

GAHC010047532024



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

Case No. : WP(C)/1329/2024

JAYSHAB HUSSAIN LASKAR
S/O- ASHAK ALI LASKAR,
R/O- VILLAGE KASHIPUR,
P.O- KASHIPUR, DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
GOVT OF ASSAM, DISPUR, ASSAM SECRETARIAT, P.O. ASSAM
SACHIVALAYA, GUWAHATI-781006

2:THE DIRECTOR OF LAND RECORDS

ASSAM
RUPNAGAR
GUWAHATI-32

3:THE DISTRICT COMMISSIONER
KARIMGANJ
ASSAM
PIN-788710

4:THE CIRCLE OFFICER
BADARPUR
KARIMGANJ
ASSAM
PIN-78871

Advocate for the Petitioner : MR. A B T HAQUE

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 24.04.2024

Heard Mr. A.B.T. Haque, learned counsel for the petitioner. Also heard Mr. C.S. Hazarika, learned Government Advocate and Mr. S. Dutta, learned Standing Counsel, Revenue.

2. This writ petition is filed by the petitioner putting to challenge the suspension order dated 17.04.2023. By order dated 17.04.2023, the petitioner was arrested in connection with ACB P.S. Case No.24/2023 under Section 7(a) of the Prevention of Corruption Act, 1988. As such, the petitioner was placed under suspension under the Rule 6(2) of the Assam (Discipline and Appeal) Rules 1964. It is the grievance of the petitioner that since the date of his suspension, no review as mandated in law was undertaken and the writ petitioner has been kept under suspension since then.

3. Earlier the respondents were directed to obtain the required instructions in the matter. Today, when the matter is called up, the department counsel has submitted before the Court on the basis of written instructions that although disciplinary proceedings have been initiated against the petitioner vide DP case No.02/2023, however, there is no information or instruction received in respect of any review being conducted in respect of the continuation of the suspension.

4. The learned counsels for the parties have been heard. The pleadings on record have been carefully perused.

5. It is seen that the petitioner was placed under suspension pending the

disciplinary proceedings and the impugned order of suspension dated 17.04.2023 was issued under Rule 6(2) of the Assam (Discipline and Appeal) Rules 1964. The learned counsel for the petitioner has urged before the Court that the law laid down by the Apex Court in *Ajay Kumar Choudhury Vs. Union of India* reported in (2015) 7 SCC 291 and which judgment has been followed by the Hon'ble Division Bench as well as several other coordinate Benches of this Court in their judgments has not been adhered to by the respondents and as a consequence thereof, the suspension of the writ petitioner was not reviewed before expiry of 90(ninety) days from the date of suspension. Under such circumstances, the learned counsel for the petitioner submits before the Court that this writ petition be allowed and the impugned order of suspension be interfered with, set aside and quashed.

6. Per contra Mr. C.S. Hazarika, learned Government Advocate representing the department has submitted that the Rules under which the petitioner has been placed under suspension, namely, Rule 6(2) of the Assam (Discipline and Appeal) Rules 1964 has a provision for an appeal, under Section 14 of the said Rule. It is submitted that when there is an alternative remedy, efficacious and adequate, then the writ Court ought not to entertain the relief sought for unless the petitioner has first availed of the alternative remedy.

7. Having heard the learned counsels for the parties and upon careful perusal of the pleadings on record, it is seen that the Assam (Discipline and Appeal) Rules, 1964 does have a provision for an appeal under Section 14 of the said Rule. Section 14 of the Assam (Discipline and Appeal) Rules 1964 is reads as under:-

“14. Appeals against orders of suspension- A Government servant may appeal against an order of suspension of the Authority to which the authority which made

or is deemed to have made the order is immediately subordinate”.

8. Time and again the law has been reiterated that when there is an alternative remedy prescribed under the statute, ordinarily a person is required to take recourse to the alternative remedy prescribed unless there is a violation of natural justice or the person who has passed the order is not the competent authority to pass such an order or that the same is in contravention with any other provision of law. In the facts of the present case, no such asseverations are made against the respondent authority, who had issued the suspension order, namely the Deputy Commissioner, Karimganj. It is not the case of the petitioner that the Deputy Commissioner is not the appropriate authority to issue suspension order or that there is a requirement of fulfilment of the principles of natural justice prior to issuance of the order of suspension or that the impugned order of suspension is violative of any other provision of law. Reference in this context may be made to the Judgment of the Apex Court in *Commissioner of Income Tax and Ors. Vs Chhabil Dass Agarwal* reported in (2014) 1 SCC 603. In this matter, the Apex Court has laid down elaborately the principles of exercise of judicial review, where there is any efficacious and alternative remedy available under the statute. The relevant paragraphs are extracted below:-

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself

contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. v. State of Haryana this Court has noticed that if an appeal is from 'Caesar to Caesar's wife' the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon."

