GAHC010218102026

2026:GAU-AS:16675

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

**Case No. : WP(C)/5462/2026**

Abdur Rousan, Son of Makram Ali, Resident of Village Madhumara, P.O. Rakeshnagar, P.S. and District Sribhumi, Assam, Pin 788701

……***Petitioner***

**-Versus-**

1. The State of Assam, represented by the Secretary to the Government of Assam, School Education (Elementary) Department, Dispur, Guwahati-06
2. The Director of Elementary Education, Assam, Kahilipara Guwahati -19.
3. The District Elementary Education Officer, Sribhumi. P.O., P.S. And District- Sribhumi.
4. The Block Elementary Education Officer, South Sribhumi Education Block, Sribhumi, P.O., P.S. And District- Sribhumi.

……..***Respondents***

**BEFORE**
**HON'BLE MR. JUSTICE MANISH CHOUDHURY**

**Advocates** :

| | | |
|---|---|---|
| Petitioner | : | Mr. R.A. Mazumder, Advocate |
| Respondents | : | Mr. P.K. Bora, Standing Counsel, Elementary Education Department. |
| Date on which judgment is reserved | : | N.A. |
| Date of pronouncement of judgment | : | 12.11.2026 |
| Whether the pronouncement is of the Operative part of the judgment? | : | No |
| Whether the full judgment has been Pronounced ? | : | Yes |

## JUDGMENT & ORDER

1. In this writ petition under Article 226 of the Constitution of India, the petitioner has assailed an Order of Suspension dated 07.11.2025 passed by the respondent no. 2 whereby the petitioner, who was serving a Head Teacher of 432 No. Harikuri Lower Primary School, District – Sribhumi, has been placed under suspension with immediate effect pending drawal of disciplinary proceedings.

2. The petitioner was serving as the Head Teacher of 432 No. Harikuri Lower Primary School, District – Sribhumi during the year 2025. On 15.05.2025, the respondent no. 4 issued a notice to the petitioner asking for his appearance

in the office of the respondent no. 4 for a hearing scheduled on 16.05.2025 after School hours along with the records mentioned therein. It was mentioned that the appearance was necessitated in view of receipt of a complaint lodged by a number of persons on 14.05.2025 regarding misuse of mid-day meal and improper utilization of development funds at 432 No. Harikuri Lower Primary School. Subsequent to the hearing, the respondent no. 4 submitted a Report before the respondent no. 3 on 22.05.2025 stating inter alia that the petitioner was found negligent in discharging his duties and on a visit by him to the school on 16.05.2025, the petitioner was found absent in the school though he had put his online attendance in the Siksha Setu Portal. The Report further mentioned that a group of guardians of the students of the School lodged complaint before the District Commissioner, Sribhumi regarding irregularities committed by the petitioner. Thereafter, by an Order dated 29.05.2025, the respondent no. 3 ordered that the petitioner would impart lesson to the students of 1271 No. Purba Bazarbond Lower Primary School within the same Education Block with immediate effect. For that purpose, the petitioner was directed to hand over the charge of Head Teacher cum Member Secretary of School Management Committee [SMC] of 432 No. Harikuri Lower Primary School to the senior most Assistant Teacher of the said School. The Order dated 29.05.2025 further mentioned that the monthly salary of the petitioner would be drawn from his original place of posting on receipt of duty certificate.

3. It transpires that a further hearing took place before the Branch Officer [Education] cum Assistant Commissioner at the office of the District Commissioner, Sribhumi on 23.06.2025. On the basis of the decision taken after the hearing, the respondent no. 5 again by a notice dated 19.06.2025 asked for

appearance of the petitioner before the Branch Officer [Education] cum Assistant Commissioner, O/o the District Commissioner, Sribhumi on 23.06.2025 with records mentioned therein. Subsequently, in view of an Order dated 03.07.2025 passed by the respondent no. 4, the petitioner was allowed to be reverted back as the Head Teacher of 432 No. Harikuri Lower Primary School. On 11.07.2025, the Branch Officer [Education] cum Assistant Commissioner, O/o the District Commissioner, Sribhumi issued a notice to the petitioner and the President of the SMC of 432 No. Harikuri Lower Primary School, Sribhumi for their appearance before him on 15.07.2025 for a enquiry into a complaint regarding non-payment of wages to cook of 432 No. Harikuri Lower Primary School and stoppage of cooking in the said school.

