

GAHC010032852024



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

Case No. : WP(C)/962/2024

MASUM AHMED CHOUDHURY
S/O- LATE ABDUL HAQUE CHOUDHURY, VILL.- LAKSHIRBOND, P.O.
LAKSHIRBOND, P.S. AND DIST. HAILAKANDI, ASSAM, PIN- 788155.

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, SCHOOL EDUCATION (ELEMENTARY) DEPARTMENT,
DSIPUR, GHY-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19.

3:THE DISTRICT COMMISSIONER
HAILAKANDI
P.O.
PS. AND DIST. HAILAKANDI
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
P.O.
P.S. AND DIST. HAILAKANDI
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
HAILAKANDI EDUCATION BLOCK
HAILAKANDI

P.O.
P.S. AND DIST. HAILAKANDI
ASSA

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri R.A. Choudhury, Advocate.
Advocate for the respondents : Shri A. Phukan, SC, Elementary
Education Department

Date of hearing : 19.09.2024

Date of judgment : 19.09.2024

Heard Shri R.A. Choudhury, learned counsel for the petitioner. Also heard Shri A. Phukan, learned Standing Counsel, Elementary Education Department.

2. Considering the subject matter involved, this writ petition is taken up for disposal at the admission stage.

3. The challenge is with regard to an order of suspension from the service dated 30.04.2022.

4. As per the facts projected, the petitioner was serving as a Head Teacher of the 116 No. Nitainagar L.P. School in the district of Hailakandi. While serving as such, vide the impugned order dated 30.04.2022, the petitioner along with another Assistant Teacher of the same School, namely, Shri Anwarul Haque Barbhuiya were placed under suspension. It is the case of the petitioner that he

was kept under suspension without there being any periodic review and in the meantime, vide an order dated 30.09.2022, the other incumbent has been reinstated in service.

5. Shri Choudhury, the learned counsel for the petitioner has submitted that very recently on 30.07.2024, the show cause notice has been issued and in the meantime, there has not been any review to extend the suspension order. The learned counsel has also complained that even the subsistence allowance have not been at the prescribed rate.

6. The learned counsel has also questioned the competency and authority of the Officer issuing the suspension order. It is submitted that the appointing authority of the petitioner is the Director of Elementary Education, Assam whereas the order of suspension has been issued by the District Elementary Education Officer which is without any jurisdiction.

7. The learned counsel, in support of his submissions has relied upon the case of **Ajay Kumar Choudhary vs. Union of India & Anr.** reported in **(2015) 7 SCC 291** of the Hon'ble Supreme Court in which the requirement of periodic review within 3 (three) months from the date of suspension if the disciplinary proceeding is not initiated before that has been laid down. He has also relied upon certain other decisions of this Court including the decision of a Division Bench in the case of **Rakibuddin Ahmed Vs. State of Assam** reported in **2019 (5) GLT 600**.

8. The learned counsel has also placed before this Court an Office Memorandum dated 04.02.2020 issued by the Chief Secretary of the State which was issued in compliance of a direction of this Court in a writ petition in which it was directed to lay down the guidelines by following the law laid down

by the Hon'ble Supreme Court in the case of **Ajay Kr. Choudhury** (supra).

9. *Per contra*, Shri Phukan, the learned counsel for the Department has submitted that a reading of the order of suspension would reveal that the allegations are grave in which the entire environment of the School in question was at stake. He has also submitted that apart from the allegations of being absent from duties, there were allegations of misappropriation of funds. He has also informed this Court that on 30.07.2024, the show cause notice has been issued and the next date is fixed on 23.09.2024. In this connection, he has placed before this Court a copy of a notice dated 18.09.2024. He accordingly submits that there may not be a requirement for interfering with the order of suspension.

10. The rival contentions have been duly considered.

11. The law regarding a requirement of periodic review of an order of suspension is well settled. The Hon'ble Supreme Court in the case of **Ajay Kr. Choudhury** (supra) has laid down as follows:

“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 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.”

12. A Division Bench of this Court has also laid down that the same rigors would also be applicable in case of a deemed suspension under Rule 6 (2) of the Assam Service (Discipline and Appeal) Rules, 1964. It also appears that pursuant to the law laid down in the case of **Ajay Kumar Choudhury** (supra), an Office Memorandum dated 04.02.2020 has been issued by the State whereby it has been laid down that a periodic review every 3 (three) months has to be done. In the instant case, the order of suspension is dated 30.04.2022 and there is no materials placed on record to show that any periodic review was done within the said period. Issuance of a show cause notice beyond the period of 90 days would not save the authorities from the mandatory requirement of having a review before the stipulated period. The aspect of lack of competency and jurisdiction of the District Elementary Education Officer is also a relevant factor.

13. Considering the mandatory requirement of having a periodic review within 3 (three) months from the date of suspension which admittedly has not been done, this Court has no other alternative but to interfere with the said order dated 30.04.2022.

14. Accordingly, the order of suspension dated 30.04.2022 is set aside and the petitioner is directed to be reinstated in his service.

15. However, considering the nature of allegations and also the fact that the disciplinary proceeding has, in the meantime been started, the authorities would be at liberty to place the petitioner in any non-sensitive post.

JUDGE

Comparing Assistant