GAHC010170842020

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

Case No. : WP(C)/5093/2020

MRIGEN BARUA
S/O- LT. BIRENDRA KANTA BARUA, R/O- RUKMINIGAON, GULMOHAR APARTMENT, BLOCK 2 A II, P.O. KAHANAPARA, PIN- 781022, DIST.- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, ENVIRONMENT AND FOREST DEPTT., DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-06

3:THE SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT.
DISPUR
GHY-06

4:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
PANJABARI
GHY-37

5:THE DIVISIONAL FOREST OFFICER
KAMRUP EAST DIVISION
BASISTHA GHY-2

Advocate for the Petitioner : MR. JYOTIRMOY ROY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN

ORDER

11.12.2020

Heard Mr. J. Roy, learned counsel for the petitioner as well as Mr. R.R. Gogoi, learned counsel representing respondent nos.1, 3, 4 and 5. Mr. B. Gogoi, learned counsel appears for respondent no.2

Having regard to the facts emerging, this writ petition is taken up for final disposal at the Motion stage itself, more particularly, in view of the judgment and order of the Supreme Court rendered in *Ajay Kumar Choudhary Vs Union of India and others*, reported in *(2015) 7 SCC 291.*

The petitioner while working as Assistant Conservator of Forest, in the Office of the Divisional Forest Officer, Kamrup East Division, Basistha was placed under suspension under Rule 6 (2) of the *Assam Services (Discipline and Appeal) Rules, 1964*, pending drawal of departmental proceedings. The said order is dated 09.02.2016 and issued under the hand of the Secretary to the Government of Assam, Environment and Forest Department.

It is stated that memorandum of charges/charge-sheet was served upon the petitioner after about 4 (four) years vide Annexure-12 to the writ petition by means of a Show-Cause Notice dated 08.09.2020, together with the Statement of Allegations. It is also submitted that neither any exercise of review for continuance of the suspension order was undertaken nor subsistence allowance paid following the order of suspension dated 09.02.2016. Reliance is first placed in the Division Bench judgment of this Court in *Rakibuddin Ahmed vs. State of Assam and Others,* reported in *2019 (5) GLT 600,* as well as in the case of *Ajay Kumar Choudhary* (supra).

In the Division Bench judgment it is categorically held that the principles laid down in the case of *Ajay Kumar Choudhary* (supra) would also be applicable in case of deemed suspension under Rule 6(2) of the *Assam Services (Discipline and Appeal) Rules, 1964.* From

the legal prescription propounded in paragraph 21 in *Ajay Kumar Choudhary* (supra), it is seen that the currency of a suspension order should not extend beyond 3 (three) months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee. The inescapable fact, as emerging in the present case, is that memorandum of charges/charge-sheet was not served upon the petitioner within 3 (three) months from the date of suspension. Although the same came to be done on 08.09.2020, which is after more than 4 (four) years from the date of the order of suspension, this Court is of the view that the same would serve no purpose and cannot operate as a saving grace in so far as the impugned order is concerned. Thus in view of the ratio laid down in paragraph 21 in *Ajay Kumar Choudhary* (supra), there can be no other option but to make interference with the impugned order of suspension dated 09.02.2016, which is accordingly done.

As a necessary corollary, the respondents shall forthwith reinstate the petitioner to his post and also take steps to make such payment as admissible and payable to the petitioner on and from the date when he was under suspension. Needless to say, the disciplinary proceeding initiated against the petitioner, following the Show-Cause Notice dated 08.09.2020, shall now be taken to its logical conclusion in accordance with law.

Writ petition stands accordingly allowed.

JUDGE

Comparing Assistant