

GAHC010230822023



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

Case No. : WP(C)/6079/2023

PINAKI DEBNATH
S/O SRI PRADIP DEBNATH, VILL-TITAGURI (BHABANIPUR), P.O.-
TITAGURI, P.S.-KOKRAJHAR, DIST-KOKRAJHAR (BTAD), ASSAM, PIN-
783374

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT, ASSAM
SECRETARIAT, DISPUR, GUWAHATI-6

2:THE DEPUTY SECRETARY
REVENUE (LR) AND DISASTER MANAGEMENT DEPARTMENT
E-BLOCK
ASSAM SECRETARIAT
DISPUR
GUWAHATI-06

3:DISTRICT COMMISSIONER AND DISCIPLINARY AUTHORITY
NAGAON
OFFICE OF THE DEPUTY COMMISSIONER
NAGAON
DIST- NAGAON
ASSAM
PIN-782001

4:THE CIRCLE OFFICER
DHING REVENUE CIRCLE
NAGAON
DIST- NAGAON
ASSAM

PIN-78212

Advocate for the Petitioner : MR. M SARANIA

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

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 05.02.2024

Heard Mr. M. Sarania, learned counsel for the petitioner. Also heard Mr. C.S. Hazarika, learned Government Advocate, Assam, for the respondent nos. 3 & 4 and Mr. S. Dutta, learned Standing Counsel, Revenue Department for the respondent no.1 & 2.

2] This writ petition is filed by the petitioner who is aggrieved by the suspension order dated 24.03.2023, whereby the petitioner was placed under suspension by the Deputy Commissioner, Nagaon. The petitioner was serving as a Lot Mondal in the office of the Dhing Revenur Circle, Nagaon. During his service as a Lot Mondal, the petitioner was taken into custody pursuant to an FIR dated 23.03.2023 lodged against him in connection with ACB Police Station Case No.19/2023 under Section 120(B) IPC read with Section 7(a) of the Prevention of Corruption Act, 1988. The petitioner was subsequently released on bail by order dated 04.05.2023 passed by the Court of Special Judge,

Guwahati. Since the petitioner was taken into custody in connection with ACB Police Station Case No. 19/2023 under Section 120(B) IPC read with Section 7(a) of the Prevention of Corruption Act, 1988, he was suspended by the District Commissioner Nagaon by order dated 24.03.2023. He was placed under suspension under Rules 6 (2) of the Assam Services (Discipline and Appeal) Rules, 1964 in connection with the Vigilance and Anti-corruption case no. ACB P.S. Case No. 19/2023 under Section 120(B) IPC read with Section 7(a) of the Prevention of Corruption Act, 1988. It is submitted that since the date of issuance of the suspension order dated 24.03.2023, the petitioner is still under suspension. It is submitted by the learned counsel for the petitioner that pursuant to the suspension order dated 24.03.2023, no review for further continuation of suspension has been undertaken by the authorities concerned. A representation dated 21.06.2023 was also filed before the authorities concerned by the petitioner requesting for his reinstatement. However, the same has not yet been redressed as on date. Finding no alternative, the petitioner has approached this Court by filing the instant writ petition.

3] On 20.11.2023 Notice were issued in the matter and the respondents were permitted to file their counter-affidavit. However, no counter-affidavit has been filed.

4] The learned Government Advocate was granted the opportunity to complete his instructions. However, the instructions which have been placed before the Court reveals that the disciplinary enquiry has been conducted against the petitioner and Enquiry Officer recommended for reducing the petitioner in lower time scale and for reduction to lower Grade/post. It is submitted that the enquiry report is presently under consideration before the Disciplinary Authority.

5] The learned counsel for the petitioner, disputes the submissions made by the learned Government Advocate to the effect that there was no enquiry conducted against the petitioner as per Rules. It was only a fact finding committee and therefore, there is no question of imposition of any penalty without granting any opportunity of being heard. However, the fact remains that no review of the suspension has been conducted and the same is not disputed by the learned Government Advocate.

