



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 288 of 2021

Date of Decision: 10.01.2025

Shri. Dipankar Das

Aged about 53 years

Son of (L) Shri. Debobrata Kar

R/o Howell Road, Laban, Shillong-793004,

East Khasi Hills District, Meghalaya.

....Writ Petitioner

-Versus-

1. State of Meghalaya represented by the Chief Secretary Shillong.
2. Commission Secretary of the Education Department
3. The Director of School Education and Literacy, Meghalaya, Shillong
4. Inquiry Officers Director of School Education and Literacy, Meghalaya, Shillong
5. The District School Education Officer, East Khasi Hills District, Shillong
6. The Principal, Government Girl's Higher Secondary School, Shillong.

....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.L. Shangreiso, Sr. Adv. with
 Mr. T. Dkhar, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
 Ms. R. Colney GA and
 Ms. Z.E. Nongkynrih, GA



i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

J U D G M E N T

1. The petitioner is an Assistant Teacher in the Government Girl's Higher Secondary School, Shillong who was placed under suspension vide Order No.DSEL/SEC-NG/MISC/28/2015/42 dated 15.09.2017 issued by the Director of School Education and Literacy Meghalaya, following his arrest made on the basis of an FIR dated 09.09.2017 which was lodged at the Laban Police Station, Shillong and later registered as Laban P.S. Case No. 97(9) 2017 under Section 7/8 of the POCSO Act, 2012 read with Section 504 IPC.

2. Though the petitioner was later released on bail on 30.10.2017, the said suspension order remained in force without any extension even after a lapse of 3 months of the same being issued. It is an admitted fact that after 5 months of the suspension of the petitioner, a Departmental Enquiry, dated 02.02.2018 was constituted comprising of two members with a direction to the Enquiry Officer to enquire into the circumstances leading to the suspension of the petitioner and to submit a report thereof.

3. It is the case of the petitioner that till the date of filing of this



petition, no show cause notice or article of charges was received from the said Enquiry Officer. However, the Disciplinary Authority vide letter dated 02.02.2018 bearing No. DSEL/SEC.G/Misc/18/2017/34 issued a Show Cause Notice to the petitioner under Rule 9 of the Meghalaya Services (Discipline & Appeal) Rules, 1964 as to why the penalties prescribed in Clause (i) to (vi) of Rule 7 of the said Rules should not be inflicted upon the petitioner on the charges based on the statement of allegations made therein.

4. It is also the case of the petitioner that on 04.01.2018 he had made a representation before the Director, School Education and Literacy, Shillong to allow him to resume his services on the ground that the initial suspension order dated 15.09.2017 has not been extended in spite of the same having exceeded the mandatory three months' period without any extension thereof. Finding no response to this representation, the petitioner has filed two reminders on 21.02.2018 and on 16.03.2018. In response, the relevant authority has allowed the petitioner to draw subsistence allowance @ 75% with effect from March 2018, however no review of the suspension order was made.

5. Another aspect of the matter brought forth by the petitioner is that no disciplinary proceedings have been drawn or proceeded against him by the competent disciplinary authority, nor did the Enquiry Officer



conducted any such proceedings. In fact, in course of time, one of the Enquiry Officer, Mr. P. Ryngksai had already retired from service in the beginning of the year 2021 and hence no effective enquiry was conducted.

6. In this backdrop, Mr. H.L. Shangreiso, learned Sr. counsel for the petitioner has submitted that the indefinite suspension of the petitioner without formal proceedings till date is an act done in violation of the law laid down by the Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary v. Union of India Through Its Secretary & Anr.* reported in (2015) 7 SCC 291, particularly at para 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 20 & 21 wherein, the Apex Court has held that a suspension order should not exceed three months or 90 days in its applicability, if the memorandum of charges is not served upon the delinquent officer/employee. The case of *Teiborlang Sunn v. State of Meghalaya* was also referred to in this regard, wherein this Court vide order dated 28.05.2019 passed in WP(C) No. 12 of 2018 dealing with a similarly situated case as that of the petitioner herein had disposed of the case by directing that the prolonged suspension of the petitioner is required to be reviewed in the light of the judgment in the case of *Ajay Kumar Choudhary (supra)*.

7. It is also the submission of the learned Sr. counsel that the



show cause notice dated 02.02.2018 cannot be considered as a valid memorandum of charges, since by then, a two-member Enquiry Committee was already constituted by the disciplinary authority and even then, the said memorandum of charges, if at all, has been framed only after a lapse of 4(four) months from the date of the suspension of the petitioner.

8. Yet again, the learned Sr. counsel has submitted that the Office Order dated 29.08.2022 for extension of the suspension till the conclusion of the criminal proceedings against the petitioner was only done so as an afterthought and cannot be sustained in law as was held in the case of Union of India & Ors. v. Dipak Mali, (2010) 2 SCC 222, para 10 & 11.

9. Per contra, Mr. N.D. Chullai, learned AAG while opposing the stance of the petitioner, has, on behalf of the State respondents re-stated the genesis of the case of the petitioner to say that he was suspended from service while working as a teacher in the Government Girls' Higher Secondary School, Jail Road, Shillong, wherein on being accused of having committed an offence under Section 7 and 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 following an FIR lodged by the mother of the minor survivor against whom the said offence was committed, he was immediately suspended from performing



his teaching duties.

10. In due course, a departmental enquiry was instituted vide order dated 02.02.2018 and the Departmental Enquiry Officer had issued a show cause notice dated 02.02.2018 directing the petitioner to submit his reply to the statement of allegations made against him.

11. Another limb of argument put forth by the learned AAG is that the petitioner being involved in a case under the POCSO Act for which criminal proceedings against him is also pending before the competent court of jurisdiction, the Department in its wisdom has put on hold the departmental proceedings against him in order to await the decision of the criminal court. However, as vested by power under Rule 6(b) of the Meghalaya Services (Discipline & Appeal) Rules, 2011, the suspension of the petitioner has been extended until the conclusion of the said criminal proceedings.

12. In response to the reliance of the petitioner in the case of Ajay Kumar Choudhary (supra), the learned AAG has submitted that in that case, the Hon'ble Supreme Court has not interfered with the order of suspension of the delinquent therein though the charge sheet was filed after three months from the date of the final order of suspension, which is a case similarly situated as this instant case.



13. The learned AAG has also relied on the case of P. Kannan v. Commissioner for Municipal Administration & Ors. reported in 2022 SCC Online Mad 1154, para 29, 31, 33 & 34 to say that in this case, the Full Bench of the Madras High Court has come to a finding that the judgment in the case of Ajay Kumar Choudhary (supra) does not lay down an absolute proposition of law that an order of suspension cannot be continued beyond three months if the memorandum of charges/charge sheet has not been served within such time. In fact, in the Meghalaya Services (Discipline & Appeal) Rules, 2011, for an employee who is detained in custody, the appointing authority is empowered to place such employee under suspension without any time frame prescribed for the same. Rule 6 (5) (b) of the said Rules of 2011 has clearly prescribed that the suspension of a Government servant shall continue until termination of all or any such proceedings, further submits the learned AAG.

14. In a similar case involving a school teacher, the Hon'ble Madras High Court in the case of K. Ramachandran v. The Chief Educational Officer & Ors, has vide order dated 24.08.2023 in W.P.(MD) No. 17695 of 2023 refused to revoke the suspension of the petitioner therein who is a school teacher and is involved in a criminal proceedings necessitating his suspension, submits the learned AAG.

15. From the submission of the learned counsels for the respective



parties, facts and circumstances as noted hereinabove not required to be reiterated unless warranted, what can be understood is that the basic issue to be decided herein is whether the alleged prolonged suspension of the petitioner without extension of the same within 90 days of the initial issuance of such order can be sustained in law.

16. It will be useful to look into the process by which the petitioner was placed under suspension in the first instance. The order dated 15.09.2017 revealed that he was placed under suspension following his arrest in connection with Laban Police Station Case No. 97(9) 17 under Section 7/8 POCSO Act 12 read with Section 206 IPC. Nothing is said as to the relevant rules under which the petitioner was placed under suspension. However, the Office Order dated 29.08.2022 by which the petitioner's suspension was extended has qualified the earlier order dated 15.09.2017 to say that he was placed under suspension in exercise of the power under Rule 6(b)[sic 6(5)(b)] of the Meghalaya Services (Discipline & Appeal) Rules, 2011.

17. It is a matter of record that since the petitioner was placed under suspension on 15.09.2017, no formal disciplinary proceedings was initiated against him within 90 days of such suspension. It was only on 02.02.2018 that an Enquiry Committee, consisting of two members was constituted to conduct the departmental enquiry against him.



Simultaneously, on the same date, that is, on 02.02.2018, the Disciplinary Authority had issued a Show Cause Notice to the petitioner along with the statement of charges calling upon him to response to the same within 10 days on receipt of such show cause notice. The Enquiry Officer, namely, Shri P. Ryngksai was also directed to conduct the inquiry and to submit his report on his findings thereof.

