

GAHC010084532024



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

Case No. : WP(C)/2385/2024

SAYED ATOWAR RAHMAN
S/O- LATE IYARAS ALI,
R/O- VILLAGE ALIPUB,
P.O AND P.S- BAIHATA CHARIALI,
DIST- KAMRUP, PIN-781381

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SPL. COMMISSIONER AND SPL. SECRETARY TO
THE GOVT. OF ASSAM, PUBLIC WORKS ROADS DEPARTMENT, DISPUR,
GUWAHATI- 6

2:THE CHIEF ENGINEER

PWD (ROADS) GOVERNMENT OF ASSAM
CHANDMARI
GUWAHATI -3

3:THE EXECUTIVE ENGINEER
BAJALI TERRITORIAL ROADS DIVISION
PATHSALA
ASSA

Advocate for the Petitioner : MS. T SOM, MS S ISLAM,MS. B DAS,MR. P TALUKDAR,MS. U
HAZARIKA,MR H DAS

Advocate for the Respondent : SC, P W D, MS. M BHATTACHARJEE (ADDL. SENIOR GA)

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

ORDER

Date : 31.07.2024

Heard Ms. T. Som, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned standing counsel, PWD, appearing on behalf of all the respondents.

2. The grievance raised by the petitioner in the present proceeding, is pertaining to an order, dated 17.11.2022, by which he was placed under suspension, in pursuance to his detention in a criminal case so instituted against him.

3. As projected in the writ petition, the petitioner, herein, while serving as a Junior Engineer(C), Public Works Roads Division, Bajali Territorial Roads Division, came to be placed under detention in connection with Baihata Chariali P.S. Case No. 218/2022 under Sections 379/411 of the Indian Penal Code on 17.11.2022.

4. It is contended that the petitioner, herein, was thereafter enlarged on bail by this Court vide order, dated 30.11.2022, passed in BA 3186/2022. It is also contended that the petitioner had proceeded to join his service on 02.12.2022. The petitioner, thereafter, continued to discharge his duties. However, vide Notification, dated 04.04.2024, the petitioner came to be placed under suspension and therein, it was intimated that the petitioner had failed to inform his superior Officer of his arrest which is regarded as suppression of material information. The Notification, dated 04.04.2024, continues to hold the field and accordingly, the petitioner is under suspension till date.

5. It is brought on record that the petitioner had approached the respondent authorities by way of filing a representation praying for revocation of the order of suspension. However, the said order of suspension continues to hold the field and the respondent authorities have not considered as to whether further continuation of the petitioner under suspension would be mandated.

6. Posed with the above factual matrix, this Court had requested Ms. M. Bhattacharjee, learned Addl. Senior Government Advocate, to receive instructions as to whether a charge-sheet has been filed in Baihata Chariali P.S. Case No. 218/2022 under Sections 379/411 of the Indian Penal Code.

7. Today, Ms. Bhattacharjee, learned Addl. Senior Government Advocate, Assam, has placed before this Court, the instructions received by her in the matter from the Superintendent of Police, Kamrup, which reveals that the charge-sheet in the said matter has not been so filed till date.

8. The above being the position and the petitioner having been so placed under suspension, vide Notification, dated 04.04.2024, and the period of 90 days having already expired and the petitioner having been also enlarged on bail by this Court vide order, dated 17.11.2022; this Court is of the considered view that further continuance of the Notification of suspension, dated 04.04.2024, would not be called for and accordingly, the same is hereby set aside.

9. This Court having interfered with the Notification of suspension, dated 04.04.2024; the respondent authorities are hereby directed to reinstate the

petitioner, herein, in his service against a post in the cadre of Junior Engineer(Civil) in the Department of Public Work(Roads), Assam.

10. However, liberty is granted to the respondent authorities to transfer the petitioner, herein, to any other place, other than the place wherein he was working at the time he was placed under detention and consequently, placed under suspension, as provided for in paragraph No. 21, of the decision rendered by the Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhary v. Union of India through its Secretary & anr.***, reported in ***(2015) 7 SCC 291***. For ready reference, the paragraph No. 21 of the judgment in the said case, is extracted hereinbelow:

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

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

JUDGE

Comparing Assistant