GAHC020002532023

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

Case No. : WP(C)/99/2023

SHRI. RENPONTHUNG KITHAN
S/O ETSO KITHAN, R/O VUNGOJU COLINY, WOKHA, NAGALAND,
WORKING AS WARDER-UNDER SUSPENSION, DISTRICT JAIL,
WOKHA, NAGALAND

VERSUS

THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND AND 4 ORS
KOHIMA NAGALAND

2:THE DIRECTOR GENERAL OF PRISONS
KOHIMA NAGALAND

3:THE INSPECTOR GENERAL OF PRISONS
NAGALAND KOHIMA

4:THE ADDITIONAL DIRECTOR GENERAL OF PRISONS
KOHIMA NAGALAND

5:THE SUPERINTENDENT OF JAIL
DISTRICT JAIL - WOKHA NAGALAN

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

Advocate for the petitioner : Mr. A. Zho,
Mr. Taka Kichu,
Mr. v. Koza, Advs.

Advocate for the State respondents : Mr. K. Angami, Sr. Govt. Adv.

Date of hearing : **13/05/2024**

Date of judgment : **27/06/2024**

JUDGMENT & ORDER (CAV)

Heard Mr. A. Zho, learned counsel for the petitioner and Mr. K. Angami, learned Sr. Government Advocate for the State respondents.

2. The facts of the case in brief is that, the petitioner while serving as a Jail Warder in the District Jail, Wokha, one under trial prisoner (UTP) namely Yanbemo Mozhui who was lodged at District Jail Wokha in connection with Bdi P.S Case No. 15/19 u/s 448/307/115/325/326/333/34 IPC, died at the District Civil Hospital, Wokha. In connection with the incident, the Police on 26/12/2019 registered Wokha P.S Case No. 046/19 u/s 325/326/330/302/304(A)/34 IPC and arrested the petitioner and 17 others alleging custodial death.

3. That consequent to the arrest of the petitioner, the Director General of Prison, in exercise of the power conferred by Sub-Rule (1) of Rule-6 of the Nagaland Services (Discipline and Appeal) Rules, 1967, issued the order No. PRI/HQ/ESTT-234/11/661, dated 28/12/2019, placing the petitioner under suspension with immediate effect in contemplation of a disciplinary proceedings for violation of section-54 of the Prison Act, 1894.

4. That thereafter, the Additional Director General of Prison, issued the Memorandum No. PRI/HQ/PM-1/2020, dated 17/03/2020 proposing to hold an enquiry against the petitioner under Rule-9(2) of the Nagaland Services (Discipline & Appeal) Rules, 1967. By the said Memorandum, the statement of Articles of Charges (Annexure-I), the statement of imputation of misconduct/misbehavior in support of the Articles of Charge (Annexure-II), the list of documents on which the Articles of Charges are proposed to be sustained (Annexure-III) and the list of witnesses by whom the Articles of Charges against the petitioner are proposed to be sustained (Annexure-IV) was also

furnished to the petitioner. In the said memorandum, the petitioner was also directed to submit within 10 days a written statement of his defense and to state whether the petitioner also desired to be heard in person.

5. The petitioner accordingly submitted the written statement of his defense dated 26/03/2020 wherein the petitioner denied the allegation leveled against him and requested the authorities to drop the proposed enquiry in the interest of justice.

6. Mr. A. Zho, the learned counsel for the petitioner submits that after the order dated 28/12/2019 was issued placing the petitioner under suspension and the memorandum dated 17/03/2020 was issued proposing to hold an enquiry against the petitioner neither any enquiry has been conducted, nor the authorities has reviewed the suspension order as mandated by law. It is submitted that the suspension order should have been reviewed by the competent authority by a reasoned order, within a period not exceeding beyond 3(three) months, for extension of the suspension, after the memorandum dated 17/03/2020 was issued proposing to hold enquiry against the petitioner. The authorities, however has not, issued any order reviewing the period for extension of suspension, of the petitioner, despite the lapse of more than 3(three) years from the time the suspension order dated 28/12/2019 was issued, nor has conducted any enquiry after the memorandum of charges dated 17/03/2020 was served on the petitioner and the authorities have continued to keep the petitioner under prolong and indefinite suspension which is neither justified nor legally sustainable. With regard to the Wokha P.S Case No. 046/19, Mr. A. Zho submits that the Police on 23/03/2020 has filed the charge-sheet against the petitioner and others and the case is presently pending trial and disposal before the learned District & Sessions Judge, Wokha. Mr. A. Zho, however submits that the criminal case which is pending trial is not expected to be concluded soon as many of the prosecution witnesses are yet to be examined by the Court.

