

GAHC010227632023



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

Case No. : WP(C)/5997/2023

GITENDRA TALUKDAR
S/O SRI RAMESH CHANDRA TALUKDAR, R/O HOUSE NO. 3, JYOTI NAGAR,
BAMUNIMADAM, CHANDMARI PS, GUWAHATI-781003, DIST- KAMRUP
(M), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT
DEPARTMENT, BLOCK-F, 1ST FLOOR, ASSAM, SECRETARIAT (CIVIL),
DISPUR, GUWAHATI-781006

2:THE DISTRICT COMMISSIONER
KAMRUP (M)
ASSAM
HENGRABARI
LICHUBAGAN
GUWAHAT

Advocate for the Petitioner : MR. D SARAF

Advocate for the Respondent : SC, REVENUE AND DISASTER MANAGEMENT DEPT

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 03-01-2024

1. Heard Mr. D. Saraf, learned counsel for the petitioner. Also heard Mr. C.S Hazarika, learned Government Advocate.

2. The case of the petitioner herein is that the petitioner was working as Lot-Mandal under Dispur Revenue Circle in Kamrup (M) district till 02.02.2022. On 02.02.2022 the petitioner was arrested in connection with an FIR registered and numbered as Kamrup CID P.S Case No.7/2021. Subsequent thereto, by an order dated 22.03.2022, the petitioner was put under suspension in exercise of the powers under Rule 6(2) of the Assam Service (Discipline and Appeal) Rules, 1964 and it was further mentioned in the suspension order that such suspension shall continue pending drawal of departmental proceedings.

3. The petitioner was released on bail by the learned CJM, Kamrup (Metro) on 08.02.2022. It is the further case of the petitioner that the petitioner had represented before the respondent authorities on 14.06.2023 for reinstating him in his service. The petitioner had again filed a representation on 13.10.2023, wherein he has specifically stated that he has already been released on bail on 08.02.2022 by CJM Kamrup (M). However, no response was received by the petitioner in this regard. Yet another representation was filed on 25.11.2022. However, the respondent No. 2 has neither taken any positive action nor passed any reasoned order on the aforesaid representation. Accordingly, the petitioner has filed this writ petition before this court for reinstatement in service.

4. It is the specific case of the petitioner that the petitioner being no longer in custody and no charge sheet/the memorandum of charge having been served upon the petitioner, the petitioner is entitled to be reinstated to his service, in view of the law laid down by the hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India & Anr** reported in **(2015) 7 SCC 291**.

5. Mr. C.S. Hazarika, learned counsel for the respondent in his usual fairness has submitted that no review has been done within the mandatory period of 90 (ninety) days nor any departmental proceeding has been initiated against the petitioner till date.

6. In terms of the law enunciated in the case of *Ajay Kr. Choudhury* (supra), suspension, specially preceding the formulation of charges, is

essentially transitory or temporary in nature and must be of a short duration. Currency of a suspension order should not extend beyond three months, if within this period the memorandum of charges/charge sheet is not served on the delinquent officer/employee; if memorandum of charges/charge sheet is served a reasoned order must be passed for the extension of suspension.

7. Admittedly 90 days period is over not only from the date of arrest but also from the date of knowledge of the employer that the petitioner has been released on bail by a competent court. However, admittedly no review has been done or any reasoned order has been passed by the employer for continuance of the suspension within the stipulated period of time and even beyond. That being the factual position, it is clear that the mandate of law laid down in Ajay Kr. Choudhury (supra) is not followed in the instant case. Accordingly, in the opinion of this court, the suspension order dated 22.03.2022 has become invalid. Accordingly the same is interferred with.

8. It is directed to the respondent authorities to forthwith reinstate the petitioner in service upon a copy of the instant order being served upon them by the petitioner.

9. It is also made clear that the respondent authorities would be at liberty to transfer the petitioner to any of its offices within the State so as to sever any local or personal contacts that the petitioner may have and which he may misuse for obstructing the investigation against him. Further, the employer is also given the liberty to prohibit the petitioner from contacting any person or handling records.

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

JUDGE