

GAHC010290222023



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

Case No. : WP(C)/7538/2023

SUBRATA CHOUDHURY
S/O- LATE S. CHOUDHURY,
R/O- RONGPUR, SILCHAR,
P.O. AND P.S.- SILCHAR,
DIST.- CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE PRINCIPAL SECRETARY TO THE
GOVERNMENT OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
PANJABARI
JURIPAR
ASSAM

GUWAHATI-37.

3:THE BLOCK DEVELOPMENT OFFICER
KALAIN DEVELOPMENT BLOCK
CACHAR
ASSAM
PIN- 788805.

4:THE BLOCK DEVELOPMENT OFFICER
KATIGORAH DEVELOPMENT BLOCK
CACHAR
ASSAM

PIN- 788805.

5:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
SILCHAR
ASSAM
PIN- 788001

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

01.03.2024

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. P. Handique, learned Standing Counsel, P&RD Department.

2] This writ petition is filed by the petitioner putting to challenge the suspension order dated 19.08.2023 passed by the Commissioner, Panchayat and Rural Development, whereby the petitioner who was working as an Accountant at Kalain Development Block, Cachar was placed under suspension. Pursuant to the said suspension order the petitioner has filed a representation before the Commissioner, Panchayat and Rural Development seeking withdrawal of the said suspension order. That having not been disposed of, the petitioner approached this Court by filing WP(C) No.5667/2023. This writ petition was disposed of by a Coordinate Bench of this Court vide Judgment and Order dated 16.10.2023 and

directed the petitioner to submit an appeal against his suspension order dated 19.08.2023 before the Secretary, P&RD within a period of 1 (one) week from the date of the order and thereafter, the Secretary, P&RD on receipt of the said appeal shall consider and dispose of the same within a period of 1 (one) month from the date of receipt of the said appeal.

2] Pursuant to the said Judgment and Order dated 16.10.2023 passed in WP(C) No.5667/2023, the petitioner filed an appeal on 20.10.2023 before the Principal Secretary/Secretary, P&RD Department. The appeal was received on 14.11.2023. However, it is stated that the said appeal is remained pending and no order has been passed on the said appeal nor has his suspension order being recalled. Learned counsel for the petitioner submits that the present writ petition is filed seeking a direction to the respondent authorities praying for setting aside of the suspension order dated 19.08.2023 on the ground that there was no order reviewing continuation of the suspension of the petitioner which was carried out by the competent authorities within a period of 3 (three) months from the date of issuance of the order of suspension as is required under the law. He, therefore, submits that his prayer for interference of the suspension be entertained and the writ petition be allowed. He has placed reliance of the judgment of the Apex Court rendered in *Ajay Kumar Choudhury Vs. Union of India* reported in (2015) 7 SCC 291. The petitioner has also relied

upon a judgment of the Coordinate Bench of this court rendered on 29.01.2021 passed in WP(C) No.3700/2020 (Jholmal Dutta vs. the State of Assam & 4 Ors.).

3] Learned Standing Counsel, P&RD Department submits that he has no instructions with regard to the disposal of the appeal. He further submits that the suspension was issued on 19.08.2023 and a show-cause notice was issued to the petitioner on 14.10.2023. Learned Standing Counsel, P&RD Department submits that since the show-cause notice was issued to the petitioner within the period of 3 (three) months from the date of issuance of the order of suspension, no order was called for.

4] Learned counsel for the parties have been heard. The writ petition along with the additional affidavit filed by the petitioner has been carefully perused.

5] The writ petitioner has approached this Court praying for interference of the suspension order dated 19.08.2023. The earlier writ petition i.e. WP(C) No.5667/2023 was filed by the petitioner and the same was disposed of on 16.10.2023. From the pleadings available on record it is seen that the show-cause notice dated 14.10.2023 was served to the petitioner. This fact has also not been pleaded in the writ petition. However, by way of an additional affidavit the show-cause notice which was served on the petitioner has been brought on record. A perusal of the additional affidavit does not reveal the date on which

the show-cause notice was served upon the writ petitioner. On the contrary on 21.10.2023 the petitioner had submitted a detailed reply to the show-cause notice. It is also not disputed that the appeal, which was directed to be filed by this Court by order dated 16.10.2023 passed in WP(C) No.5667/2023, is also presently pending before the Principal Secretary of the P&RD Department. It is evident that the petitioner has proceeded to avail the statutory remedy available under the Assam Services (Discipline and Appeal) Rules, 1964.

6] Accordingly, at this stage this Court does not consider it necessary to invoke its discretionary writ jurisdiction only to pass an order on the correctness of the suspension order issued on 19.08.2023 when the statutory appeal filed is pending. However, considering the matter in its entirety, this Court directs the respondent authorities, more particularly, the respondent no.1 namely, the Principal Secretary/Secretary, P&RD Department, to expeditiously dispose of the representation dated 20.10.2023 stated to have been filed and pending before the respondent no.1. The representation be disposed of within a period of 30 (thirty) days from the date of receipt of a certified copy of this order. Since a Coordinate Bench of this Court by Judgment and Order dated 16.10.2023 passed in WP(C) No.5667/2023 has already directed the petitioner to file an appeal before the Secretary, P&RD Department and pursuant to which an appeal has been filed by the petitioner, it is directed that the appeal filed be

disposed of as directed above within the specified time frame. Relevant records as may be found necessary for disposal of the appeal filed by the petitioner may also be called for by the respondent authorities from any subordinate authority, if so required.

7] The writ petition stands disposed of in terms of the above. No order as to cost.

JUDGE

Comparing Assistant