

GAHC010122722023



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

**Case No. : WP(C)/3403/2023**

PHULENDRA KALITA  
S/O LATE KASHINATH KALITA,  
INSPECTOR OF SCHOOL, BARPETA (LAST PLACE OF POSTING),  
PRESENTLY UNDER SUSPENSION,  
R/O- VILL. JYOTINAGAR,  
PS AND PO- PATSHALA,  
DIST.- BARPETA, ASSAM, PIN- 781325.

VERSUS

THE STATE OF ASSAM AND 5 ORS  
REPRESENTED BY THE SECRETARY,  
TO THE GOVT. OF ASSAM,  
DEPARTMENT OF SCHOOL EDUCATION (SECONDARY EDUCATION),  
BLOCK-C, ASSAM CIVIL SECRETARIAT,  
JANATA BHAWAN, DISPUR, GUWAHATI,  
ASSAM, PIN- 781006.

2:THE CHIEF SECRETARY TO THE GOVT. OF ASSAM  
ASSAM CIVIL SECRETARIAT  
DISPUR

GUWAHATI  
ASSAM  
PIN- 781006.

3:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI  
ASSAM

PIN- 781019.

4:THE INSPECTOR OF SCHOOLS  
BARPETA DISTRICT CIRCLE  
BARPETA  
ASSAM.

5:THE ACCOUNTANT GENERAL  
A AND E  
ASSAM  
MAIDAMGAON  
GUWAHATI  
ASSAM

PIN- 781029.

6:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR

GUWAHATI  
ASSAM

**Advocate for the Petitioner** : MR. A K DUTTA

**Advocate for the Respondent** : SC, SEC. EDU.

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

|                         |                     |
|-------------------------|---------------------|
| <b>Date of hearing</b>  | <b>: 20.06.2024</b> |
| <b>Date of Judgment</b> | <b>: 20.06.2024</b> |

**Judgment & order(Oral)**

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. Bedanta Kaushik, learned standing counsel, Secondary Education Department, appearing on behalf of the respondents No. 1, 3 & 4; Mr. P. Saikia, learned Government Advocate, appearing on behalf of respondent No. 2; Mr. B. Sarma, learned Accountant General(A&E), Assam, appearing on behalf of respondent

No. 5; and Mr. A. Chaliha, learned standing counsel, Finance Department, Assam, appearing on behalf of respondent No. 6.

**2.** The challenge in the present proceeding by the petitioner is to an order, dated 31.03.2023, by which, the petitioner, on his conviction in a criminal proceeding initiated against him, came to be imposed with the penalty of dismissal from service in accordance with Article 311(2) of the Constitution of India *read with* Rule 10 of the Assam Services (Disciplinary & Appeal) Rules, 1964.

**3.** The petitioner, herein, while working as a District Elementary Education Officer (DEEO), Darrang, came to be placed under detention on 25.07.2016, by the Vigilance Anti-Corruption Department in connection with ACB Police Station Case No. 07/2016 registered under Section 7/13(1)(d)/13(2) of the PC Act, 1988.

**4.** On the petitioner being placed under suspension; the respondent authorities vide order, dated 30.07.2016, proceeded to place the petitioner under suspension invoking the powers under Rule 6(2) of the Assam Services(Disciplinary & Appeal) Rules, 1964. The said order of suspension was followed by initiation of a Disciplinary Proceeding against the petitioner with the issuance of a Show Cause Notice, dated 13.01.2017. The petitioner preferred an appeal praying for revocation of the order of suspension and the same not having been so done, approached this Court by way of instituting a writ petition being WP(c)4267/2018. This Court vide order, dated 23.07.2018, on

consideration of the issues arising therein, proceeded to dispose of the said writ petition with a direction to the respondent authorities to review the order of suspension in the light of the decision of the Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhury v. Union of India & ors.***, reported in **(2015) 7 SCC 291**.

**5.** The respondent authorities in pursuance of the directions passed by this Court, proceeded vide order, dated 11.02.2019, to reinstate the petitioner in service, pending disposal of the Disciplinary Proceeding initiated against him.

