

GAHC010177302024



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

Case No. : WP(C)/4433/2024

FAROQUE AHMED
S/O- LT. ASHRAF ALI, R/O- NABIN NAGAR, HAIBORGAON, P.S. NAGAON
(SADAR), P.O. NAGAON, DIST.- NAGAON, ASSAM, PIN- 782002

VERSUS

THE STATE OF ASSAM AND 8 ORS
TO BE REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF
ASSAM, DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI-6

2:THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
DISPUR
GUWAHATI-6

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE DISTRICT COMMISSIONER
NAGAON
DIST.- NAGAON
ASSAM
PIN- 782002

5:THE INSPECTOR OF SCHOOLS (NDC)
NAGAON
DIST.- NAGAON
ASSAM
PIN- 782002

6:MUSSTT. PARBIN AHMED
ADDITIONAL TEACHER
SOLMARI HIGH SCHOOL
NAGAON

P.O. SOLMARI
DIST.- NAGAON
ASSAM
PIN- 782002
7:MD. MINCHU ALI
ADDITIONAL TEACHER
SOLMARI HIGH SCHOOL
NAGAON
P.O. SOLMARI
DIST.- NAGAON
ASSAM
PIN- 782002
8:MD. MINAR UDDIN AHMED
JUNIOR ASSISTANT
SOLMARI HIGH SCHOOL
NAGAON
P.O. SOLMARI
DIST.- NAGAON
ASSAM
PIN- 782002
9:MD. JEHIRUL ISLAM
PRESIDENT
SMDC
SOLMARI HIGH SCHOOL
NAGAON
P.O. SOLMARI
DIST.- NAGAON
ASSAM
PIN- 78200

Advocate for the Petitioner : MR. K N CHOUDHURY, MR. Z HAMMAD,MR. R M DEKA

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

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 22.10.2024

Heard Mr. K. N. Choudhury, learned senior counsel assisted by Mr. Z. Hammad, learned counsel for the petitioner. Also heard Ms. P. Das, learned

standing counsel, Secondary Education Department for the respondent Nos. 1, 2, 3 and 5 and Ms. D. D. Barman, learned Addl. Senior Govt. Advocate for the respondent No.4.

2. The service of the petitioner was provincialised along with other teaching and non-teaching staffs w.e.f 15.08.1994 of the then Solmari Sr. Madrassa, Nagaon which was later on converted to Solmari High School, Nagaon. Thereafter, the petitioner was allowed to hold the charge of Headmaster of Solmari High School in addition to his normal duties by an order dated 07.11.2023, issued by the Director, Secondary Education, Assam. While the petitioner was serving as such, the Director-cum-Disciplinary Authority, Secondary Education, Assam passed an order dated 18.05.2024 placing the petitioner under suspension with immediate effect pending drawal of departmental proceeding.

3. Being aggrieved, petitioner preferred a writ petition which was numbered as WP(C)/2926/2024 challenging the suspension order dated 18.05.2024. During the pendency of WP(C)/2926/2024, the Disciplinary Authority-cum-Director, Secondary Education, Assam issued a Show Cause Notice dated 05.06.2024 to the petitioner on the allegation that the petitioner while serving as Assistant Teacher -cum- Headmaster-in- Charge in the Solmari High School (A) Nagaon, the petitioner did not pay the monthly salaries for the month of April 2024 to two additional teachers of the petitioner's institution and the petitioner was directed to submit his written statement within 10(ten) days. Accordingly, the petitioner submitted his written statement on 03.07.2024. The petitioner thereafter, preferred an Interlocutory Application which was registered

as I.A.(Civil)/1967/2024 challenging the Show Cause Notice dated 05.06.2024.

4. While the WP(C)/2926/2024 and the connected Interlocutory Application was pending disposal, the Director of Secondary Education, Assam passed an order on 17.08.2024 extending the period of suspension of the petitioner for further 3(three) months w.e.f 18.08.2024. Accordingly, the petitioner withdrew WP(C)/2926/2024 and I.A.(Civil)/1967/2024 on 22.08.2024 with liberty to file afresh. Thereafter, the petitioner filed the present consolidated writ petition challenging the suspension order dated 18.05.2024, show cause notice dated 05.06.2024 and the order dated 17.08.2024 by which the suspension period of the petitioner was extended for further 3(three) months w.e.f 18.08.2024.