7. In support of his submission, the learned counsel for the petitioner, has relied on the following cases;

i). **Ajay Kumar Choudhary** -versus- **Union of India & Another**, reported in **(2015) 7 SCC 291**.

ii) **State of Tamil Nadu** represented by Secretary to the Government (Home) -versus- **Promod Kumar, IPS & Another**, reported in **(2018) 17 SCC 677**.

iii) **State of Nagaland & Others** -versus- **Chubanungsang Imchen & Another**, reported in **2019 (5) GLT 444**.

iv) **Md. Sahabuddin** -versus- **State of Assam & Others**, reported in **1990 (1) GLR 276**.

v) **Sabina Langthasa** -versus- **State of Assam & 2 Others**, order dated 12/02/2024 in W.P.(C) No. 664/2024.

8. Mr. K. Angami, the learned Sr. Government Advocate referring to the affidavit-in-opposition filed by the State respondents, submits that under the Nagaland Services (Discipline & Appeal) Rules, 1967, under which the petitioner has been suspended there is no provision to review the suspension order once in 3(three) months. It is submitted that the memorandum dated 17/03/2020 has been issued proposing to hold departmental enquiry against the petitioner, however the enquiry has not commenced as the criminal case against the petitioner is pending disposal in the court of the learned Sessions Judge, Wokha. It is further submitted that the law does not insist for reviewing the period of suspension by the competent authority once in every 3(three) months when the memorandum of charges dated 17/03/2020 has already been served to the petitioner within the window period of the first 3(three) months of the suspension. In sum and substance, the case of the State respondents is that there is no provision under the Rules, 1967 to review the suspension order of the petitioner every 3(three) months and the departmental enquiry has not commenced against the petitioner, as of date, as the criminal trial is yet to be concluded.

In support of his submission the learned Senior Government Advocate has relied on the following cases;

(i) **Khem Chand vs. Union of India & Ors.** reported in **AIR 1963**

SC 687

(ii) **R.P.Kapur vs. Union of India & Anr.** reported in **AIR 1964 SC 787**

(iii) Common Order dated 15.03.2022 passed by a three Judge Bench of the Madras High Court in **WP No. 2165 of 2015 (P. Kannan -vs- The Commissioner for Municipal Administration Municipal Administration Commission Ezhilagam Annexure-6th Floor Chepauk, Chennai-5 & 2 Others) and in W.P. No. 21628/2018 (D. Sekar -vs- the Assistant Director of Survey and Land Records Kancheepuram)**.

9. Heard the learned counsel for the parties.

10. By the order dated 28/12/2019, issued by the Director General of Prison, Nagaland, Kohima, in exercise of the power conferred by Sub-Rule (1) of Rule-6 of the Nagaland Services (Discipline & Appeal) Rules, 1967, the petitioner was placed under suspension, contemplating a disciplinary proceeding for violation of section-54 of the Prison Act, 1894. Thereafter, the memorandum of charges dated 17/03/2020 was issued by the Additional Director General of Prison, Nagaland, Kohima, proposing to hold the departmental enquiry against the petitioner under Rule-9(2) of the Nagaland Services (Discipline & Appeal) Rules, 1967. In reply to the memorandum dated 17/03/2020, the petitioner has also submitted the written statement of his defense.