6] Having heard the learned counsel for the parties and upon perusal of the pleadings on record, it is seen that the petitioner was put under suspension by order dated 24.03.2023 during his service as a Lot Mondal in the office of the District Commissioner, Nagaon. The petitioner was placed under suspension by order dated 24.03.2023 under the provisions of the Rules 6(2) of the Rules,

1964 as the petitioner was taken into custody for more than 48 Hours in connection with ACB P.S. Case No. 19/2023 under Section 120(B) IPC read with Section 7(a) of the Prevention of Corruption Act, 1988 and since then the petitioner continued to be under suspension. No review for continuation of suspension was undertaken by the respective authorities. The Representation dated 21.06.2023 filed by the petitioner was also not considered. The submission made by the learned counsel for the respondents on the basis of the instructions received reveals that no review in respect of the continuation of the suspension order had taken place. Under such circumstances, the order of suspension dated 24.03.2023 has been assailed in the present proceedings only on the ground that as mandated by Law, the review of requirement of continuation of placing the petitioner under suspension was not carried out and therefore, the suspension order dated 24.03.2023 is required to be interfered with and set aside.

6.A] In order to appreciate the arguments advanced by the learned counsel appearing for both the sides, it would be necessary to refer to the provisions of Rule 6 of the Assam Services (Discipline and Appeal) Rules of 1964, which deals with suspension. Rule 6 is quoted herein below for ready reference

6. Suspension – (1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf

may place a Government servant under suspension-

(a) Whether a disciplinary proceeding against him is contemplated or is pending; or

(b) Where in the opinion of the authority aforesaid he has engaged himself in activities prejudicial to the interest of the security of the State; or

(c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial: Provided that where the order of suspension is made by an authority lower than the Appointing authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall remain under suspension until further orders : Provided that where the detention is made on account of any charge not connected with this position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rule and the case is remitted for further inquiry or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where penalty of dismissal, removal or compulsory retirement from

service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed. The Government shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the Authority which made or is deemed to have made the order or by any Authority to which that Authority is subordinate."

7] Rule 6(2) provides that an order of deemed suspension of an employee due to detention in custody exceeding a period of 48 hours would remain in force until further orders. What is to be noted herein is that the proviso to Sub-Rule 2 of Rule 6 lays down that after the employee is released on bail or is not otherwise in custody or imprisonment, the authority may vacate the order of deemed suspension if the circumstances so justify. However, as noted above, no such exercise appears to have been undertaken in this case.

8] This Court is of the view that time and again Hon'ble Supreme Court as well as this Court had passed several orders interfering with the suspension order where there is a failure on the part of the competent authority to review the continuance of the suspension as mandated by law. This law has been

clearly laid down by the Apex Court in *Ajay Kumar Choudhury Vs. Union of India* reported in (2015) 7 SCC 291 and this judgment has been followed by the Hon'ble Division Bench as well as several other coordinate Bench of this Court in their several judgments. That apart, the Office Memorandum dated 04.02.2020 issued by the Department of Personnel (B) indicates that the Government of Assam in the competent level have taken note of the principle laid out in *Ajay Kumar Choudhury (supra)* and directed all the Senior Most Secretaries of all the Department to ensure that the Memorandum of Charges/Charge Sheet has been served on the delinquent officer/employee before the expiry of 3 (three) months from the date of the order of suspension. By the said Memorandum a direction was also given to ensure that the currency of the said suspension order should not extend beyond 3 (three) months and if within the period of 3 (three) months the Memorandum of Charges or Charge Sheet is not submitted on the delinquent officer/employee, a reasoned order must be passed for extension of the suspension, whenever necessary. It is also stated in the said OM that pursuant to the Memorandum of Charges/Charge-Sheet, the Senior Most Secretaries shall undertake a review within 6 (six) months as regards the desirability for further continuation of the suspension order and the Senior Most Secretaries will be held responsible if the cases of suspension in their respective Department are not dealt with and reviewed accordingly. This OM dated

04.02.2020 is extracted below for better appreciation:

Government of Assam
Department of Personnel :: Personnel (B)
Dispur ::: Guwahati

No. ABP. 13/2018/Pt/35

Dated : Dispur, the 4th February, 2020

Hon'ble High Court Guwahati in its order dated 30.11.2017 in a series of writ petitions, the lead case being WP(C) no.6465/2017 has directed to issue a notification indicating the law laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhury – Vs- Union of India case to the effect that the Disciplinary Authorities to strictly comply with the requirement to issue the Memorandum of Charges/Charge-Sheet before the expiry of three months from the date of issuance of order of suspension.

It is therefore directed that all the Senior Most Secretaries of all the Departments shall ensure that the memorandum of Charges/Charge-Sheet is served on the delinquent officer/employee before the expiry of three months of period from the date of issuance of Order of suspension. They shall also ensure that the currency of the suspension order should not extend beyond three months if within the period of Memorandum of Charges/Charge-Sheet is not served on the delinquent officer/employee. If the Memorandum of Charges/Charge-Sheet is served within 3 (three) months of suspension, a reasoned order must be passed for the extension of the suspension, wherever necessary.