**6.** The criminal case as instituted against the petitioner on a charge-sheet being filed, was taken up for consideration by the Court of the learned Special Judge, in Special Case No. 15/2017. The learned trial Court on consideration of the matter, vide its judgment, dated 28.12.2020, proceeded to convict the petitioner against the charges so levelled against him and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 20,000/-, in default, rigorous imprisonment for 1 month under Section 7 of the PC Act, 1988. The petitioner was also convicted and sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of Rs. 30,000/-, in default, rigorous imprisonment for 2 months under Section 13(2) of the PC Act, 1988.

**7.** The petitioner on being convicted; he was taken into custody on 20.12.2020, and subsequently, released on bail by an order passed by this Court vide order, dated 04.06.2021, in IA(Crl.)46/2021. The petitioner being under custody w.e.f. 20.12.2020 till 04.06.2021, he was not allowed, after being

released on bail, to discharge his duties and it was construed that he was placed under deemed suspension. Being aggrieved; the petitioner approached this Court by way of instituting a writ petition being WP(c)5858/2021 and this Court, on consideration of the issues arising in the matter held that the petitioner being in custody for a period exceeding 48 hours, on being convicted, he came to be placed under deemed suspension by operation of law under Rule 6(2) of the Assam Services(Disciplinary & Appeal) Rules, 1964, and there was no infirmity on the part of the respondent authorities in not allowing the petitioner to resume his service. Accordingly, the respondents were directed to verify the records and take a decision as required under the proviso to Rule 6(2) of the Rules of 1964 as to whether the subsequent deemed suspension of the petitioner requires to be vacated in the facts and circumstances of the case.

**8.** The respondent authorities, thereafter, proceeded to consider the issue and vide order, dated 13.05.2022, proceeded to hold that the petitioner having been convicted for a criminal charge; he is liable for dismissal from service in terms of the provisions of Rule 10(i) of the Assam Services (Disciplinary & Appeal) Rules, 1964, *read with* Article 311(2)(a) of the Constitution of India. The petitioner being aggrieved by the conclusions so arrived at in the matter vide order, dated 13.05.2022; proceeded to assail the same by way of instituting WP(c)3755/2022 before this Court. The said writ petition was disposed of by this Court vide order, dated 22.07.2022, requiring the respondent authorities to pay to the petitioner, his subsistence allowance w.e.f. 28.12.2020. Accordingly, the respondent authorities vide order, dated 01.09.2020, proceeded to authorize to the petitioner his subsistence allowance at the rate of 50% of the last pay drawn by him w.e.f. 28.12.2020 for a period of 3 months and thereafter, at the

rate of 75% as per the provisions holding the field.

**9.** The petitioner again approached this Court by way of instituting a writ petition being WP(c)7680/2022, assailing his placement under suspension under the provisions of Rule 6(2) of the Assam Services(Disciplinary & Appeal) Rules, 1964, on account of being in custody for a period beyond 48 hours on his conviction by the learned trial Court. This Court vide order, dated 04.01.2023, proceeded to dispose of the said writ petition, by directing the Secretary to the Government of Assam in the Secondary Education Department, to pass a reasoned order upon examination of the claim of the petitioner for vacating the suspension order. The manner in which the said consideration was required to be done, was also provided for. In pursuance of the said directions passed by this Court; the respondent authorities processed the matter further and vide order, dated 31.03.2023, proceeded to impose upon the petitioner a penalty of dismissal from service in exercise of powers conferred under Rule 10 of the Assam Services (Disciplinary & Appeal) Rules, 1964, *read with* Article 311(2) of the Constitution of India on account of his conviction in Special Case No. 15/2017. Being aggrieved, the petitioner has instituted the present proceeding before this Court.

**10.** The petitioner in the present proceeding, has raised several contentions. However, this Court is required to examine as to whether the order, dated 31.03.2023, could have been so issued by the respondent authorities.

