

GAHC040012792023



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

Case : WP(C)/510/2023

Opet Mibang
Age: 46
Occupation :
Address:W/o Shri Anam Jerang
Upper Sille Village
PO/PS Sille Oyan
East Siang District
Arunachal Pradesh. Mob 919233714318

VERSUS

The State of AP and 2 Others
Age: 0
Occupation :
Address:the Commissioner/Secretary (Education)
Government of Arunachal Pradesh
Itanagar.
2:The Director of Elementary Education

Age: 0
Occupation :
Address:Government of Arunachal
Pradesh
Itanagar.

3:The Deputy Director Secondary Education (DDSE)

Age: 0
Occupation :
Address:Yinkiyong
Upper
Siang District.

Advocate for : T T Tara
Advocate for : appearing for The State of AP and 2 Others: Advocate ,
 , appearing for 2,
 3, respectively.

**BEFORE
HONBLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 18-03-2024

Heard Mr. T.T. Tara, learned counsel for the petitioner. Also heard Mr. Taba Tagum learned standing counsel, Education Department appearing on behalf of the official respondents.

The writ petitioner herein was working as Upper Division Clerk in DDSE's office, Yinkiyong at Upper Siang District in the State of Arunachal Pradesh when she was placed under suspension vide order dated 16-11-2022 issued by the respondent No. 1, i.e. the Commissioner (Education), Govt. of Arunachal Pradesh, Itanagar by invoking powers under Sub-Rule 2 of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the ground that upon her arrest in connection with a criminal proceeding, the petitioner was detained in custody exceeding 48 hours. Since then, the petitioner is under suspension.

The writ petitioner was arrested on 30-10-2022 in connection with SIC (Vig.) P.S. Case No. 12/2022 registered under Section 120B/ 406/ 409/ 420 of the IPC read with Section 13(2) of the P.C. Act, 1988 (renumbered as CBI PS Case No. RC172022A0009.

By the order dated 31-01-2023 passed by the Gauhati High Court in BA No. 1/2023 in connection with CBI PS Case No. RC172022A0009, the petitioner was released on bail. Thereafter, a departmental proceeding was initiated against her by serving memorandum of charge on 07-01-2023. The grievance of the petitioner is that the order of suspension dated 16-11-2022 has neither been reviewed nor extended by the authorities till date by a reasoned order, as a result of which, serious prejudice has been caused to the interest of the petitioner.

By referring to the decision of the Hon'ble Supreme Court rendered in the case of ***Ajay Kr. Choudhury Vs. UoI through its Secretary & Anr.*** reported in ***(2015) 7 SCC 291*** as well as a decision of the Division Bench of this Court rendered in the case of ***State of Assam & Anr. Vs. Ajit Sonowal & Ors.*** reported in ***2023 (6) GLT 115***, Mr. Tara, learned counsel for the appellant has argued that the order of suspension, not having been reviewed on the expiry of 90 days, has automatically lost its force and therefore, the same is liable to be interfered with by this Court on such count alone. According to the learned counsel for the petitioner the case of his client is squarely covered by the decision of the Supreme Court rendered in the case of ***Ajay Kr. Choudhury (Supra)*** as well as the decision of this Court in ***Ajit Sonowal (Supra)*** and therefore, the impugned order be quashed and the petitioner be reinstated in service.

Mr. T. Tagum, learned standing counsel, Education department has submitted, in his usual fairness, that the impugned order of suspension dated 16-11-2022 had neither been reviewed nor extended and to such extent, he does not dispute the submission of the petitioner's counsel that this case is covered by the decision in the case of ***Ajay Kr.***

Choudhury (Supra) and **Ajit Sonowal (Supra)**.

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.

Taking note of the law laid down in the case of **Ajay Kr. Choudhury (Supra)** as well as in the case of **UoI & Ors. Vs. Dipak Mali** reported in **(2010) 2 SCC 222**, this Court, in the case of **Ajit Sonowal (Supra)** has held as follows in paragraph 13:-

“13. From careful analysis of the above decisions of the Supreme Court what follows is that unless review is held within 90 days, an order of suspension including one issued due to the detention of an employee in custody for 48 hours, would not survive nor can such an order be granted fresh lease of life by carrying out a review after expiry of the period of 90 days. In view of the law laid down in the case of Dipak Mali (supra) and Ajay Kumar Choudhury (Supra) it is axiomatic that the order of suspension dated 07.12.2019 had lapsed after expiry of 90 days due to want of review of the same by the Disciplinary Authority. We, therefore, find ourselves in agreement with the findings recorded by the learned Single Judge in the impugned Judgment and Order dated 22.04.2021.”

In view of the law laid down by the Hon'ble Supreme Court as well by the Division Bench of this Court, there can be no manner of doubt that the order of suspension dated 16-11-2022, not having been reviewed nor extended by a reasoned order within 90 days of passing the same the order dated 16-11-2022 had lost its force upon expiry of 90 days. As such, the impugned order dated 16-11-2022 is hereby set aside with a direction upon the authorities to reinstate the petitioner in service.

However, in view of the fact that a departmental proceeding has already been

initiated against the petitioner, liberty is granted to the authorities to issue fresh order of suspension *qua* the petitioner, if so advised, after complying with the present order of this Court.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant