

GAHC010255572023



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

Case No. : WP(C)/6597/2023

PRANJAL MANDAL
SON OF RAM NATH MANDAL,
R/O- VILL- NAKUCHI PATHAR,
P.O.- NAKUCHI PATHAR,
P.S.- PATACHARKUCHI,
DIST.- BAJALI/ BARPETA,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:THE DIRECTOR OF LAND RECORDS AND SURVEYS ETC.
ASSAM
BAMUNIMAIDAM
GUWAHATI
PIN- 781021.

3:THE DEPUTY COMMISSIONER/ ADDL. DEPUTY COMMISSIONER
(I/C) BAJALI
IN THE DISTRICT OF BAJALI
ASSAM

PIN- 781325.

4:THE CIRCLE OFFICER CUM DDO
SARUPETA REVENUE CIRCLE
BAJALI

DISTRICT- BAJALI

ASSAM
PIN- 781352

Advocate for the Petitioner : P BASFOR

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 25.01.2024

Heard Mr. M. Kalita, learned counsel for the petitioner. Also heard Mr. J. K. Goswami, learned Additional senior Government Advocate appears for the respondent.

2. This writ petition is filed by the petitioner praying for setting aside and quashing of the suspension order dated 11th July, 2023 issued by the Additional Deputy Commissioner (in-charge), Bajali. The petitioner was appointed as a Gaonpradhan of village Nakuchi pathar of Charge No.11 of Mouza-Bhawanipur under Sarupeta Revenue Circle, in the district of Bajali.

3. Pursuant to an FIR lodged on 01.07.2023 which was received and registered as Patacharkuchi P.S Case No. 293/2023 (GR No.333/23) under Section 379/411 of IPC, the petitioner was arrested and subsequently he was released on bail by order dated 09.08.2023 passed in B.A. No. 2566 of 2023. Since the petitioner was arrested, the Additional Deputy Commissioner by the impugned order dated 11.07.2023 placed the petitioner under suspension with effect from 07.07.2023 and since then the petitioner has been under suspension.

4. It is the submission of the learned counsel for the petitioner that the suspension of the petitioner has not been reviewed and therefore, by operation of the principle laid down in *Ajay Kumar Choudhury Vs Union of India through its Secretary and Anr.*, reported in (2015) 7 SCC 291 by the Apex court and followed in a series of judgments in this High Court, the suspension order is to be interfered with and the petitioner be directed to be re-instated.

5. Learned counsel for the petitioner further submits that he has filed representations before the Additional Deputy Commissioner praying for re-instatement of the petitioner. Representations were filed on 11.09.2023 and 10.10.2023, however, no order has been passed on these representations.

6. Per contra, Mr. J. K. Goswami, learned Additional Senior Government Advocate submits that the department has contested the case by filing their affidavit. It is submitted that the petitioner is appointed under provisions of 162 A of the Executive Instructions appended to the Assam Land and Revenue Regulations, 1886. It is submitted that under Instructions 162 A, there is the power conferred on the Deputy Commissioner or the Sub-Divisional Officer (Sador) to appoint, suspend or dismiss 'Gaonburahs' in case of Sador subdivision. It is submitted that the Executive Instructions 162 A appended to the Assam Land and Revenue Regulations, 1886, governs the appointment, suspension and dismissal of gaonpradhans. There is no provision for review of the continuation of suspension. It is submitted that consequently the principal laid down in *Ajay Kumar Choudhury (supra)* is not applicable in these cases as this is not a case under Discipline and Appeal Rules of the State or of the Central Government.

7. Perusal of the Executive instructions reflect that under Executive Instructions 162 B, there is a provision for an appeal against the order of

appointment over suspension and dismissal of a gaonburah by a sub-divisional officer and the same shall lie to the Deputy Commissioner within a period of 60 (sixty) days. Under 162 C a second appeal from the order of the Deputy Commissioner shall lie to the Commissioner of the Divisions within a period of 60 (sixty) days from the date of passing of the order by the Deputy Commissioner.

8. The grievance of the petitioner is that since the order of suspension is issued by the Additional Deputy Commissioner (in-charge), Bajali and the representation has been preferred before the said authority and no orders having been passed, the petitioner is unable to prefer a second appeal before the Commissioner of Divisions. It is further submitted that since the order of suspension was issued by the Additional Deputy Commissioner, no appeal can be filed before the Deputy Commissioner.

9. Upon hearing the learned counsels for the parties and upon careful perusal of the pleadings on record, it is seen that the order of suspension is passed by the Additional Deputy Commissioner. Reading the provisions of 162 A of the Executive instructions it is seen that appointment, suspension or dismissal of gaonburahs are to be exercised by the Deputy Commissioner or by the Sub-Divisional Officer, and in the event the post of SDO is vacant and the powers are to be exercised by the Assistant Commissioner or extra Assistant Commissioner, as may be authorized by the Deputy Commissioner.

10. Under such circumstances, the submission of the petitioner that there is no appellate authority since the impugned order of suspension is issued by the Additional Deputy Commissioner cannot be accepted. The executive instructions 162 A empowers the Assistant Commissioner or extra Assistant Commissioner to exercise the powers of appointment, suspension, dismissal of gaonburahs in the

absence of an SDO. Unless the contrary is shown, it will have to be accepted that the Additional Commissioner is exercising powers of an SDO either in his absence or as has been specifically directed by the Deputy Commissioner. Therefore, the appellate authority under the Executive Instructions is indeed available to redress the grievances of the petitioner in respect of the suspension order passed on 11.07.2023. It is seen that in the writ petition two representations are shown to have been preferred before the Additional Deputy Commissioner, namely representation dated 11th September, 23 and 10th October, 2023.

11. It is submitted by Mr. J. Handique, learned standing counsel, Revenue department that the Executive Instructions were subsequently amended by Notification dated 10th April, 2011. Under these amended instructions under 162 C an appeal against the order of appointment, suspension or dismissal of a gaonburah by Deputy Commissioner shall lie to the Divisional Commissioner within a period of 60 (sixty) days. Further as per subsequent notification issued by the Department, now second appeals will lie to the Principal Secretary of Revenue and Disaster Management in place of Divisional Commissioner.

12. Under such circumstances, this writ petition is disposed of, directing the respondent No. 3 to place the representations before the Deputy Commissioner, Bajali and thereupon the Deputy Commissioner will pass appropriate speaking orders on the said representations.

13. A copy thereof shall be served on the petitioner. It is directed that the Deputy Commissioner will consider the application and pass the speaking order as directed within a period of 30 (thirty) days from the date of receipt of a certified copy of this order.

14. The representation is shown to be dated 11.09.2023, which was initially filed before the Additional Deputy Commissioner (in-charge), Bajali and the order of suspension was issued on 11.07.2023 by the Additional Deputy Commissioner (in-charge), Bajali and the petitioner was placed under suspension with effect from 07.07.2023.

15. In that view of the matter the representation filed by the petitioner is within the period prescribed under Rule 164 B. The petitioner will be at liberty to prefer further appeal to the Principal Secretary, department of Revenue and Disaster Management in terms of the provisions of Executive Instructions 162 C read with the Notifications issued from time to time by the concerned department.

16. With the above observation, the writ petition stands disposed of.

JUDGE

Comparing Assistant