4. In the above backdrop, the Order of Suspension came to be issued by the respondent no. 2. From the Order of Suspension, it is noticed that the respondent no. 2 had received an Enquiry Report dated 03.11.2025 from the District Commissioner, Sribhumi stating inter alia that the petitioner as the Head Teacher of 432 No. Harikuri Lower Primary School had failed in the administrative front and was found negligent to verify the eligibility and presence of the cook-cum-helper, in updating personnel and bank records; and in informing the higher authorities about the crucial changes, etc. The Order further mentioned that in view of the gravity of allegations, the petitioner had been placed under suspension with immediate effect pending drawal of disciplinary proceedings. The petitioner was allowed to draw subsistence allowance as admissible under the Assam Services [Discipline and Appeal] Rules, 1964 [‘the 1964 Rules’, for short] during the suspension period. It was ordered that the petitioner should not leave the headquarter during suspension

period without prior permission from the higher authority and he was not to engage himself in any profession or trade during the suspension period.

5. Heard Mr. R.A. Mazumder, learned counsel for the petitioner and Mr. P.K. Bora, learned Standing Counsel, Elementary Education Department.

6. Mr. Mazumder has submitted that the petitioner was placed under suspension by the Order dated 07.11.2025. The respondent authorities, that is, the disciplinary authority failed to serve the Memorandum of Charges within a period of three months from the Order of Suspension dated 07.11.2025. The disciplinary authority did not also review the case for extending the period of suspension within a period of three months. Therefore, the suspension of the petitioner beyond a period of three months from 07.11.2025 is to be adjudged as invalid and unauthorized.

7. Mr. Bora, learned Standing Counsel, Elementary Education Department appearing for the State respondents has submitted, on instruction, that initially, the petitioner raised an objection regarding non-payment of subsistence allowance at the enhanced rate. In so far as the said grievance of the petitioner is concerned, he has submitted that the petitioner was paid the subsistence allowance at the rate of 50% up to September, 2026. Subsequently, a bill for subsistence allowance at the enhanced rate of 75% for the month of October, 2026 was submitted to the Treasury and finally, the amount towards enhanced subsistence allowance was disbursed to the petitioner. As regards the drawal of disciplinary proceedings, Mr. Bora has submitted that a Show Cause Notice under Rule 9 of the 1964 Rules read with Article 311 of the Constitution of India

has already been issued by the respondent no. 2 to the petitioner on 14.10.2026 asking the petitioner to show cause as to why any of the penalties prescribed in Rule 7 of the 1964 Rules should not be inflicted upon him for the charges mentioned therein, based on the Statement of Allegations attached therewith. He has fairly submitted that the Memorandum of Charges was not issued to the petitioner within a period of three months from 07.11.2025. He has also submitted on the basis of instructions received that no review could be done within the period of three months from 07.11.2025. Mr. Bora has referred to the written instructions received by him from the office of the Elementary Education, Assam vide Office Letter bearing no. E.718623/100 dated 05.11.2026.

8. The petitioner is a government employee and therefore, in matters of suspension and initiation of disciplinary proceedings, the provisions of the Assam Services [Discipline and Appeal] Rules, 1964 are made applicable.

9. The power to place a Government servant under suspension has been provided in Rule 6 of the Rules, 1964. For the purpose of the case in hand, Rule 6 of the Rules, 1964 is quoted below for ready reference :-

> [1] The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf may place a Government servant under suspension –
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> [a] Where a disciplinary proceeding against him is contemplated or is pending; or
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> [b] Where is the opinion of the authority aforesaid he has engaged himself in activities prejudicial to the interest or the security of the State; or

[c] Where a case against him in respect any criminal offence is under investigation, inquiry or trial;

Provided that where the order of suspension is made by an authority lower than the Appointing Authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

[2] A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

Provided that where the detention is made on account of any charge not connected with his position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.