11. It is however observed that subsequent to the issuance of the order dated 28/12/2019 placing the petitioner under suspension and the memorandum dated 17/03/2020 proposing to hold an enquiry against the petitioner, no departmental enquiry has ever been conducted against the petitioner despite the petitioner submitting his written statement of defense within the stipulated time. On a query from the learned Government Advocate as to why the enquiry has not proceeded against the petitioner despite the lapse of more than 3(three) years from the time the memorandum dated 17/03/2020 was issued to the petitioner, the learned Government Advocate has submitted that the enquiry could not proceed against the petitioner as the

criminal trial against the petitioner is pending disposal before the court of the learned Sessions Judge, Wokha, Nagaland. Mr. K. Angami has further reiterated his submission that there is no provision under the Nagaland Services (Discipline & Appeal) Rules, 1967, to review the suspension order of the government employee once in 3(three) months.

12. There is no dispute, to the well settled principle of law, that the authorities can place an employee under suspension contemplating a departmental enquiry. However, the statutory power conferred upon the disciplinary authority to keep an employee under suspension during the contemplated enquiry cannot be interpreted in such a manner so as to confer an arbitrary, unguided or absolute power to keep an employee under suspension without any enquiry for an unlimited period or by prolonging the enquiry unreasonably, particularly when the delinquent employee is not responsible for such delay. In the present case, it is observed that more than 3(three) years has lapsed from the time the memorandum of charge dated 17/03/2020 was furnished to the petitioner without holding any enquiry and it is not discernible that the petitioner was responsible for the delay. This Court is therefore of the view that keeping the petitioner under prolonged suspension without holding any enquiry is unreasonable, penal in nature and cannot be legally sustained. The defense taken by the State respondents that the enquiry could not be proceeded against the petitioner in view of the pendency of the criminal case and as there is no provision to review the period of suspension every 3(three) months under the Nagaland Services (Discipline & Appeal) Rules, 1967, cannot justify the prolonged and unreasonable suspension of the petitioner. The law is well settled that departmental proceedings and proceedings in criminal case can proceed simultaneously and pendency of a criminal case cannot be a ground to unreasonably delay the departmental enquiry. Moreover, the Hon'ble Division Bench of this Court in Chubanungsang Imchen (supra) has held that the proposition enunciated in Ajay Kumar Choudhury (supra) that even if a charge-sheet is submitted against the delinquent officer/employee then also a reasoned order must have to be passed

by the competent authority for extension of the period of suspension shall be applicable in respect of an employee who has been placed under suspension in terms of the Rule-6(1)(b) of the 1967 Rules.

13. In the case of **Capt. M. Paul Anthony** -versus- **Bharat Gold Mines Ltd. & Another**, reported in **(1999) 3 SCC 679**, the Hon'ble Supreme Court has held as follows;

> *"22. The conclusions which are deducible from various decisions of this Court referred to above are:*
>
> *(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*
>
> *(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*
>
> *(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.*
>
> *(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.*
>
> *(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."*

14. In **Prem Nath Bali** -versus- **Registrar, High Court of Delhi &**

Another, reported in **(2015) 16 SCC 415**, the Hon'ble Supreme Court has held that;

> *"26. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.*
>
> *27. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.*
>
> *28. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."*

15. In Ajay Kumar Choudhary (supra) referred to, by the petitioner, the Hon'ble Supreme Court, in laying the law, on the imposition of a limit, on the period of suspension has held as follows;

> *"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 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 Raghubir Singh*

vs. State of Bihar[16]*, and more so of the Constitution Bench in Antulay*[12]*, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C, 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries 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/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. 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/Charge-sheet 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 concerned person 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that 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."

