

GAHC010086812024



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

Case No. : WP(C)/2396/2024

JADAV SARMAH
S/O LATE PURNA RAM SARMAH,
RESIDENT OF BARATHIABARI, PO JANARAMCHOWKA, PS MANGALDAI,
DIST DARANG, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE HOME AND
POLITICAL DEPARTMENT GOVT. OF ASSAM, DISPUR, GUWAHATI 06,
ASSAM

2:THE SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR GUWAHATI 06 ASSAM

3:THE DIRECTOR GENERAL OF POLICE
GOVT. OF ASSAM
ULUBARI
GUWAHATI 7 ASSAM

4:THE SUPERINTENDENT OF POLICE
KAMRUP
AMINGAON
ASSAM 78103

Advocate for the Petitioner : MR I RAFIQUE, MRS S A CHOUDHURY, MS A AFREEN, MS. R R
SAIKIA

Advocate for the Respondent : GA, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

19.08.2024

Heard Shri I. Rafique, learned counsel for the petitioner. Also heard Ms. M. Bhattacharyya, learned State Counsel.

2. The subject matter of challenge is an order of suspension from service dated 04.12.2023.

3. As per the facts projected, the petitioner, who was serving as a Sub-Inspector of Police (UB) was placed under suspension vide an order dated 04.12.2023 issued by the Superintendent of Police, Kamrup. The said suspension was on account of the arrest of the petitioner on the previous day i.e., 03.12.2023 in connection with ACB P.S. Case No. 104/2023 under Section 7 (a) of the Prevention of Corruption Act, 1988.

4. It is the specific case of the petitioner that no review was done within the stipulated time and the disciplinary proceeding was initiated vide Show Cause Notice dated 03.04.2024 which is beyond the period of 90 days.

5. The learned counsel in this connection has referred to the case of ***Ajay Kumar Choudhary Vs. Union of India & Anr.***, reported ***(2015) 7 SCC 291.***

6. Ms. M. Bhattacharyya, the learned State Counsel has however tried to justify the action and submitted that the disciplinary proceeding already having been initiated, there may not be any requirement to interfere with the order of suspension. By referring to the affidavit-in-opposition filed on 22.07.2024 by the respondent no. 4, the learned State Counsel has submitted that the petitioner

was released on bail only on 04.01.2024 and the Show Cause Notice having been issued on 03.04.2024, the same is within time.

7. The rival submissions have been duly considered.

8. At the outset, this Court is reminded of the fact that a Division Bench of this Court in the case of ***Rakibuddin Ahmed vs. State of Assam***, reported in ***2019 (5) GLT 600*** has laid down that the rigours of a timely review as held to be mandatory by the Hon'ble Supreme Court in the case of ***Ajay kr. Choudhury*** (supra) would also be applicable in a case of deemed suspension under Rules 6 (2) of the Assam Services (Discipline and Appeal) Rules, 1964.

9. In the instant case, the order of suspension was issued on 04.12.2023 which was with effect from 03.12.2023. Though the petitioner has been stated to be released on bail on 04.01.2024, the same could not be a reason to delay the requirement of making a review and take a conscious decision as to whether the suspension is required to be extended or not. Initiation of a disciplinary proceeding beyond the period of 90 days from the date of suspension would not save the authorities from the requirement of having a periodic review within the time prescribed.

10. In view of the above, this Court does not have any other option but to interfere with the impugned order of suspension dated 04.12.2023 which is accordingly done. However, considering the seriousness of the allegations, the respondent authorities would be at liberty to place the petitioner in any non-sensitive post.

11. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant