

GAHC010207042024



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

**Case No. : WP(C)/5238/2024**

GOPAL DEKA  
S/O- LATE GOLAP CHANDRA DEKA, R/O- VILL.- JIAGABHARU, P.O.  
JIAGABHARU, P.S. MISAMARI, DIST. SONITPUR, ASSAM, PIN- 784506.

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY SPECIAL CHIEF SECRETARY TO THE GOVERNMENT OF  
ASSAM, D-BLOCK, 2ND FLOOR, JANATA BHAWAN, DISPUR, GHY-781006,  
ASSAM

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF  
FOREST  
ENVIRONMENT AND FOREST DEPARTMENT  
GOVT. OF ASSAM  
ARANYA BHAWAN  
PANJABARI  
GHY-781037.

3:THE DIVISIONAL FOREST OFFICER  
SONITPUR WEST DIVISION  
TEZPUR  
DIST. TEZPUR  
ASSAM  
PIN- 784001

**Advocate for the Petitioner : MR D S DEKA,**

**Advocate for the Respondent : SC, FOREST,**

**BEFORE  
HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date : 06/11/2024**

Heard Mr. D.S. Deka, learned counsel for the writ petitioner. Also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam, appearing for the respondents.

The writ petitioner herein is serving as Forester Grade-I and posted in the Office of the Divisional Forest Officer, Sonitpur West Division. He was placed under suspension vide order dated 21/06/2024 by invoking the provision of Rule 6(2) of the Assam Discipline and Appeal Rules, 1964, on account of the fact that on 20/06/2024, the petitioner was arrested in connection with ACB P.S. case No. 49/2024 registered under section 7(a) of the Prevention of Corruption Act, 1988 (as amended up to date) and was detained in custody for more than 48 ours. The petitioner was subsequently released on bail granted by the Court of Special Judge, Assam by the order dated 24/07/2024.

The grievance of the petitioner is that although the bail order dated 24/07/2024 was duly communicated to the Departmental Authorities, yet, the order of suspension dated 21/06/2024 has neither been reviewed nor revoked till today. Mr. Deka, learned counsel for the petitioner submits that in view of the decision of the Hon'ble Supreme Court rendered in the case of ***Ajay Kumar Choudhury Vs. Union of India through its Secretary and another*** reported in ***(2015) 7 SCC 291***, an order of suspension, if not reviewed within 90 days from the date of issuance, would automatically lapse. Therefore, the petitioner is entitled to be reinstated in service.

Taking note of the grievance expressed in the writ petition, this matter was posted today so as to give an opportunity to the learned departmental counsel to obtain instruction.

Today, when the matter is called up, Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam, submits on instruction that the order of suspension dated 21/06/2024 has neither been reviewed nor extended till today.

It is to be noted herein that in the case of **Ajay Kumar Choudhury (Supra)**, the Supreme Court has categorically held that an order of suspension, if not reviewed within a period of 90 days from the date of issuance of the same nor extended by a reasoned order, would automatically lapse after expiry of 90 days.

Taking note of the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhury (Supra)** and a host of decisions rendered in similar matters, this Court in the case of **State of Assam and another Vs. Ajit Sonowal & Ors.** reported in **2023(6) GLT 115** has clarified that the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhury (Supra)** is applicable in case of a deemed suspension under Rule 6(2) of the Rules of 1964. It has also been reiterated that an order of suspension would automatically lapse on the expiry of 90 days if not reviewed by the Departmental Authority. The observations made in para 13 of the said decision are reproduced herein below for ready reference :-

*“13. From careful analysis of the above decisions of the Supreme Court what follows is that unless review is held within 90 days, an order of suspension including one issued due to the detention of an employee in custody for 48 hours, would not survive nor can such an order be granted fresh lease of life by carrying out a review after expiry of the period of 90 days. In view of the law laid down in the case of **Dipak Mali (supra)** and **Ajay Kumar Choudhary (Supra)** it is axiomatic that the order of suspension dated 07/12/2019 had lapsed after the expiry of 90 days due to want of review of the same by the Disciplinary Authority. We, therefore, find ourselves in agreement with the findings recorded by the learned Single Judge in the impugned Judgment and order dated 22/04/2021.”*

Since the departmental counsel has submitted that there was no review of the order of suspension dated 21/06/2024 and considering that there is no dispute about the fact that the law laid down in the case of **Ajay Kumar Choudhury (Supra)** and **Ajit Sonowal (Supra)** will be squarely applicable in the present case, this Court is of the unhesitant opinion that the order of suspension dated 21/06/2024 has already lapsed. Therefore, the petitioner would be liable to be reinstated in

service without any further delay.

In view of the above, it is hereby declared that the order of suspension dated 21/06/2024 issued in respect of the writ petitioner shall be deemed to have lapsed on the expire of 90 days from the date of issuance of the order. Consequently, the writ petitioner would have an indefeasible right to be reinstated in service with effect from 21/09/2024, with all consequential benefits.

It is, therefore, ordered that the respondent authorities will pass appropriate order within two weeks from today in the light of the observations made herein above.

Writ petition stands disposed of.

**JUDGE**

*Sukhamay*

**Comparing Assistant**