16. In the case of State of Tamil Nadu -versus- Promod Kumar, IPS (supra), the Hon'ble Supreme Court referring to Ajay Kumar Choudhary (supra) has held that;

"27. This Court in Ajay Kumar Choudhary -versus- Union of India[13] *has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration……"*

17. In State of Nagaland & Others -versus- Chubanungsang Imchen & Another (Supra), the Hon'ble Division Bench of this Court relying on Ajay Kumar

Choudhary (supra) has held as follows;

"11. In view of the submission of the learned counsel for the appellants that the decision in Ajay Kumar Choudhary (supra) is not applicable in respect of a Government servant whose condition of service are regulated by the Rules of 1967 and the said decision pertains only to a Government servant coming under the purview of CCS (CCA) Rules, 1965, it is appropriate to reproduce the following observations and conclusion made by the Hon'ble Supreme Court in paragraphs 8, 11 and 12 in Ajay Kumar Choudhary (supra) hereunder :-

"8. Learned Senior Counsel for the Appellant, however, has rightly relied on a series of Judgments of this Court, including O.P. Gupta v. Union of India, where this Court has enunciated that the suspension of an employee is injurious to his interests and must not
be continued for an unreasonably long period; that, therefore, an order of suspension should not be lightly passed.

11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which
assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

12. A reading of the aforesaid observations goes to show that the observations made therein are on the subject-matter of suspension in general and the same are not restricted to the provisions of CCS (CCA) Rules, 1965 in particular. In fact, it is crystal clear from the above extracts including paragraph 21, from Ajay Kumar Choudhary (supra), that an order of suspension should not extend beyond 3(three) months if within that period of 3(three) months, the memorandum of charges/charge-sheet is not served on the employee under suspension. Further, it is clear from the above judgment that if a memorandum of charges/charge-sheet is served, a reasoned order must be passed for extension of the suspension. In laying down the said propositions, the Hon'ble Supreme Court has referred to the provisions of Section 167, Code of Criminal Procedure, 1973 (the Cr.PC, in short). Thus, it is made clear that an employ-yee's initial period of suspension can be for a period of 3 (three) months from the date of suspension and if within that period, the memorandum of charges/charge-sheet is not served on the employee, the order of suspension looses its force and in case if within that period of 3(three) months, the memorandum of charges/charge-sheet has been served and the competent authority is of the opinion that the period of suspension should be continued beyond the period of 3(three) months then also, a reasoned order must be passed for extension of the period of suspension.

14. In respect of the submission of the learned counsel for the appellants that the learned Single Judge was not correct to hold that the provisions of CCS (CCA) Rules, 1965 were applicable in toto in respect of a Government employee serving under Government of Nagaland, we are of the considered view that the submission of the learned counsel to that extent is correct since the conditions of service of State Government employees under the Government of Nagaland like the respondents, are regulated by the provisions of the 1967 Rules. But when the matter is considered in the perspective of the contention of the appellants that in respect of an employee who was placed under suspension in terms of Rules 6(1) (b) of the 1967 Rules, the proposition enunciated in Ajay Kumar Choudhary (supra) is not applicable, the other part of the contention does not, in our considered opinion, appear to be correct. Because, it has been clearly mentioned in Ajay Kumar Choudhary (supra) that even if a charge-sheet is submitted then also a reasoned order must have to be passed by the competent authority for extension of the period of suspension. The said principle has been laid to adequately safeguard the right of the delinquent employee to speedy trial. The preservation of the interests of the Government in the prosecution of such an employee also has been taken into consideration while laying down the above- stated proposition and in the impugned judgment also, the aforesaid perspective was duly taken into consideration by the learned Single Judge.

15. The State Government definitely has the power, authority and jurisdiction to keep a Government servant under suspension pending

drawal of disciplinary proceeding or during the pendency of a disciplinary proceeding or during the pendency of a criminal investigation/inquiry/trial. The object of placing a Government servant under suspension is to keep him away from an influential position wherefrom he can interfere with the conduct of the disciplinary proceeding, pending or contemplated, or criminal investigation/inquiry/trial so as to prevent him from hampering in the process of collection of evidence or from tempering with the evidence, in any manner, or where, having regard to the nature of charges/allegations against him, the competent authority is of the opinion that it would be unsafe to continue to vest in him the powers of the post the Government servant is occupying. It is for the competent authority to consider all these aspects at the time of placing the Government servant under suspension and also during the period subsequent to suspension for keeping him under suspension. At the same time, on the other hand, the placement of a Government servant under suspension for a prolonged period unduly would change the colour of measure taken to place the public servant under suspension with the aforestated objectives, into a measure of punishment. It has been emphasised therefore, time and again, that the matter of suspension as well as the period of suspension should also be considered from the perspectives of consequences and effects emanating therefrom. Having considered the principle laid down in Ajay Kumar Choudhary (supra) regarding periodical review for the purpose of extension of the period of suspension, we are of the considered opinion that the proposition is also applicable in a case, like the cases in hand, where a public servant is placed under suspension when a case against him in respect of any criminal offence is under investigation, inquiry or trial and no review of the necessity of keeping him under suspension for any further period or otherwise has been made even after submission of a charge-sheet in the criminal case.

