

GAHC010089582023



In the Gauhati High Court
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) 2319/2023

Babul Borah

..... **Petitioner**

VERSUS

The State of Assam and 4 Ors

..... **Respondents**

BEFORE
HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioners : Mr. D.K. Kotoky

Advocate for the Respondent : Mr. G. Bordoloi, (SC, Co-operation Dept)

Date of Hearing & Judgement : **29.05.2024**

JUDGMENT & ORDER (Oral)

Heard Mr. D.K. Kotoky, learned counsel for the petitioners. Also heard Mr. G. Bordoloi, learned standing counsel for the Co-operation Department.

2. By filing this application, the petitioner has challenged the order No. DCTE 4/2023/1 dated 13.02.2023, issued by the District Deputy Registrar of Co-

operative Societies, Sonitpur, whereby the petitioner was placed under suspension under Rule 6(1)(a) of Assam Services (Discipline & Appeal) Rules, 1964 and for a direction to revoke the order of suspension and reinstate by regularising the period of suspension.

3. The petitioner is a Grade-III employee, serving as UDA in the office of the Assistant Registrar of Co-operative Societies, Tezpur. Contemplating department inquiry/proceedings, the petitioner was placed under suspension vide impugned order dated 13.02.2023 by the District Co-operative Societies, Sonitpur, under Rule 6(1)(a) of Assam Services (Discipline & Appeal) Rules, 1964, alleging inefficiency in discharging duty, indiscipline and disobedience, negligence and dereliction of duty, gross misconduct and rudeness with charge of serious misconduct.

4. The petitioner is challenging the impugned suspension order dated 13.02.2023, on the ground that there is no review within 90 (ninety) days from the date of suspension and he has been put on continuous suspension since 13.02.2023 till date. It is contended that charges sought be made against the petitioner are all false and no disciplinary proceeding has been initiated as on date.

5. It is the contention of the petitioner that there is no specific allegation against the petitioner which can be termed as serious misconduct. Therefore, it is submitted that the suspension order may be directed to be revoked.

6. Mr. G. Bordoloi, learned Standing Counsel for the Co-operation Department, submits that after the petitioner was placed on suspension vide dated 13.02.2023, the authority has issued a show-cause notice to the

petitioner vide dated 28.02.2023 alleging as many as 10 charges of a serious misconduct with statements of allegations. Thereafter, the authority has issued orders directing the petitioner to appear before the Inquiry Officer. However, the petitioner has refused to appear and co-operate with the inquiry.

7. Mr. D.K. Kotoky, learned counsel for the petitioner, while refuting the submissions of the learned State Counsel, submits that the petitioner has not received any show-cause notice or the orders to appear before the Inquiry Officer.

8. Considered the submissions of the learned counsel for the parties and the materials available on record.

9. Rule 6(1)(a) of Assam Services (Discipline & Appeal) Rules, 1964, provides, which is reproduced herein below:-

"6. Suspension - (1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where a case against him in respect of any criminal offence involving moral turpitude is under investigation or trial :

Provided that where the order of suspension is made by an authority lower the Appointing Authority such authority shall forthwith report to the Appointing than Authority the circumstances in which the order was made."

10. The petitioner was put under suspension vide order dated 13.02.2023. Thereafter, the show-cause was issued to the petitioner with as many as 10 (ten) charges along with the Statement of allegations. On consideration, although the learned counsel for the petitioner has denied the receipt of the show-cause notice and orders for appearing before the Inquiry Officer, in my view for the purpose of the determination of the present lis, such submission may be irrelevant at this stage.

11. It is noticed that vide order dated 13.05.2023, the respondent authority has passed an order holding that the matter of suspension of the petitioner has become subjudice in the WP(C)2319/2023 (present proceedings). The departmental proceedings drawn against him has been kept pending till the outcome of the judgment in the said case and the suspension period is also extended, accordingly, w.e.f. from 15.05.2023.

12. On bare perusal of the above order, this Court finds that the authority has not reviewed the suspension of the petitioner as required under the law. Though the order stated to have been issued within the period of 90 days, such review and extension of the suspension cannot be justified as the ground of extending the suspension is only on account of the pendency of the present writ petition.

13. It is fairly submitted by the learned State Counsel, except the order dated 13.05.2023, no any further order has been passed as on date. However, the petitioner has been kept under continuous suspension by virtue of the above order.

14. In the case of **Ajay Kumar Choudhary Vs. Union of India**, reported in **(2015) 7 SCC 291**, the Hon'ble Supreme Court has held, which is reproduced herein below.

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries

also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

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/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.....”

15. As quoted above, the Hon’ble Supreme Court has observed that suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay. 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

16. Reverting back to the present case, it is noticed that order dated 13.05.2023, does not reflect of any review or grounds of extension of the

suspension of the petitioner. It is also seen that except the show-cause notice dated 28.02.2023 and subsequent orders for appearance before the Inquiry Officer, no further proceeding is discernable, much less chargesheet/charge memo. It is obvious that in view of the order dated 13.05.2023, there would not be any further inquiry or proceedings as the authority has decided to keep the matter pending till the outcome of the present proceedings and by extending the suspension order and allowed the petitioner to remain under suspension.

17. Having considered above, this Court is of the view that such a course of action on the part of respondent authority cannot be allowed as the same is in violation of the applicable provisions of Rules as well as the ratio laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary** (supra).

18. In view of the discussion made herein above and in the light of the ratio laid down by the Hon'ble Supreme Court, the action of the respondent authority in placing the petitioner under continuous suspension without proper review and extending on the irrelevant reasons, in my considered view, cannot be sustained. Accordingly, the respondent authorities are directed to revoke the impugned order of suspension dated 13.02.2023 as well as the order dated 13.05.2023 and to reinstate the petitioner forthwith. However, it is made clear that the respondents are at liberty to proceed with departmental inquiry or proceedings in accordance with law.

19. In the result, writ petition stands allowed and disposed of.

No order as to costs.

JUDGE

Comparing Assistant