The officer proposing for suspension shall also ensure that the charges are framed and submitted to the Disciplinary Authority within two weeks from the date of passing order of suspension.

After issuance of Memorandum of Charges/Charge-Sheet, the Senior Most Secretaries shall undertake a review within 6 months as regards the desirability to further continued with the suspension Order.

Senior Most Secretaries will be held responsible if cases of suspension in their respective Departments are not dealt with and reviewed accordingly.

However, for those certain categories of employees for whom Disciplinary Authorities are not the Governor or the Chief Secretary, the concerned Appointing Authority as listed at Schedule in the Assam Services (Discipline and Appeal) Rules, 1964, will be held responsible if cases of suspension under the subordinate offices are not dealt with and reviewed accordingly.

All the Departments shall submit quarterly return to the personnel (B) Department with details about the suspension order issued, Memorandum of Charges/Charge-Sheet served upon the delinquent officer/employee and if any extension of suspension period is given etc. The Personnel Department will compile the reports received from all the departments and place before the undersigned for a periodical review every 3 months of the last 3 months suspension orders for further necessary action.

*Sd/- (Kumr Sanjay Krishna, IAS)
Chief Secretary to the Government of Assam*

9] It is to be noted herein that the question as to whether the Disciplinary

Authority would be entitled to place an employee under prolonged suspension without reviewing the order of suspension came up for consideration before the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary (Supra). The observations made in paragraphs 20 and 21 of the said decision would be relevant in the facts of this case and are, therefore, extracted below :-

“20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghbir Singh v. State of Bihar' and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) CrPC postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/chargesheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

10] The law laid down by the Apex Court were accepted and applied by the Hon'ble Division Bench of this Court in *Rakibuddin Ahmed Vs. State of Assam & Ors.* reported in 2019 (5) GLT 600 [WP(C) No.3218/2019 and the Hon'ble Division Bench held that the principles laid down in *Ajay Kumar Choudhury* (supra) will be applicable in cases of suspension under Rule 6 (2) of the Assam Services (Discipline and Appeal) Rules, 1964. Same view was adopted in *State of Assam & Anr Vs. Ajit Sonowal & 3 Ors.* (WA. No.114/2022) by its judgment and order dated 02.03.2023 and *Tapan Das vs. State of Assam* by its judgment and order dated 16.11.2023 in WP(C) No.6101/2023. In view of such

authoritative finding by the Apex Court followed by the Hon'ble Division Bench of this Court as well as the Office Memorandum dated 04.02.2020 issued by the Department of Personnel (B), Government of Assam, there is no reason for the authority not to consider the suspension case of the petitioner or review thereof in terms of the OM dated 04.02.2020.

11] Whether the law rendered by the Apex Court in *Ajay Kumar Choudhury (supra)* will also be applicable to suspensions under Rule 6(2) of the Rules of 1964 was a question which came up before this Court in *Rakibuddin Ahmed (supra)*. A Division Bench while deciding this issue had clearly held in *Rakibuddin Ahmed (supra)* that the law laid down in *Ajay Kumar Choudhury (supra)* will also be applicable to a suspension under Rule 6(2) of the Rules of 1964.

12] Under such circumstances, this Court has to unequivocally come to a conclusion that the continuation of the suspension of the petitioner with effect from the issuing of suspension order dated 24.03.2023 having not been reviewed and which position the learned Government Advocate, Assam has not disputed on the basis of the instructions received, the impugned order dated 24.03.2023 is required to be set aside and interfered with. The impugned order dated 24.03.2023 is therefore interfered with and set aside. The petitioner will

be reinstated in service forthwith and his subsistence allowance during the period of suspension, as per the provision of law, if not released, is directed to be released forthwith. However, this order shall not bar any proceedings that are contemplated to be held against the Department or already instituted against the Department. Copy of this order be marked to the Office of the learned Government Advocate, Assam, for onward communication.

13] In view of the findings of this Court as well as Office Memorandum dated 04.02.2020, the Court expresses its displeasure in the manner in which the Department neglected to comply with its own Office Memorandum. Such conduct is deprecated, however, on the given facts and circumstances, the Court refrain from imposing any cost of litigation on the respondents.

14] The writ petition stands allowed and disposed of in terms of the above.

Interim order, if any, stands merged.

Pending Interlocutory Application, if any, stands disposed of.

JUDGE

Comparing Assistant