

GAHC040016822024



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

Case No. : WP(C)/574/2024

Otem Tayeng
Director of Elementary Education (Under Suspension) Department of Education,
Govt of Arunachal Pradesh, Itanagar.

VERSUS

The State of AP and Anr
represented by the Chief Secretary, Govt of Arunachal Pradesh, Itanagar. 2:The
Commissioner
Age: 0
Occupation :
Department of Education
Govt of Arunachal Pradesh
Itanagar

Advocate for the Petitioner : Lissing Perme, T Tagam,Signal Yirang,Tabung Nonang,William
Yirang,Wintet Sawin,A Perme,Krishna Dubey

Advocate for the Respondent : GA (AP), Taba Tagum,SC (Education)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 11.12.2024

Heard Mr. L. Perme, learned counsel for the petitioner and Mr. T. Tagum,
learned Standing counsel for the respondents, Education Department.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has put to challenge the validity of his suspension order, vide Memo No. SEDN-26/10/2022/673, dated 18.01.2024, issued by the Chief Secretary, Government of Arunachal Pradesh through the Commissioner (Education), Government of Arunachal Pradesh.

3. The grievance of the petitioner, being sought to be addressed in this petition, is that the petitioner was serving as Director of Elementary Education in the Department of Education, Government of Arunachal Pradesh. While he was discharging his duties, he was placed under suspension, vide Memo No. SEDN-26/10/2022/673, dated 18.01.2024, issued by the Chief Secretary, Government of Arunachal Pradesh through the Commissioner (Education), Government of Arunachal Pradesh. Since the date of his suspension i.e. 18.01.2024, the period of 90 days elapsed on 17.04.2024 and he was expecting that he would be reinstated in the service. But, the concerned authority did not review his suspension order even after elapse of 90 days. Then, the petitioner submitted one representation on 20.05.2024, praying for revocation of the suspension order dated 18.01.2024, but the same failed to yield any result. Thereafter, on 20.06.2024, he filed another representation addressing the Commissioner (Education), Government of Arunachal Pradesh for revocation of the suspension order and to grant consequential benefits, but the same again failed to yield any result. Then, again on 25.11.2024, the petitioner had filed another representation for revocation of his suspension order dated 18.01.2024, but the same also failed to yield any result. It is the contention of the petitioner that under sub-rules (6) and (7) of Rule 10 of the CCS (CCA) Rules, 1965 ('Rules of 1965', for short), the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date

of order of suspension and sub-rule (7) of the aforementioned Rule provides that the order of suspension made or deemed would not be valid after a period of 90 days, unless it was extended after review for a further period of 90 days. His further contention is that as his suspension order dated 18.01.2024, was neither reviewed nor extended, the same became invalid in view of sub-rule (7) of Rule 10 of the Rules of 1965, on 17.04.2024, and therefore, he approached this Court by filing the present petition challenging the suspension order dated 18.01.2024.

4. Mr. Perme, learned counsel for the petitioner submits that since the impugned order was passed on 18.01.2024 and since the same has not been reviewed in terms of sub-rules (6) and (7) of Rule 10 of the Rules of 1965, the suspension order became invalid w.e.f. 17.04.2024 and as such, Mr. Perme has contended to set aside the impugned suspension order dated 18.01.2024 and to direct the respondent authorities to reinstate the petitioner w.e.f. 17.04.2024, granting him all the service benefits which he is entitled to, in accordance with law.

5. Per contra, Mr. Tagum, learned Standing counsel for the respondents, after obtaining necessary instruction, submits that the impugned suspension order dated 18.01.2024, has neither been reviewed nor been extended till date, though the period of 90 days has already been elapsed and as such, Mr. Tagum has conceded to the submission, so advanced by Mr. Perme, learned counsel for the petitioner.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record, and also perused the impugned suspension order dated 18.01.2024.

7. It appears that the petitioner was placed under suspension on 18.01.2024, while he was discharging duty as Director of Elementary Education in the Department of Education, Government of Arunachal Pradesh, vide Memo No. SEDN-26/10/2022/673, and admittedly, the impugned suspension order dated 18.01.2024, has neither been reviewed nor been extended till date.

8. Sub-rules (6) and (7) of Rule 10 of the Rules of 1965, are read as under:

“(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.

(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.”

9. In the instant case, suspension order was passed on 18.01.2024 and the said order was not reviewed even after elapse of 90 days on 17.04.2024. In view of sub-rule (6) of Rule 10 of the Rules of 1965, it is incumbent upon the respondent authorities to review the suspension order and either to extend or to revoke before expiry of 90 days, and in view of sub-rule (7) of Rule 10 of the aforesaid Rules, the suspension order shall not be valid after a period of 90 days, unless it is extended after review, for a further period before expire of 90 days.

10. In the case of **Union of India and Ors. Vs. Dipak Mali**, reported

in (2010) 2 SCC 222, Hon'ble Supreme Court has held that by operation of sub-rule (6) of Rule 10 of the Rules of 1965, the order of suspension would not survive after the period of 90 days, unless it was extended after review. Since admittedly, the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days.

11. Again, in the case of **Ajay Kumar Choudhary vs. Union of India through its Secretary and Anr.**, reported in (2015) 7 SCC 291, Hon'ble Supreme Court has held that the currency of a suspension order should not extend beyond three months, if within this period, the memorandum of charges/chargesheet is not served on the delinquent officer/employee; if the memorandum of charges/chargesheet is served, a reasoned order must be passed for the extension of the suspension.

12. In the case in hand, admittedly the departmental proceeding is going on against the petitioner and he has been served with the memorandum of charges/chargesheet, but, no reasoned order has been passed for extension of the suspension. And application of the ratios laid down in the aforesaid two cases, to the facts here in this case, would reveal that the impugned suspension order dated 18.01.2024, became invalid for want of review and extension in terms of sub-rules (6) and (7) of Rule 10 of the Rules of 1965, and as such, the same requires interference of this Court.

13. Accordingly, this Court is inclined to hold that the impugned suspension order dated 18.01.2024, became invalid w.e.f. 17.04.2024, on which the period of 90 days elapsed on account of absence of review and extension and as such, the impugned suspension order deemed to have been revoked w.e.f.

17.04.2024. Consequently, the petitioner is entitled to be reinstated in service w.e.f. 17.04.2024, with all consequential service benefits including arrear of pay and allowances.

14. The petitioner shall obtain a certified copy of this order and place the same before the respondent authorities within a period of one week from today. Thereafter, the respondent authorities shall reinstate the petitioner within a period of one week from the date of receipt of certified copy of this order and he shall be provided with all the service benefits as per his entitlement. However, the departmental proceeding initiated against the petitioner shall continue.

15. In terms of above, the writ petition stands disposed of.

16. The parties have to bear their own costs.

JUDGE

Comparing Assistant