

GAHC010049732024



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

Case No. : WP(C)/1408/2024

NOWSHAD ALI
SON OF LATE TALEB ALI, R/O- JHAGRARPARI PT-III, P.S. AND DIST.
DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, LAND REVENUE AND DISASTER
MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI-06

2:THE DISTRICT COMMISSIONER
BISWANATH
P.O. AND DIST.- BISWANATH
ASSAM
PIN- 784176

3:THE CIRCLE OFFICER
GOHPUR REVENUE CIRCLE
P.O. GOHPUR
DISTRICT- BISWANATH
ASSAM
PIN- 78417

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 24.06.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Addl. Senior Govt. Advocate for the respondents.

2. The continued suspension of the petitioner, allegedly without passing any reasoned order, is under challenge in this writ petition filed under Article 226 of the Constitution of India.

3. It is noted that the matter has been listed today for the seventh occasion in the *motion* column. In the meanwhile, the respondent no.2 has filed an affidavit-in-opposition. Though formal notice of motion has not been issued till date, but at the joint prayer made by the learned counsel for both sides, the matter has been heard for disposal at the *motion* stage.

4. In brief, the case of the petitioner is that while working as a Lot Mandal in the Gohpur Revenue Circle, in the District of Biswanath, he was arrested on 07.8.2023 in connection with A.C.B. P.S. Case No. 57/2023 under section 7(a) of the Prevention of Corruption Act, 1988. The said case was registered pursuant to FIR dated 07.08.2023 by one Debendra Kakati, *inter alia*, alleging that the petitioner had demanded bribe for mutation of land in the name of the informant. Accordingly, a trap case was laid and the petitioner was arrested on 07.08.2023. By an order dated 08.08.2023, the petitioner was placed under suspension with effect from 07.08.2023, the date of his arrest. The petitioner projects that he was granted bail by order dated 11.09.2023, passed by the learned Special Judge, Assam.

5. On 07.10.2023, the petitioner had submitted his representation

for being reinstated in service. However, the petitioner was served with a notice dated 31.10.2023, issued by the Addl. District Commissioner (Rev.), Biswanath informing the petitioner that a charge was filed against him by the officials of the Directorate of Vigilance and Anti-Corruption Department in connection with taking bribe of Rs.4,000/- (Rupees Four thousand only) under A.C.B. P.S. Case No. 57/2023 under section 7(a) of the Prevention of Corruption Act, 1988 during office hours on 07.08.2023 at the office of the Circle Officer, Gohpur Revenue Circle. Accordingly, the petitioner was asked to submit a statement in writing regarding such charges. Thereafter, the petitioner had submitted his reply dated 09.11.2023.

6. The learned counsel for the petitioner has submitted that the show cause notice referred above was not accompanied with the articles of charges, statement of allegation, list of documents and list of witnesses. It was submitted that the petitioner was not reinstated in service and the petitioner is still under suspension.

7. The learned counsel for the petitioner has relied on the case of *Ajay Kumar Chaudhary v. Union of India, (2015) 7 SCC 291: (2015) 0 Supreme (SC) 140*, and the judgment of the Division Bench of this Court rendered in the case of *Rakibuddin Ahmed Vs. State of Assam and Ors., (2020) 2 GLR 621*. It was submitted following the said two cases, several writ petitions were allowed by this Court, thereby reinstating several similarly situated government servant in service.

8. It was submitted that a detailed and reasoned order is a pre-condition for continuation of suspension of the petitioner, notwithstanding the nature of charges made against the petitioner. It was submitted that as no reason has been assigned by the respondent authorities to keep the petitioner

under suspension, the continued suspension of the petitioner was bad in law and required to be set aside.

9. The relevant observations of the Supreme Court of India in paragraphs 20 and 21 the case of *Ajay Kumar Chaudhary (supra)* are quoted below:-

“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 Cr.P.C. of 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 Raghbir Singh v. State of Bihar, (1986) 4 SCC 481, and more so of the Constitution Bench in Antulay, 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/Charge-sheet 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."

10. The learned Addl. Senior Government Advocate has referred to the affidavit-in-opposition filed by the respondent no.2 and has submitted that after receipt of show-cause reply dated 09.11.2023, the District Commissioner, Biswanath, by order dated 04.11.2023, had appointed an Enquiry Officer as per Rule 4 of the Assam Services (Discipline & Appeal) Rules, 1964, who was asked to complete the enquiry on or before 31.01.2024, and moreover, a presenting Officer has also been appointed as per Rule 5 thereof. Accordingly, the Enquiry Officer had conducted the Enquiry against the petitioner and had submitted an Enquiry Report dated 15.03.2024, containing a finding that the petitioner had committed gross misconduct while discharging his duty as a public servant and recommendation was issued to penalize the petitioner by reducing him to a lower time scale under Rule 7(iv) of the Assam Services (Discipline & Appeal) Rules, 1964.

11. It was also submitted that in the meanwhile vide notification dated 03.11.2023, the Director of Land Records & Surveys, Assam has been designated as the Disciplinary Authority in respect of Land Record Inspector and therefore, all the records have been sent to the said authority vide

communication dated 10.05.2024. The District Commissioner, Biswanath had further informed the said Disciplinary Authority that the petitioner was placed under suspension by order dated 08.08.2023.

12. It is seen that in the affidavit-in-opposition filed on behalf of the respondent no. 2, it has been disclosed that vide notification no. RLR-253668/198 dated 22.09.2023, issued by the Principal Secretary to the Govt. of Assam, Revenue and Disaster Management Department, on coming into effect of the Assam Land Records Subordinate Service Rules, 2023 and in accordance with Sub-Rule (2) of Rule 8 of the Assam Services (Discipline and Appeal) Rules, 1964 and Rule 4 and 126 of the Assam Land Records Manual, 1906, the Director of Land Records & Surveys, Assam was the Disciplinary Authority for (i) the Land Record Supervisor (State Cadre), and (ii) Land Record Assistant (State Cadre) and the Senior-most Secretary, Revenue and Disaster Management Department would be the Revisional Authority.

13. However, the said Disciplinary Authority has not been impleaded by the petitioner despite such disclosure by the respondent no. 2. On and from 22.09.2023, it would be the newly notified Disciplinary Authority that was required to take all necessary steps against the petitioner relating to his suspension and/or disciplinary proceeding.

14. Therefore, in the absence of the proper and necessary parties, this writ petition cannot be effectively decided as the present respondents cannot obtain and give instructions on behalf of the said newly appointed disciplinary authority.

15. Therefore, on recording a *prima facie* satisfaction that this writ petition is bad for non-joinder of necessary parties, this writ petition stands

dismissed, however, without adjudicating the writ petition on merit.

16. However, in light of the well settled legal position on suspension of government servant, we deem it appropriate to close this writ petition, however, by granting leave to the petitioner to approach the Court again by impleading all proper and necessary parties.

JUDGE

Comparing Assistant