9. In a recent Judgment rendered by the Apex Court in *PHR Invent Educational Society Vs UCO Bank and Others* reported in 2024 INSC 297, the Apex Court, while entertaining a matter in respect of Debts Recovery Tribunals Act and SARFAESI Act it was held that High Court should not entertain a petition under Article 226 of the Constitution of India, more particularly, when an alternative statutory remedy is available. It was held that the powers of the High Court under Article 226 of the Constitution of India are of widest amplitude, still, the Courts cannot be oblivious of the rules of self-imposed restraint evolved by the Apex Court. The Apex Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one

of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition under Article 226 of the Constitution, where effective efficacious alternative remedy is available. The Apex Court discussed the earlier precedents and held that certain exceptions can be carved out where a petition under Article 226 of the Constitution of India could be entertained inspite of availability of an alternative remedy. Referring to the judgment of the Apex Court in *Chhabil Dass (Supra)*, the Apex Court referred to the instances which can be considered to be exceptions for entertaining a writ petition in spite of availability of an efficacious alternative remedy. Although the list of such exceptions are not exhaustive, some of such instances are enumerated as under:-

- “(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;*
- (ii) it has acted in defiance of the fundamental principles of judicial procedure;*
- (iii) it has resorted to invoke the provisions which are repealed; and*
- (iv) when an order has been passed in total violation of the principles of natural justice”.*

The Apex Court held that the High Court will not entertain a petition under Article 226 of the Constitution if effective alternative remedy is available to the aggrieved person or the statute under which the action complained of itself contains a mechanism for redressal of the grievance.

10. In view of the discussions above, this Court is of the considered view that when there is an expressed statutory provision for filing an appeal under the Assam (Discipline and Appeal) Rules 1964, and more particularly, when the exceptions prescribed under the law laid down by the Apex Court in *Chhabil*

Dass Agarwal (Supra) and reiterated in *PHR Invent Educational Society (supra)* have not been complained of in the present proceedings. This is a fit case to be relegated to the appellate authority to decide any such appeal that may be filed by the writ petitioner. If such an appeal is preferred by the writ petitioner, then the same shall be decided by taking into consideration the principles laid down by the Apex Court in *Ajay Kumar Choudhury (Supra)* and which judgment has been reiterated and followed in several judgments of this court. The Appellate Authority will hear and consider the entire matter and thereafter pass a speaking order. The authorities will also take into consideration the office memorandum dated 04.02.2020 issued by the Department of Personnel, Dispur, Guwahati, whereby the procedure for review of cases under suspension have been elaborately provided for in the notification issued by the Chief Secretary, to the Government of Assam. It is submitted by the learned Government Advocate appearing for the State that the said office memorandum is still in force.

11. Under such circumstances, considering the facts of this case, the petitioner is permitted to file the appeal before the appellate authority within 1 (one) week from the date of receipt of certified copy of this order and thereafter the appropriate authority, namely, the Commissioner and Secretary, Government of Assam, Revenue and Disaster Management, which office has now been re-nomenclatured as the Principal Secretary, Government of Assam, Department of Revenue and Disaster Management. The appellate authority will hear the appeal and dispose it of in terms of the directions indicated above. For the purposes of this case, if the petitioner desires to file the appeal, the writ petition along with the enclosures is permitted to be filed as an appeal and which the authority concern will treat it as an appeal under Rule 14 of the Assam (Discipline and

Appeal) Rules, 1964 and thereafter pass necessary orders as directed above.

12. The entire exercise be completed within a period of 60 (sixty) days from the date of receipt of a certified copy of this order. Any such order that is passed, copies thereof will be served on the writ petitioner.

13. With the above observations and directions, writ petition stands disposed of. No order as to cost.

JUDGE

Comparing Assistant