

GAHC040008432023



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

Case No. : WP(C)/287/2023

Gomo Sora
S/o Shri Tumgo Sora,
Village Taba Sora, PO/PS Aalo, District West Siang, Arunachal Pradesh
Phone No. 8414803195

VERSUS

THE STATE OF AP and 2 Ors.
Through the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.

2:the Principal Secretary (Finance)
Age: 0
Occupation :
Govt. of Arunachal Pradesh
Itanagar

3:the Director
Age: 0
Occupation :
Accounts and Treasuries Department
Govt. of Arunachal Pradesh
Itanagar

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (ORAL)

15.03.2024

Heard Mr. J. Jini, learned counsel for the petitioner and Mr. N. Ratan, learned Additional Advocate General assisted by Ms. R. Basar, learned Government Advocate appearing for the State.

2. The petitioner by way of instituting the present proceedings has prayed for an interference by this Court with the order of suspension, dated 16.12.2022, issued in his case and for a direction to reinstate in his service with all consequential benefits.

3. The petitioner came to be placed under arrest in connection with Itanagar P.S. Case No. 229/2022 under Sections 120(B)/420/406/407/409 IPC. The allegation in the said case was that the questions paper of the recruitment for the post(s) of Assistant Engineer (Civil) conducted by the Arunachal Pradesh Public Service Commission (APPSC) on 26.08.2022 and 27.08.2022 was leaked and the petitioner was arrested in connection with the said case on 02.12.2022. In view of his arrest on 02.12.2022 and being under detention for more than of 48 hours thereafter, the petitioner came to be placed under suspension vide an order, dated 16.12.2022, invoking the provisions of Rule 10(2)(1) of the Central Civil Services (Classification, Control and Appeal) Rule, 1965. The disciplinary authority, thereafter, vide memorandum, dated 06.01.2023, instituted a

Departmental Proceeding Committee (DPC) against the petitioner basing on four articles of charge as levelled against him therein. The petitioner as of 06.01.2023 was under detention and this Court vide order, dated 09.03.2023, passed in Bail Application No. 29/2023 was pleased to enlarge the petitioner on default bail. The petitioner contends that after having enlarged on bail he had on 10.03.2023, informed the Chief Secretary, Government of Arunachal Pradesh, Itanagar about his such release. The petitioner, thereafter, submitted application praying for revocation of his order of suspension on the ground that the same having not been reviewed in terms of the provisions of the said Rule of 1965, the same has spent its force and he was entitled to be reinstated in his service.

4. The learned counsel for the parties have made submission in tune with the pleadings as brought on record by the respective parties. Accordingly, the submission made by the parties are not reproduced herein below.

5. I have heard the learned counsel for the parties and also perused the materials available on record.

6. The petitioner admittedly was placed under suspension on 06.12.2022 and he continued to remain under suspension on 06.01.2023 when the DPC was initiated against him. The petitioner was granted the privilege of bail vide an order, dated 09.03.2023, passed by this Court.

7. On institution of the present proceedings, the respondent had initially filed an affidavit in the matter and therein had contended that the intimation as given by the petitioner on 10.03.2023 was not received by any of the authorities and accordingly, there may have occasioned a delay in reviewing the order of his suspension. It was also contended that the suspension of the petitioner would be considered in terms of the outcome of the departmental proceedings

already instituted against the petitioner.

8. The respondents have also contended that although a formal intimation was not received from the petitioner about his release from the jail, however, the authorities were from time to time extending the order of suspension as passed against the petitioner. It was contended that the said police case registered against the petitioner was taken over by the CBI, ACP, Guwahati Camp Itanagar. Accordingly, on 12.10.2023, a Review Committee headed by the Chief Secretary of the State was constituted and the said committee extended the period of suspension by noticing that the intimation as to whether the petitioner was released from the detention was not received either from the petitioner or from any other source. Further, the said Committee in its meeting held on 23.11.2023 on receipt of an information from the Superintendent of Police, CBI, ACP, Guwahati that the petitioner was granted bail by this Court, proceeded to review the suspension of the petitioner and continue it for another 90 days w.e.f. 24.11.2023 to 21.02.2024. It is also contended that the said order of suspension was continuously reviewed and vide the order, dated 15.02.2024, on review, the Committee had extended such suspension for a further period of 90 days w.e.f. 22.02.2024 to 21.05.2024.

9. The issue arising in the present proceedings is as to whether the suspension of the petitioner not having been reviewed in the manner as mandated under the provisions of the said Rules of 1965 is to be held to have spent its force and a direction was called for reinstatement of the petitioner. In this connection, the amendment as effected in the proviso of Rule 10(7) of the said Rules of 2022 is to be noted. The said proviso after amendment being relevant to the issue arising in the present proceedings is extracted herein below:

“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)"

10. In terms of the said proviso to Rules 10(7) as amended, it is seen that the 90 days period in case of a deemed suspension under the proviso of Rule 10(2) of the said Rules of 1965 would be computed from the date the Government servant detained in custody is released from the detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later. Further, in case where a charge-sheet is not issued under the said Rules, the total period of deemed suspension including any extended period thereof shall not exceed two years from the date the Government servant is

detained in custody is released or the date on which the fact of his release from the detention is intimated to the authority, whichever is later.

11. In the present case, it is seen that the petitioner was already issued with the memorandum of charge on 06.01.2023 and it is stated in the Bar that the enquiry in the said proceedings has already commenced. In view of the peculiar facts as arising in the present proceedings and reckoning the amended provisions of the Rule 10(7) of the said Rules of 1965, this Court deems it fit that the order of suspension of the petitioner, at this stage, does not call for any interference. Accordingly, the petitioner shall continue to remain under suspension. However, the respondent authorities are duty bound to all requisite steps for conducting reviews in the matter as may be mandated.

12. However, noticing that the petitioner was already furnished with a memorandum of charge way back on 06.01.2023 and the submissions made by the parties at the Bar that the enquiry is presently underway, this Court directs that the Departmental enquiry as instituted against the petitioner be proceeded with expeditiously and completed on a date, not later than 14.06.2024 and thereafter, on receipt of the enquiry report, the respondents authorities shall, in the event that the allegation against the petitioner is found to have been established, furnish a copy of the enquiry report to the petitioner and also provide adequate time to submit his representation thereof and shall, thereafter, pass appropriate orders as may be called for in the matter within 15.07.2024.

13. In the event, the enquiry is not concluded within 14.06.2024, as directed hereinabove, the petitioner shall be reinstated in his service w.e.f. 15.06.2024, however if, in the event that the petitioner is so required to be reinstated in his services, he shall be posted against a post other than the post from which he came to be placed under suspension.

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

JUDGE

Comparing Assistant