

GAHC010195192024



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

Case No. : WP(C)/4847/2024

NIRHANDRA THAOSEN
S/O- LATE SONOT THAOSEN,
R/O NAYAN PATH,
LNB ROAD HATIGAON,
GUWAHATI, KAMRUP (M), ASSAM, PIN-781038

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, REVENUE
AND D.M DEPARTMENT, DISPUR, GUWAHATI-06

2:THE INSPECTOR GENERAL OF REGISTRATION
ASSAM
RUPNAGAR
GUWAHATI-3

Advocate for the Petitioner : MR. I H SAIKIA, MS L HMAR,MR. M R CHOUDHURY,MR. K KALITA,MR K KASHYAB,MR. B BORAH

Advocate for the Respondent : SC, REVENUE,

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 03/10/2024

Heard Mr. I.H. Saikia, learned counsel for the writ petitioner. Also heard Mr. J. Handique, learned Standing Counsel, Revenue and DM Department, Assam, appearing for the respondents.

The case of the petitioner, in a nutshell, is that he was working as Deputy Registrar, Nagaon, in the establishment of Inspector General of Registration. The petitioner was arrested on 30/12/2023 in connection with Geetanagar PS Case No. 309/2023 registered under sections 120(B)/448/468/417/420/406/409 IPC. In view of his arrest, by invoking the provision of Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964, the petitioner was placed under suspension with effect from 30/12/2023 by issuing the order dated 21/02/2024.

By order dated 29/02/2024 passed in B.A. 564/2024, the petitioner was released on bail by this Court. Immediately after his release on bail, the petitioner had communicated the bail order dated 29/02/2024 to the Principal Secretary to the Government of Assam, Revenue and Disaster Management Department, vide letter dated 11/03/2024 with a prayer to reinstate him back in service. The grievance of the petitioner is that despite his release on bail and also receipt of the communication dated 11/03/2024, the respondents have neither reinstated him in service nor has the order of suspension been reviewed till date. Consequently, the petitioner has been continuing under suspension till date.

Taking note of the grievance expressed by the petitioner's counsel, Mr. J. Handique, learned Standing Counsel, Revenue and DM Department, Assam, was granted time to obtain instruction in the matter.

Today, when the writ petition is called up, Mr. Handique has produced a copy of the communication dated 03/10/2024 issued by the Joint Secretary to the Government of Assam, Revenue and DM (Registration) Department, Assam, a perusal of which goes to show that efforts are on to initiate departmental proceeding against the petitioner by serving him with a Memorandum of Charges. However, in the written instruction dated 03/10/2024, there is not even a whisper as to whether the order of suspension of the petitioner has been reviewed and if so, whether the same has been extended by any order passed in the departmental file.

In the case of ***Ramanath Barman Vs. State of Assam and others [WP(C) 338/2022]***, this Court, while dealing with a similar writ petition had observed that in view of the law laid down in the case of ***Ajay Kumar Choudhury Vs. The Union of India & Anr.*** reported in ***(2015) 7 SCC 291, Rekibuddin Ahmed Vs. The State of Assam & Ors [WP(C) 3218/2019]***, an order of suspension would automatically lapse on the expiry of 90 days, unless the same is reviewed and extended by a subsequent order upon initiation of departmental proceeding.

It is the admitted position of fact that neither any Memorandum of Charge has been served upon the petitioner nor has the order of suspension been reviewed prior to the expiry of 90 days. If that be so, it is apparent that the order of suspension dated 21/02/2024 has automatically lapsed by operation of law, after the expiry of 90 days with effect from the date of suspension/issuance of the same.

Under the circumstances, this Court is left with no other option but to make a declaration to that effect. Consequently, it is provided that within seven days from today, the concerned authority shall pass appropriate order for reinstatement of the petitioner back in service. It is, however, made clear that notwithstanding this order passed by the Court, it would be open for the respondents to initiate and continue with the departmental proceeding, if any, against the petitioner, by following the due process of law and also to pass any other order in the matter, which may be permissible as per the provisions of law.

Writ petition stands disposed of accordingly.

JUDGE

sukhamay

Comparing Assistant