

GAHC010053222024



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

Case No. : WP(C)/1467/2024

DIPANKAR KALITA
S/O- LATE SURENDRA CH. KALITA,
R/O- HOUSE NO- 31, HENGRABARI ROAD, FOREST GATE , NAMGHAR
PPATH, DISPUR, ASAM SACHIVALAYA, GUWAHATI-06,
DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, PERSONNEL (A) DEPARTMENT
ASSAM SECRETARIAT, DISPUR, GUWAHATI, KAMRUP (M), ASSAM, PIN-
781006

2:THE SECRETARY
TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781006

3:THE JOINT SECRETARY
TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI
KAMRUP (M)
ASSAM

PIN-781006

4:THE DISTRICT COMMISSIONER
KAMRUP
AMINGAON
PIN-781039
ASSA

Advocate for the Petitioner : MR. M SARMA

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri M. Sarma

Advocate for the respondents : Shri CKS Baruah, GA-Assam

Date of hearing : **08.05.2024**

Date of Judgment : **08.05.2024**

JUDGMENT & ORDER

An order of suspension of the petitioner dated 25.10.2023 is the subject matter of challenge in this writ petition. The primary ground of challenge is that though there was an order of extension of the suspension order of 19.02.2024, it was not within the mandate of 90 days from the date of suspension.

2. Heard Shri M. Sarma, learned counsel for the petitioner. Also heard Shri CKS Baruah, learned State Counsel appearing for the official respondents, who has also filed an affidavit-in-opposition on 08.04.2024.

3. Shri Sarma, learned counsel for the petitioner has submitted that the petitioner while discharging his duties as Assistant Commissioner, Kamrup was

placed under suspension vide an order dated 25.10.2023. The aforesaid order of suspension was passed in consequence of the arrest and detention of the petitioner in a case under the Prevention of Corruption Act on 16.10.2023. Therefore, under Rule 6(2) of the Assam (Discipline and Appeal) Rules, 1964, he was placed under suspension w.e.f. 16.10.2023. The learned counsel for the petitioner has submitted that he was kept under suspension continuously and no order of periodic review was passed within the period of 3(three) months which is required under the law.

4. The Personnel Department has however passed an order of 19.02.2024 whereby the suspension was extended for another period of 3(three) months w.e.f. 25.01.2024. The learned counsel further submits that the show-cause notice is yet to be served upon the petitioner and therefore, the charges are not yet framed.

5. Shri Sarma, learned counsel for the petitioner has also tried to rely upon an Office Memorandum dated 04.02.2020 which has been issued pursuant to an order of this Court. It is submitted that if a show-cause notice / charge-sheet is not issued within the period of 3(three) months, even a reasoned order of extension of suspension would not entitle the Department to keep a delinquent under suspension.

6. Shri Sarma Baruah, learned State Counsel, by referring to the affidavit-in-opposition filed on 08.04.2024 has however submitted that the charges against the petitioner are grave which involves the Prevention of Corruption Act in which he was also arrested. The learned State Counsel has also submitted that the suspension order has been extended on 19.02.2024. He has also pointed out that initial order of suspension though dated 25.10.2023, the same has been given effect from 16.10.2023.

7. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

8. The law regarding the procedures to be followed involving suspension of a Government servant is laid down under the Assam (Discipline and Appeal) Rules, 1964. With regard to the *pari materia* provision of Central services and other State services, there is an authoritative pronouncement of the Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhary Vs. Union of India & Anr.*** Reported in **(2015) 7 SCC 291.**

9. A Division Bench of this Court in the case of ***Rakibuddin Ahmed Vs. State of Assam*** reported in **2019 (5) GLT 600** has clarified that even in a case of deemed suspension under Rule 6(2) of the Rules of 1964, the same rigours of having the order of suspension a periodic reviewed and extended before expiry of three months has been held to be mandatory.

10. It is also a settled law that an order of suspension takes effect on the date when the same is issued. In the instant case, the suspension order was issued on 25.10.2023 and the period of 3(three) months had expired on or about 24.01.2024. Even if the effective date of suspension is held to be 16.10.2023 that would make the date of expiry of 3(three) months to be on or around 16.01.2024. There is no dispute that the extension order was passed only on 19.02.2024. The learned State Counsel has tried to explain that though extension order is dated 19.02.2024, the effect has been given from 25.01.2024.

11. Apart from the settled position that a review exercise to extend or not to extend an order of suspension is mandatorily required to be done within a period of 3(three) months from the date of the order of suspension if the

Disciplinary Proceeding is not initiated in the meantime, in the present case when admittedly the order of extension was passed on 19.02.2024, the same could not have been given effect from a prior date i.e. 25.01.2024 which is not permissible in law.

12. This Court is of the considered opinion that the authorities are not without any jurisdiction or power to extend an order of suspension in case there is any delay in issuing a formal charge sheet / show-cause notice within a period of 3(three) months and only the requirement is to have a periodic review within the said period of 3(three) months and pass appropriate orders within that period.

13. The lapse on the part of the authorities cannot be a ground for giving effect to an order of extension which is admittedly made beyond the period of 90 days.

14. As regards the submission made on behalf of the petitioner that in absence of a charge sheet within the period of 90 days, even a reasoned order of extension of suspension is not permissible, is however not accepted as the same is not untenable in law.

15. Be that as it may, in view of the aforesaid discussions, the order of suspension of the petitioner dated 25.10.2023 is held to have spent its force on expiry of 3(three) months as no order or review / extension was passed prior to that. The subsequent order of extension would not cure the defect which has already been done.

16. The order of suspension is accordingly held to have spent its force and accordingly a direction is issued to reinstate the petitioner in service. However, taking into account the serious nature of the charges and also the involvement

and arrest of the petitioner in a police case, the respondent authorities are at liberty to post the petitioner in any non-sensitive post.

17. The writ petition accordingly stands allowed in the manner indicated above.

JUDGE

Comparing Assistant