5. Mr. K. N. Choudhury, learned counsel for the petitioner submits that the petitioner was suspended by the order dated 18.05.2024 only on the mere allegation that he had failed to prepare the salary statement of 2(two) additional teachers of Solmari High School (A) Nagaon when the petitioner was the Headmaster-in-Charge of the said school. It is submitted that the 2(two) additional teachers had in fact received their salaries for the month of April, 2024. He also submits that the order dated 17.08.2024 by which the suspension period of the petitioner was extended was reviewed only on the 91st day from the date the suspension order dated 18.05.2024 was issued and therefore, the review of the suspension of the petitioner was done beyond the period of 90 (ninety) days and therefore, the order dated 17.08.2024 by which the suspension period of the petitioner was extended for a period of further 3(three) months w.e.f 18.08.2024 stands vitiated in terms of the ratio laid down by the

Hon'ble Supreme Court in the case of *Ajay Kumar Choudhury Vs. Union of India through its Secretary and Another reported in 2015 7 SCC 291* and also in the case of *Union of India and Ors. Vs. Dipak Mali reported in 2010 2 SCC 222*. He therefore submits that the suspension order dated 18.05.2024 would not be valid inasmuch as the review of the suspension period of the petitioner was made after lapse of 90 (ninety) days.

6. Ms. P. Das, learned standing counsel, Secondary Education Department on the other hand submits that after the suspension order dated 18.05.2024, the respondents had issued the show cause notice to the petitioner on 05.06.2024 to which the petitioner also submitted his written statement on 03.07.2024. She further submits that the petitioner was placed under suspension for his misconduct and arbitrary action on non-submission of salary bill to the treasury in respect of 2(two) additional teachers of his institution. The Departmental Proceeding against the petitioner was already initiated by the show cause notice dated 05.06.2024 to which the petitioner filed his written statement on 03.07.2024 and as the written statement received from the petitioner was not found satisfactory, an Enquiry Committee was constituted to inquire into the matter. She further submits that the Departmental Proceeding drawn up against the petitioner has been concluded and the Enquiry Officer has submitted the Inquiry Report. It is also submitted that the Enquiry Report has been sent to the petitioner via registered post directing him to submit a written reply on the findings of the Enquiry Report within 7(seven) days by a communication dated 15.10.2024 written by the Director-cum-Disciplinary Authority, Secondary Education, Assam. In that view of the matter, the suspension order of the petitioner as well as the order dated 17.08.2024 by which the suspension order

of the petitioner was extended may not be interfered with and the Departmental Proceeding may be permitted to come to its logical end.

7. I have considered the submissions made by the learned counsel for the parties. This Court has taken into consideration that the Enquiry Report with regard to the Departmental Proceeding against the petitioner has already been submitted and the said Enquiry Report has been sent to the petitioner via registered post and the petitioner has been directed to file his reply against any finding of the Enquiry Report by communication dated 15.10.2024.

8. This Court has also taken into consideration that the petitioner was suspended by order dated 18.05.2024. If the Authority wanted to review the suspension period of the petitioner the same should have been done before the expiry of 90(ninety) days from the date of issuance of the suspension order. However, a perusal of the order dated 17.08.224 would indicate that the review of the suspension order of the petitioner was done beyond the prescribed period of 90(ninety) days.

9. In the case of Ajay Kumar Choudhury, the Hon'ble Supreme Court has held that the currency of a suspension period should not extend beyond 3(three) months, if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee and if the memorandum of charges/charge-sheet is served a reasoned order must be passed for the extension of the suspension period. In the case in hand, what is noticed is that the suspension order was passed on 18.05.2024 and the order extending the

suspension period of the petitioner was made on 17.08.2024. A perusal of the order dated 17.08.2024 also indicates that no reasons has been given requiring the further extension of the petitioner's suspension except that the departmental proceeding is pending.

10. This Court on 25.09.2024 directed the standing counsel, Secondary Education Department to produce the records as well as take instructions on which date the review of the suspension of the petitioner was made by the respondents and directed that this matter be listed on 03.10.2024. On 03.10.2024, the learned standing counsel, Secondary Education Department was again given one last chance to produce the records in original. Today, when the matter is called up, the learned standing counsel could not produce the records in original and has only produced a communication dated 15.10.2024, issued by the Director of Disciplinary Authority, Secondary Education, Assam and addressed to the petitioner, whereby, the Enquiry Report was enclosed and a direction was given to the petitioner to file written reply, if any, on the findings of the Enquiry Report. Under such circumstances, this Court has to presume that as the respondents are not willing to produce the records, the same is not favorable to them. Accordingly, this Court has to proceed on the materials available on record and has no hesitation to come to the finding that the review of the suspension of the petitioner was made after expiry of 90 (ninety) days and further the order dated 17.08.2024 by which the suspension order of the petitioner was extended is without any reasons.

11. In view of the discussions made hereinabove, the suspension order dated 18.05.2024, issued by the Director-cum-Disciplinary Authority, Secondary

Education, Assam suspending the petitioner and the order dated 17.08.2024 issued by the Director of Secondary Education, Assam extending the period of suspension of the petitioner for further 3(three) months w.e.f 18.08.2024 are set aside and quashed. The respondents are directed to forthwith reinstate the petitioner back into service.

12. However, this Court makes it clear that it is not interfering with the Disciplinary Proceeding initiated against the petitioner and the respondents are directed to bring the Disciplinary Proceeding to its logical end at the earliest.

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

JUDGE

Comparing Assistant