

GAHC010073162024



2024:GAU-AS:12060

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

Case No. : WP(C)/2000/2024

MOFIZUR RAHMAN
S/O ABU SAYED,
RESIDENT OF NABI NAGAR , PO BALADMARI CHAR, PS AND DIST
GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION DISPUR GUWAHATI 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI 19

3:THE DISTRICT COMMISSIONER

GOALPARA
ASSAM 783101

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
GOALPARA
ASSAM 783101

5:THE BLOCK ELEMENTARY EDUCATION OFFICER (BEEO)
BALIJANA
GOALPARA
ASSAM 783101

6:THE HEAD TEACHER OF BALADMARI NABI NAGAR LP SCHOOL
PO BALADMARI
PS AND DIST GOALPARA

ASSAM 78310

Advocate for the Petitioner : MR. M ALI, MR J. E. SARKAR

Advocate for the Respondent : GA, ASSAM, SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 02.12.2024

Heard Mr. M. Ali, learned counsel for the petitioner as well as Mr. A. Phukan, learned standing counsel, Elementary Education Department for the respondent Nos. 1 to 5.

2. The petitioner while serving as Assistant Teacher of Baladmari Nabinagar L. P. School under the Block Elementary Education Officer, Balijana, Goalpara district was placed under suspension with immediate effect on the allegations of being unauthorized absence from his School duties and also as a case was registered against him in Goalpara PS under Section 124/23/U/S-354(A) IPC R/W Sec-12 of the POCSO Act by an order dated 2nd of November, 2023, issued by the Director of Elementary Education, Assam.

3. The present case has been instituted by the petitioner challenging the suspension order on 2(two) grounds. The first grounds is that the suspension order dated 2nd of November, 2023 has not been reviewed within the prescribed period of 90(ninety) days. The second ground is that no charge sheet/memorandum of charge has been served on the petitioner within this period of 90(ninety) days.

4. Considering the submission made by the learned counsel for the petitioner, the learned standing counsel, Elementary Education Department was directed to produce the records in order to enable this Court to verify as to whether the suspension of the petitioner made by the order dated 2nd of November, 2023 was reviewed within the prescribed period of 90(ninety) days.

5. Today, when the matter is called up, Mr. A. Phukan, learned standing counsel, Elementary Education Department has produced the records. This Court on perusal of the records, particularly, at page-9 of the note sheet, it is seen that the suspension order has not been reviewed and it was only on 27.09.2024 that an opinion was made for reviewing of the suspension order dated 02.11.2023 issued against the petitioner.

6. The Hon'ble Supreme Court in the case of *Ajay Kumar Choudhury Vs. Union of India and Ors. reported in 2015 7 SCC 291* has already held that the currency of a suspension order should not extend beyond 3(three) months, if within this period the memorandum of charge/charge sheet is not served on the delinquent officer/employee and if the memorandum of charge/ charge sheet is served, a reasoned order must be passed for the extension of the suspension.

7. This Court is therefore of the considered opinion that after the suspension order dated 02.11.2023 was passed, no review was made for further extension of the said suspension order within the period of 3(three) months after the issuance of the said suspension order. Further, no charge sheet/ memorandum of charge has also been served on the petitioner till date. In that view of the matter, the suspension order of the petitioner dated 2nd of November, 2023 stands vitiated and the same is accordingly set aside and quashed. The respondents are directed to forthwith reinstate the petitioner back into service.

8. Notwithstanding the quashing and setting aside of the suspension order dated 2nd of November, 2023, the respondents are given the liberty to transfer the petitioner to any school in any part of the Assam in order to ensure that the petitioner severs any local or personal contacts that the petitioner may have and which he may misuse for obstructing the investigation against the petitioner. This Court also makes it clear that is not making any observations, if the respondents are contemplating for having a disciplinary proceeding initiated against the petitioner.

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

JUDGE

Comparing Assistant