10. The Hon'ble Supreme Court of India in **Ajay Kumar Choudhary vs. Union of India, [2015] 7 SCC 291,** more particularly, in paragraph 21 has laid down the law that the currency of a suspension order should not extend beyond three months if within the said period of three months, the memorandum of charge / charge-sheet is not served. In order to extend the suspension period beyond the period of three months, a reasoned order must be passed for extension of the suspension period. It has been further held that if the memorandum of charges / charge-sheet is served within the period of three months, then also a reasoned order must be passed for extension of the

suspension period.

11. From a plain reading of the law laid down in **Ajay Kumar Choudhary** [supra], it is discernible that the law so laid down is in two parts. The first situation envisaged is where a disciplinary proceeding has not been initiated against the delinquent officer / employee within a period of three months from the date such officer / employee was placed under suspension. In such situation, it has been laid down that the currency of the suspension period shall not extend beyond three months, if within the initial period of three months, the memorandum of charges / charge-sheet is not served upon the delinquent officer / employee and no reasoned order is passed extending the period of suspension.

12. The second situation envisaged in **Ajay Kumar Choudhary** [supra] contains a mandate that even in the event the memorandum of charges / charge sheet is issued and served upon the delinquent officer / employee within a period of three months from the date of suspension even, then also, a reasoned order must be passed for extension of the suspension period beyond the initial period of three months.

13. It is also settled that for extending the currency of an order, the order for extension has to be passed during the currency of the said order. Therefore, an order for extending the period of suspension is not to be passed after the suspension period is over. The period of three months from 07.11.2025 expired in 07.02.2026. The authority who had passed the Order of Suspension, ought to have passed a reasoned order within a period of three months from 07.11.2025

to extend the period of suspension. But no reasoned order by way of review was admittedly passed within a period of thee months from 07.11.2025. The Show Cause Notice was issued on 14.10.2026, which was also beyond a period of three months from 07.11.2025. Thus, it is clear that no review was done within a period of three months from 07.11.2025.

14. In the light of the discussion made above and for the reasons assigned, this Court finds that a right has accrued to the petitioner for seeking a direction for reinstatement on account of the failure on the part of the competent authority to pass a reasoned order within a period of three months from 07.11.2025. Therefore, the period of suspension beyond a period of three months from 07.11.2025 is found to be invalid in view of the law declared in the case of **Ajay Kumar Choudhary** [supra]. Any review even if carried out subsequently for extending the currency of the suspension period pursuant after expiry of a period of three months from 07.11.2025 would be of no consequence. The Court is of the clear view that the Order of Suspension dated 07.11.2025 has lost its force on or after 07.02.2025 and accordingly, the same cannot be said to be in currency any further. Consequently, the petitioner is required to be reinstated in service. Accordingly, it is directed that the respondent authorities shall reinstate the petitioner in service within a period of fifteen days from the date of submission of a certified copy of this order by the petitioner at the office of the respondent no. 2.

15. It is observed that above direction for reinstatement of the petitioner would not come in the way of the Disciplinary Authority to proceed further with the disciplinary proceedings initiated by issuance of the Show Cause Notice

dated 14.10.2026. The Disciplinary Authority while finalizing the disciplinary proceedings, shall also take a final decision as regards entitlement of the petitioner for pay and allowance during the suspension period.

16. If the Disciplinary Authority finds that the continuation of the petitioner at the present place of posting would not be in the best interest of administration and the petitioner is required to be kept out of the range of mischief, it is observed, following the observations made in **Ajay Kumar Choudhary** [supra] in paragraph 21, that the respondent authorities will be at liberty to transfer the petitioner to a place so as to sever any local or personal contact that he may have and which he may like to misuse for obstructing the disciplinary proceedings against him. In other words, the respondent authorities are to reinstate the petitioner and thereafter, are also at liberty to transfer him to a place to keep him out of mischief's range following due procedure of law.

17. With the observations made and the directions given, the writ petition is allowed to the extent indicated above. No cost.

**JUDGE**

**Comparing Assistant**

Pallabi Das

Digitally signed by Pallabi Das
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