16. In the case of Promod Kumar (supra), the matter under challenge was suspension of the respondent therein in view of his arrest in a criminal case under Rule 3(2) of the All India Services (Discipline and Appeal) Rules, 1969. In paragraph 23 of the said judgment, the decision of Ajay Kumar Choudhary (supra) has been referred to and the Hon'ble Supreme Court has observed as follows:-

> *"23. This Court in Ajay Kumar Choudhary v Union of India, (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post."*

17. The respondents were placed under suspension on 6.10.2017, if it is assumed to be on the purported ground under Rule 6(1)(b) of the 1967 Rules, when the appropriate authority decided to grant prosecution sanction in respect of 5(five) nos. of Government of

Nagaland employees including the respondents herein. As it transpires, the charge sheet under Section 173, Cr.PC was submitted by the Investigating Agency before the learned Court on 20.12.2017. In view of the submission of the charge sheet in Regular Case No. 1/2015, it prima facie appears that all the necessary materials have been collected by the Investigating Agency to prosecute the accused arraigned therein including the present respondents, to prosecute them under the appropriate offences. There is no whisper in the affidavits-in-opposition filed by the appellants herein as the respondents, in the writ petitions to the effect that there was any attempt on the part of the respondents to interfere in the process of collection of evidence or to temper with the evidence or to influence the witnesses in any manner. There is no indication in the charge-sheet that any further investigation is necessary to unearth any further materials.

18. In view of the aforesaid discussion, we are of the considered view that the learned Single Judge is not unjustified in reaching the ultimate conclusion that the period of suspension of the respondents in absence of any reasoned order passed in review, cannot be prolonged and, therefore, is justified in setting aside the orders of suspension dt. 6.10.2017 in respect of both the respondents. Consequently, we do not find any merit in the appeals and accordingly, the same are dismissed. There shall, however, be no order as to cost."

18. In the case of Md. Sahabuddin (supra), the Hon'ble Division Bench of this Court has also held as follows;

"5. Without entering into that controversy at this stage, we do think that prolonged suspension for more than 3(three) years of the petitioner from service without any further action having been taken in the matter, was neither proper nor justified.

6 Suspension from service is a very serious matter and should be for a minimum period as may only be necessary. A prolonged suspension without any justifiable cost is not only wastage of human resources but also of material resources of the organization which has to pay the subsistence allowance etc., without any return. We find absolutely no reason to continue the suspension of the petitioner.

7. We therefore, revoked the impugned suspension of the petitioner from service with immediate effect but make it clear that it shall be open to the respondents to pursue disciplinary action against the petitioner as may be necessary and also the matter relating to the alleged irregular appointment of the petitioner. We make no order as to costs. This petition is disposed of accordingly. "

19. In Sabina Langthasa (supra), the Co-ordinate Bench of this Court has held that;

"Having heard the learned counsel for the parties and upon careful perusal of the writ petition, 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 mandate by law. This law has been clearly laid down by the Apex Court in Ajay Kumar Choudhary -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 Co-ordinate Bench of this Court in several judgment. "