**11.** A perusal of the said order, dated 31.03.2023, would reveal that the

respondent authorities had invoked the powers conferred under the 2<sup>nd</sup> proviso to Article 311(2) of the Constitution of India *read with* Rule 10 of the Assam Services(Disciplinary & Appeal) Rules, 1964.

**12.** Second proviso to Article 311(2) of the Constitution of India provides under clause (a) that the provisions of 311(2) of the Constitution of India shall not apply when a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Likewise, the provisions of Rule 10 of the Assam Services (Disciplinary & Appeal) Rules, 1964, mandates that notwithstanding the provisions of Rule 9, where a penalty is imposed upon a government servant on the ground of conduct which has led to his conviction on a criminal charge; the disciplinary authority may consider the circumstances of the case and pass orders thereon as it may deem fit.

**13.** Second proviso to Article 311(2) of the Constitution of India as well as the provisions of Rule 10 of the Assam Services(Disciplinary & Appeal) Rules, 1964, are exceptions to the procedure mandated to be followed prior to imposition of a penalty of dismissal, removal or reduction in rank upon a government employee, which otherwise can be only imposed upon an inquiry being held and the delinquent concerned is given an opportunity of hearing.

**14.** Second proviso to Article 311(2) of the Constitution of India mandates that the provisions of Article 311(2) would not apply when such a delinquent is dismissed or removed or reduced in rank on the ground of his conduct which

has led to his conviction on a criminal charge. Same is the stipulation as made in Rule 10 of the Assam Services(Disciplinary & Appeal) Rules, 1964. In situations covered by the second proviso to Article 311(2) of the Constitution of India and Rule 10 of the Assam Services(Disciplinary & Appeal) Rules, 1964; the disciplinary authority is not called upon to issue any notice to the delinquent and the disciplinary authority can proceed to impose the penalty as found to be so commensurating by it upon the delinquent concerned on the delinquent being convicted in a criminal case.

**15.** In the case on hand, the petitioner, herein, being convicted by the learned trial Court; the disciplinary authority was within its jurisdiction to impose the penalty of dismissal from service vide the issuance of the said order, dated 31.03.2023, and for the said purpose; there was no further requirement of giving any notice and/or to give him an opportunity of hearing in the matter. Accordingly, no error can be found with the action of the respondent authorities in issuing the Notification dated 31.03.2023.

**17.** At this stage; a submission made by the learned counsel for the petitioner that the conviction of the petitioner by the learned trial Court was assailed by him before this Court by way of instituting a criminal appeal being CrI. A. No. 21/2021 and the same is pending disposal and further that this Court vide order, dated 04.06.2021, in IA(CrI.)46/2021, had granted bail to the petitioner, herein, and suspended the sentence imposed by the learned trial Court; the order, dated 31.03.2023, being subsequent to the passing by this court the said order, dated 04.06.2021; the order dated 31.03.2023 could not have been so issued, is to be considered.

**18.** The said submission of the learned counsel for the petitioner is considered only to be rejected in-as-much as this Court vide order, dated 04.06.2021, in IA(Crl.)46/2021, had only stayed the sentence and not interfered with the conviction of the petitioner, herein, by the learned trial Court. The conviction of the petitioner by the learned trial Court continuing to be in force; the invocation by the disciplinary authority of the powers conferred under the second proviso to Article 311(2) of the Constitution of India *read with* Rule 10 of the Assam Services(Disciplinary & Appeal) Rules, 1964, and the imposition of the penalty of dismissal from service upon the petitioner on account of his conviction in the criminal proceeding instituted against him; would not require any interference from this Court.

**19.** In view of the above conclusions; this writ petition is held to be devoid of merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

**20.** The dismissal of the writ petition, notwithstanding, in the event, the petitioner is found to be entitled to receive any amount towards subsistence allowance for the period he had remained under suspension till the issuance of the order, dated 31.03.2023; the same shall be so computed and released to the petitioner by the respondent authorities within a period of 1(one) month from the date of receipt of a certified copy of this order.

**JUDGE**

**Comparing Assistant**