

GAHC010280832023



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

Case No. : WP(C)/7344/2023

HAFIZUR RAHMAN
S/O- LATE MOKSED ALI, VILL.- KAMARPOTA, P.O. SIMLITOLA, DIST.
GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (SECONDARY), DISPUR,
GUWAHATI-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE EXECUTIVE DIRECTOR
SSA
ASSAM
KAHILIPARA
GUWAHATI-781019.

4:THE INSPECTOR OF SCHOOLS
GOALPARA DISTRICT CIRCLE
GOALPARA
P.O. AND DIST. GOALPARA
ASSAM
PIN- 783101

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

09.04.2024

Heard Mr. S.H. Rahman, learned counsel for the petitioner. Also heard Ms. D. Mushahary, learned Standing Counsel, Secondary Education Department and Mr. P. Nayak, learned Standing Counsel, SSA.

2] This writ petition has been filed by the petitioner putting to challenge the suspension order dated 18.08.2023, whereby the petitioner who was employed as the Headmaster of Simlitola High School under Goalpara district is placed under suspension as per the Provisions of Rule 6 (1) of the Assam Services (Discipline and Appeal) Rules, 1964 with immediate effect. It is submitted by the learned counsel for the petitioner that notwithstanding the fact that the petitioner having been suspended with effect from 18.08.2023, a review for further continuation of the suspension has not been taken place prior to expiry of 3 (three) months.

3] No affidavit has been filed by the respondents. However, learned Standing Counsel, Secondary Education Department on instructions has submitted that the review of the suspension took place on 17.02.2024 and a copy of the said order has been placed before the Court today. By the said order dated

17.02.2024 the period of suspension of the petitioner has been extended until further orders with effect from 19.11.2023. What is also submitted before the Court is that the on 22.12.2023 a show-cause notice was issued against the petitioner in the Departmental Proceedings. It is also submitted that the petitioner has filed his reply to the show cause-notice on 28.02.2024.

4] Learned counsel for the petitioner submits that the writ petition is required to be allowed and suspension order is required to be set aside in view of the fact that the suspension order dated 18.08.2023 was not reviewed prior to expiry of 3 (three) months nor the departmental proceedings have been initiated before the expiry of 3 (three) months.

5] In spite of the opportunity being granted, learned Standing Counsel, Secondary Education Department has failed to file their affidavit. However, on instructions, learned Standing Counsel has placed before the Court the order of review dated 17.02.2024. The law regarding suspension has been settled by the Apex Court in its judgment passed 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 Benches as well as several other coordinate Bench of this Court in several judgments.

6] 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 findings of the Apex Court 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.”

7] Ordinarily this Court would have been inclined to interfere with the suspension order dated 18.08.2023, considering the fact that the suspension order has not been reviewed prior to the expiry of 3 (three) months nor the Departmental Proceedings have been initiated prior to expiry of 3 (three) months. This Court, however, expresses displeasure in view of the fact that in spite of the Office Memorandum dated 04.02.2020 issued by the Department of Personnel, Personnel (B), Government of Assam laying down the procedure to review a suspension prior to expiry of 3 (three) months or initiation of departmental proceedings, such steps have not been followed by the

Department to ensure that all the suspension orders with respect of the employees are required to be mandatorily completed prior to expiry of 3 (three) months in terms of the Office Memorandum dated 04.02.2020.

8] It may be mentioned here that although the Apex Court had culled out the principles with regard to the matters relating to prolong suspension in *Ajay Kumar Choudhury (Supra)* in paragraph 21 of the Judgment, however, even in that judgment in view of the disciplinary proceedings being initiated, the Apex Court held that these principles will not be applicable to that case. The relevant paragraph of the said Judgment is extracted below:

“22. So far as the facts of the present case are concerned, the appellant has now been served with a charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the respondents will be subject to judicial review”.

9] Under such circumstances, this Court, on the facts of this case, does not consider it necessary to invoke its discretionary powers to interfere with and set aside the suspension order and/or the review at this stage. However, this Court directs the respondent authorities to expeditiously complete the Disciplinary Proceedings within a period of 60 (sixty) days from the date of receipt of a certified copy of this order and pass necessary orders thereon. In the event the charges made against the petitioner are found to be unsustainable during the Disciplinary Proceeding, then the petitioner shall be reinstated in service with

immediate effect and the period of suspension will be treated as period of duty.

10] With the above observation the writ petition stands disposed of.

Interim order, if any, stands vacated.

JUDGE

Comparing Assistant