

GAHC010023372024



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

Case No. : WP(C)/664/2024

SABINA LANGTHASA
W/O- SRI PREMA BHADRA HASU, R/O- PIYA EXOTICA, C-BLOCK 3L, P.O.
KAHILIPARA, P.S. BHAGADUTTAPUR, DIST. KAMRUP(M), ASSAM, PIN-
781019.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY, DEPARTMENT
OF HIGHER EDUCATION TO THE GOVT. OF ASSAM, DISPUR, GUWAHATI-6.

2:THE SECRETARY
HIGHER EDUCATION DEPARTMENT
GOVT. OF ASSAM
DISPUR
GHY-6.

3:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 12-02-2024

Heard Mr. B.D. Das, learned Senior Counsel assisted by Mr. S. Bora, learned counsel for the petitioner. Also heard Mr. D. Upamanyu, learned Standing Counsel, Higher Education Department.

This writ petition is filed by the petitioner, who is aggrieved by the suspension order dated 20.10.2023, whereby the petitioner was placed under suspension by the respondent no.3. The petitioner was serving as an Assistant Professor in B. Borooah College, Ulubari, Guwahati. During her service the petitioner was arrested on 12.10.2023 in connection with Dispur P.S. Case No.1909/2023 under Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986 under Section 4/8 of the POCSO Act, 2012 and under Section 75/77 of the Juvenile Justice (Care and Protection of Child) Act. The petitioner was subsequently released on bail by order dated 30.11.2023 passed by the Court of Special Judge, POCSO, Kamrup(M), Guwahati. Since the petitioner was taken into custody in connection with Dispur P.S. Case No.1909/2023, she was suspended by the respondent no.3 by an order dated 20.10.2023. It is the grievance of the petitioner that since the date of issuing of the suspension order

dated 20.10.2023, till date the petitioner is under suspension and pursuant to the said suspension order, no review for further continuation of suspension has been undertaken by the authority concerned. An appeal dated 24.01.2024 was also filed before the respondent no.2 requesting for reinstatement, however, the same has not been redressed as on date. Finding no alternative, the petitioner has approached this Court by filing the present writ petition.

Learned Senior Counsel for the petitioner submits that there was no enquiry conducted against the petitioner and therefore, there is no question of imposition of any penalty. It is submitted that no review of the suspension has been conducted and the same is not disputed by the learned Standing Counsel, Higher Education Department.

Having heard the learned counsel for the parties and upon perusal of the records, it is seen that the petitioner was put under suspension by order dated 20.10.2023 during her service as an Assistant Professor and no review for continuation of suspension was undertaken by the respective authorities. The appeal dated 24.01.2024 filed by the petitioner has also not been considered. Under such circumstances, the order of suspension dated 20.10.2023 has been assailed in the present proceedings on the ground that as mandated by the Law, the review of requirement of continuation of putting the petitioner under

suspension was not carried out and therefore, the suspension order dated 20.10.2023 is required to be interfered with.

Having heard the learned counsel for the parties and upon careful perusal of the writ petition, this Court is of the view that time and again Hon'ble Supreme Court as well as this Court had passed several orders interfering with the suspension order where there is a failure on the part of the competent authority to review the continuance of the suspension as mandated by law. This law has been clearly laid down by the Apex Court in *Ajay Kumar Choudhury Vs. Union of India* reported in (2015) 7 SCC 291 and this judgment has been followed by the Hon'ble Division Benches as well as several other coordinate Bench of this Court in several judgments.

It is to be noted herein that the question as to whether the Disciplinary Authority would be entitled to place an employee under prolonged suspension without reviewing the order of suspension came up for consideration before the Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary (Supra)*. The findings of the Apex Court in paragraphs 20 and 21 of the said decision would be relevant in the facts of this case and are, therefore, extracted 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 Code of Criminal Procedure, 1973 contains a new proviso which has the

effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a 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' and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries 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) CrPC 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/chargesheet 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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise 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."

The ratio laid down in *Ajay Choudhury (Supra)* has been applied by the Hon'ble Division Bench of this Court in *Rakibuddin Ahmed Vs. State of Assam & Ors.* reported in 2019 (5) GLT 600 [WP(C) No.3218/2019] wherein it was held that the principles laid down in *Ajay Kumar Choudhury* (supra) will be applicable in cases of suspension under Rule 6 (2) of the Assam Services (Discipline and Appeal) Rules, 1964 also. Same view was rendered by another Division Bench of this Court in *State of Assam & Anr Vs. Ajit Sonowal & 3 Ors.* (WA. No.114/2022) in its judgment and order dated 02.03.2023. Coordinate Bench have also applied this ratio in *Rafed Ali Ahmed vs. State of Assam & 3 Ors.* rendered in WP(C) No.455/2023 and Tapan Das vs. State of Assam by its judgment and order dated 16.11.2023 in WP(C) No.6101/2023. In view of such authoritative finding by the Apex Court and which law is followed by the Division Bench and other Co-ordinate Benches of this Court, the authorities are duty bound in law to comply with the principles laid down by the Apex Court in *Ajay Choudhury* (supra).

Learned counsel for the parties have been heard. The writ petition has

been perused. Time and again the Apex Court as well as this Court had passed several orders interfering with suspension order(s) where there is a failure on the part of the competent authority to review the continuance of the suspension as mandated by law. This law in this regard has been clearly laid down by the Apex Court in *Ajay Kumar Choudhury Vs. Union of India* reported in (2015) 7 SCC 291. This law laid down by the Apex Court has been followed by the Division Bench as well as several other coordinate Benches of this Court in several judgments as discussed above.

The learned counsel for the parties have jointly prayed that at this stage directions may be given to the respondent no.2 to dispose of the petitioner's appeal. Accordingly, taking into consideration the submissions made at the Bar, it is directed that the statutory appeal dated 24.01.2024 which is presently, pending before the respondent no.2 be disposed of by the respondent no.2 within a period of 3 (three) weeks from the date of receipt of a certified copy of this order by the petitioner. The respondent no.2 shall intimate the petitioner about the outcome of the said appeal.

The writ petition stands disposed of in terms of the above. No order as to cost.

JUDGE

Comparing Assistant