*

[hereinafter, referred to as *the CCS (CCA) Rules, 1965*]. The petitioner was placed under suspension on the ground that the petitioner has been in detention for a period exceeding 48 (forty-eight) hours. It is provided that the order of suspension to remain in force for the period during the trial.

7. The petitioner, on completion of 90 (ninety) days period of suspension and there being no review of the suspension order, has submitted his joining report to the DDSE, Changlang District. However, the petitioner was not allowed to perform his duty. Thereafter, the petitioner submitted a representation dated 10.06.2024 to the Director of Elementary Education for revocation of suspension order dated 19.02.2024 but same has not been considered. Resultantly, petitioner is under continuous suspension without there being any periodical review.

8. Mr. D. Panging, learned counsel for the petitioner, submits that the impugned order dated 19.02.2024 has been passed in clear violation of *Rule 10(6) & (7) of the CCS (CCA) Rules, 1965*, which provides that an order of suspension made or deemed to have been made under the above Rules shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of 90 (ninety) days from the effective date of suspension and an order of suspension made or deemed to have been made under Sub-Rule (1) or (2) of the Rule 10 shall not be valid after a period of 90 (ninety) days unless it is extended after a review, for a further period before the expiry of 90 (ninety) days. He submits that the authorities have not reviewed the order of suspension as required under the aforementioned rules.

9. Mr. Panging, learned counsel, submits that since the suspension order was issued under *Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965,* the

respondent authorities could not have issued the impugned order dated 19.02.2024 by providing that the suspension of the petitioner shall remain in force till the completion of trial without reviewing the suspension of the petitioner and thereafter, extending the suspension period of petitioner, which is in violation of *Rule 10(6) & 10(7) of the CCS (CCA) Rules, 1965*. He submits that suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature and must perforce be of short duration. In the present case, though no memorandum of charges/charge-sheet has been served upon the petitioner till date, the respondent authorities have acted in an arbitrary and unreasonable manner and had issued the order dated 19.02.2024, by which the suspension of the petitioner had been made effective till the completion of the trial. Therefore, he submits that the impugned order dated 19.02.2024 is liable to be set aside and quashed and the respondent authorities may be directed to reinstate the petitioner.

10. Mr. T. Tagum, learned Standing counsel, Education Department, appearing for the respondents, by placing the written instruction from the Department of Education, Government of Arunachal Pradesh, submits that no review of the suspension of the petitioner has been made by the respondents as on date. No extension of suspension of the petitioner is required in view of the order providing that the order of suspension shall remain in force during the period of trial. However, he fairly submits that the authorities ought to have reviewed the order of suspension as required under the relevant provisions of law.

11. Due consideration has been extended to the submissions advanced by the learned counsel for the parties and the materials available on record.

12. The petitioner who was serving as an LDC, was arrested on 09.02.2024, in

connection with the SIC (Vig.) Case No. 03/2023 registered under Sections 120(B)/420/468/471/409 IPC read with Section 13(2) of *the Prevention of Corruption Act, 1988*. Consequent to his arrest, the impugned order date 19.02.2024 was issued by the Commissioner (Education) in exercise of power conferred under *Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965,* by placing the petitioner under suspension on the ground that the petitioner has been in detention for a period exceeding 48 (forty-eight) hours. Before the petitioner was arrested, the SIC (Vig.) has summoned the petitioner on various dates and recorded his statements. In the F.I.R., dated 17.08.2023, it is revealed that the daughter of the petitioner has been appointed as MTS in the Education Department, Changlang District.

13. The Rules regulating the suspension, is provided under *the CCS(CCA) Rules, 1965*. *Rule 10(6) & (7)* of the said Rule*,* provides, which is reproduced hereinbelow:

> "***10 (6)*** *- An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the effective date of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.*
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> ***10 (7)*** *- An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days. 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 suspension at that time of completion of ninety days of suspension and the ninety days' period in such case will count from the date of 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."*

14. Perusal of the Rule provides that an order of suspension made or deemed to have been made under this rule shall be reviewed by the authority, which is competent to modify or revoke the suspension before expiry of 90 (ninety) days from the effective date of suspension and an order of suspension made or deemed to have been made under *Sub-Rule (1) of (2) of Rule 10 of the CCS (CCA) Rules, 1965,* shall not be valid after a period of 90 (ninety) days unless it is extended after a review, for a further period before expiry of 90 (ninety) days. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

15. In the present case, since the petitioner was placed under suspension w.e.f. 09.02.2024, the period of 90 (ninety) days has expired on 08.05.2024. Undisputably, the authorities have not reviewed the suspension of the petitioner even after expiry of 90 (ninety) days much less before expiry of 90 (ninety) days. Therefore, in my considered view, the petitioner cannot be allowed to be placed under continuous suspension without review as required to be done under Sub-Rule 6 of Rule 10 of *the CCS (CCA) Rules, 1965.*

16. Another aspect of the matter which is required to be noticed and considered is to the effect that the order of suspension of the petitioner dated 19.02.2024 to remain in force during the period of trial. Having perused the impugned order and the relevant rule as mentioned above, I am of the view that such an order placing the petitioner under suspension during the entire period of trial would be in violation of the relevant provisions as provided under *Rule 10(6) & (7) of the CCS (CCA) Rules, 1965* as well as the law laid down by

the Hon'ble Supreme Court.

17. In this regard, a profitable reference may be made to the judgment of the Hon'ble Supreme Court, in the case of **Ajay Kumar Choudhury vs. Union of India, through its Secretary** reported in **(2015) 7 SCC 291**, wherein, the Hon'ble Supreme Court has spurred to extrapolate the quintessence of the proviso to Section 167 (2) of the Code of Criminal Procedure, 1973, to moderate suspension order in cases of departmental/disciplinary enquiries also. It is held that if the Parliament considered it necessary that a person be released from incarceration after the expiry of 90 (ninety) days even though accused of commission of most heinous crimes, *a fortiori* suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167 (2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to speedy trial should also be placed on the same pedestal. Therefore, the Hon'ble Supreme Court has held that the currency of a suspension order should not extend beyond 3 (three) months if within this period the memorandum of charges/charge-sheet is not served on the officer/employee, if the memorandum of charges/charge-sheet order is served, a reasoned order must be passed for extension of the suspension.

18. In light of the above decision of the Hon'ble Supreme Court and having considered that no review has been made to the suspension order of the petitioner, coupled with the fact that the impugned order provided that the suspension to remain in force during the entire period of trial, I am of the considered view that the impugned order dated 19.02.2024 passed by the

Commissioner (Education), Government of Arunachal Pradesh, is unsustainable, which warrants interference.

19. In view of the discussions made hereinabove, the impugned order dated 19.02.2024 cannot be allowed to be continued. Thus, the same is hereby interfered with.

20. Accordingly, the impugned order dated 19.02.2024 passed by the Commissioner (Education), Government of Arunachal Pradesh, Itanagar is hereby set aside and quashed. Consequently, the respondent authorities are directed to reinstate the petitioner, forthwith.

21. The writ petition stands allowed and disposed of. No order as to costs.

JUDGE

Comparing Assistant