"The ratio laid down in Ajay Choudhary (supra) has been applied by the Hon'ble Division Bench of this Court in Rajibuddin Ahmed vs State of Assam & Ors. reported in 2019 (5) GLT 600 (W.P.(C) No. 3218/2019) wherein it was 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 also. Same view was rendered by another Division Bench of this Court in the State of Assam & Anr. vs. Ajit Sonowal & 3 Ors. (W.A No. 114/2022) in its judgment and order dated 02/03/2022. Co-ordinate Bench have also applied this ratio in Rafed Ali Ahmed vs. State of Assam & 3 Ors. rendered in W.P.(C) No. 455/2023 and Tapan Das vs. State of Assam by its judgment and order dated 16/11/2023 in W.P.(C) No. 610/2023. In view of such authoritative finding by the Apex Court and which is followed by the Division Bench and other Co-ordinate Bench of this Court, the authorities are duty bound in law to comply with the principles laid down by the Apex Court in Ajay Choudhary (supra)."

20. The learned Government Advocate by referring to Khem Chand (supra) has only relied on the observation made by the Hon'ble Supreme Court that the suspension of the government servant pending an enquiry is a necessary part of the procedure for taking disciplinary action against him. Khem Chand case does not deal with the periodical review for the purpose of extension of the period of suspension and therefore, not relevant to the case at hand.

21. So also in R.P. Kapur (supra) which has also been referred to, by the learned Government Advocate, the Hon'ble Supreme Court in paragraph-8 of the said judgment has observed that;

"7. The only question that has been debated before us is with respect to suspension whether as a punishment or otherwise of a member of one of the Secretary of State's services, in this case the Indian Civil Service, members of which have become members of the Indian Administrative Service under the Recruitment Rules; and it is only this question that falls to be determined in the present appeal....."

This case also does not deal with the periodical review of suspension after the memorandum of charges/charge-sheet is served on the delinquent employee as propounded in Ajay Kumar Choudhary (supra).

22. The learned Government Advocate has further placed reliance in the

common order dated 15/03/2022 passed by a three Judge Bench of the Madras High Court in W.P. No. 2165/2015 (P. Kannan -vs- The Commissioner for Municipal Administration Municipal Administration Commission Ezhilagam Annexure-6th Floor Chepauk, Chennai-5 & 2 Others) and in W.P. No. 21628/2018 (D. Sekar -vs- Assistant Director of Survey and Land Records Kancheepuram), wherein after discussing the various judgments of the Hon'ble Supreme Court has inter-alia held as follows;

> *"34. For the foregoing reason, the reference is answered by holding that;*
>
> *(i) The judgment of the Apex Court in the case of Ajay Kumar Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension."*

It is however observed that in Ajay Kumar Choudhary (supra), a clear direction has been laid down that the 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 the memorandum of charges/charge-sheet is served, a reasoned order must be passed for extension of the suspension. In the said case, the Hon'ble Supreme Court has also recognise that the previous Constitution Benches having been reluctant to quash proceedings on the ground 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 interest of justice. This Court is mandated to follow the proposition of law as laid down by the Hon'ble Supreme Court in regard to the periodical review for extension of the suspension order which has been followed by the Hon'ble Division Bench of this Court as well as by the Co-ordinate Benches.

23. In the light of the discussions made above and in view of the law laid down by the Hon'ble Supreme Court more particularly in the case of Ajay Kumar Choudhary which has been consistently followed by the Hon'ble Division Bench of this Court as well as by the Co-ordinate Benches in various judgments, this

Court is of the view that the prolonged suspension of the petitioner without any valid reason to extend the period of suspension and without holding any enquiry against the petitioner consequent to the issuance of the memorandum dated 17/03/2020 proposing to hold an enquiry, is unreasonable and cannot be legally sustained. The order No. PRI/HQ/ESTT-234/11/661, dated 28/12/2019, issued by the Director General of Prison, Nagaland, Kohima, placing the petitioner under suspension is accordingly revoked, quashed and set aside. The State respondents shall re-instate the petitioner in service within a period of 30(thirty) days from the date of passing of this judgment. This Court however makes it clear that it shall be opened to the State respondents to pursue the disciplinary action against the petitioner as may be necessary and in accordance with law.

24. The writ petition stands allowed to the extent indicated above.

25. Writ petition disposed. No cost.

JUDGE

Comparing Assistant