18. It is also a matter of record that the petitioner on receipt of the said show cause notice had responded to the same vide letter dated 08.02.2018 seeking permission to inspect relevant documents. Nothing is brought on record to show that the enquiry committee had replied to such request. This has then led to the petitioner to seek revocation of his suspension by his communication dated 04.01.2018 and reminders dated 21.02.2018 and 16.03.2018 respectively.

19. The relevant authority has failed to response to the prayer of the petitioner for revocation of his suspension and instead, after a long period of time, on 29.08.2022 had issued the Office Order for extension of the initial suspension order.

20. It is also the assertion of the petitioner that the Enquiry Officer, Shri P. Ryngksai has since retired from service in the year 2021. The concerned authority has not taken any steps for reconstitution of a



fresh Enquiry Committee and as such, the disciplinary proceedings against the petitioner has been kept in limbo. This has indeed cause prejudice against the petitioner.

21. On perusal of the authority set out in the case of Ajay Kumar Choudhary (supra) at para 21 of the same, the Apex Court has held as follows:

“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 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.”

22. The reliance of the State/respondent on the case of P. Kannan



(supra) to say that the Full Bench of the Madras High Court has held that the judgment of the Apex Court in the case of Ajay Kumar Choudhary (supra) does not lay down absolute proposition of law that suspension cannot be continued beyond the period of three months if the memorandum of charge/charge-sheet has not been served within three months, or if the memorandum of charges/charge-sheet is served without reasoned order of extension is applicable to the case of the petitioner cannot be accepted at face value as the proposition expounded by the Apex Court in the case of Ajay Kumar Choudhary (supra) is not an entirely new principle propounded. The Apex Court in the case of Dipak Mali (supra) while referring to sub-rules (6) & (7) of Rule 10 of the Central Civil Services (CCA) Rules, 1965 as amended, which rule briefly stated, stipulates that an order of suspension shall be reviewed by the authority competent to modify or revoke the same, before the expiry of 90 days from the date of such suspension, otherwise such suspension becomes invalid after the period of 90 days, if not extended after review.

23. Again, at para 21 of the Ajay Kumar Choudhary case, (supra) the Apex Court has disapproved the stand of the Central Vigilance Commission that pending criminal investigation, departmental proceedings are to be kept in abeyance as was done in the case of the petitioner. On this ground alone, the said Office Order dated 29.08.2022



(supra) is liable to be struck down.

24. In a similarly situated case, this Court in the case of Teiborlang Sunn (supra), relying on the authority cited in the case of Ajay Kumar Choudhary, at para 17 of the same has observed as follows:

“17. By the said judgment it is postulated that a suspension order should not extend beyond three months subject to other conditions such as filing of charge sheet etc., and if charge sheet has been filed, a reasoned order must be passed to justify the extension of suspension. As such, pendency of a criminal trial will not automatically render a person ineligible to reinstatement in service. With regard to the Departmental Proceedings, notwithstanding the duration that he has been kept under suspension, the enquiry as conducted and report as submitted though not under challenge cannot come within the meaning, or within the four corners of a duly conducted Department Proceedings.”

25. Under the facts and circumstances of the case of the petitioner and the contention and submission of the respective parties herein, this Court is of the opinion that the principle propounded by the Apex Court in the case of Ajay Kumar Choudhary (supra) at para 21 in the context of the 90 days’ period of suspension of a delinquent employee which ought to be reviewed, but if not done so, would render the said suspension order infructuous is applicable to the case of the petitioner herein.

26. Again, advertent to the peculiar facts and circumstances of the case of the petitioner herein, following the law of precedent, this Court is bound to adhere to the proposition of law as laid down in the case of



Ajay Kumar Choudhary (supra), which even otherwise would prevail over the said Rule [6(5)(b)] of the Meghalaya Services (Discipline & Appeal) Rules, 2011.

27. As far as the prayer of the petitioner for payment of the subsistence allowance, the learned Sr. counsel for the petitioner has not made any submission in this regard. The State/respondent has however adverted in its affidavit-in-opposition that 75% of the subsistence allowance of the petitioner has been paid and the further claim of enhance entitlement has also been processed. This Court would allow the process to be concluded as far as this issue is concerned.

28. In view of the above, this Court hereby directs the relevant authority to reconsider the case of the petitioner as to the order of his suspension and to reinstate him in service, even to the extent of placing him in any administrative position, if permissible under the rules, pending conclusion of the criminal proceedings against him.

29. Accordingly, this petition is disposed of. No costs.

Judge