

GAHC010049642024



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

Case No. : WP(C)/1389/2024

ASHOK RABHA
S/O- ARABINDA CHANDRA RABHA, R/O- VILL.- THEKASU PT-I, P.O.
DUDHNOI, DIST. GOALPARA, ASSAM, PIN- 783124.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
AGRICULTURE AND HORTICULTURE DEPARTMENT, DISPUR, GUWAHATI-
781006, ASSAM

2:THE DIRECTOR OF AGRICULTURE
ASSAM
OFFICE OF THE DIRECTORATE OF AGRICULTURE
KRISHI BHAWAN
G.S. ROAD
KHANAPARA
GUWAHATI-781022
ASSAM

3:JOINT DIRECTOR OF AGRICULTURE (ZONE)
GOALPARA
DIST. GOALPARA
ASSAM
PIN- 783101.

4:DISTRICT AGRICULTURAL OFFICER
GOALPARA
DIST. GOALPARA
ASSAM
PIN- 783101.

5:SUB-DIVISIONAL AGRICULTURAL OFFICER

DUDHNOI
DIST. GOALPARA
ASSAM
PIN- 783124

Advocate for the Petitioner : MR H K NATH

Advocate for the Respondent : SC. AGRICULTURE

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

10.04.2024

Heard Mr. H.K. Nath, learned counsel for the petitioner. Also heard Ms. R. Borah, learned Standing Counsel, Agriculture.

2. The petitioner herein, who was working as an Upper Division Assistant in the Office of the Sub-Divisional Agricultural Officer, Dudhnoi, Goalpara, was arrested on 16.11.2023 by the Vigilance and Anti Corruption, Assam, in connection with ACB P.S. Case No. 98/2023. The petitioner was placed under suspension by order dated 20.11.2023 w.e.f. 16.11.2023 under Rule 6(2) of the Assam Services (Discipline & Appeal) Rules, 1964 until further order. By order dated 18.12.2023 passed by learned Court of Special Judge, Assam, the petitioner has been released on bail. Thereafter, the petitioner has submitted a representation dated 23.02.2024 to the respondent No. 4 seeking revocation of his suspension and reinstatement in service in the office of the respondent No. 5.

3 This writ petition is filed by the petitioner being aggrieved by the fact that he has not been re-instated in service inspite of being placed under suspension

for a period beyond three months without any review.

4. By order dated 03.04.2024, the respondents were permitted to obtain instructions as to whether any specific review order has been passed regarding extension of the suspension order issued to the petitioner. Today when the matter is called up, learned counsel for the respondents submits that he has not been posted with the required instructions.

5. Inspite of opportunities granted, neither any instructions are forthcoming from the respondents nor has any affidavit been filed. Under such circumstances, this Court is of the considered view that the writ petition can be disposed of with a direction to the respondent authorities to pass appropriate orders in respect of the prayer of the petitioner for reinstatement in his service.

6. Having heard the learned counsel for the parties, 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 Bench as well as several other coordinate Bench of this Court in their several judgments. That apart, the Office Memorandum dated 04.02.2020 issued by the Department of Personnel (B) provides that the Government of Assam at the competent level have taken note of the principles culled out in *Ajay Kumar Choudhury (supra)* and had directed all the Senior Most Secretaries of all the Department to ensure that the Memorandum of Charges/Charge Sheet has been served on the delinquent officer/employee before the expiry of 3 (three) months from the date of the order of suspension. By the said Memorandum a direction was also given to

ensure that the currency of the said suspension order should not extend beyond 3 (three) months and if within the period of 3 (three) months the Memorandum of Charges or Charge Sheet is not submitted on the delinquent officer/employee, a reasoned order must be passed for extension of the suspension, whenever necessary. It is also stated in the said OM that pursuant to the Memorandum of Charges/Charge-Sheet, the Senior Most Secretaries shall undertake a review within 6 (six) months as regards the desirability for further continuation of the suspension order and the Senior Most Secretaries will be held responsible if the cases of suspension in their respective Department are not dealt with and reviewed accordingly. This OM dated 04.02.2020 is extracted below for better appreciation:

Government of Assam
Department of Personnel :: Personnel (B)
Dispur :: Guwahati

No. ABP. 13/2018/Pt/35

Dated : Dispur, the 4th February, 2020

Hon'ble High Court Guwahati in its order dated 30.11.2017 in a series of writ petitions, the lead case being WP(C) no.6465/2017 has directed to issue a notification indicating the law laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhury – Vs- Union of India case to the effect that the Disciplinary Authorities to strictly comply with the requirement to issue the Memorandum of Charges/Charge-Sheet before the expiry of three months from the date of issuance of order of suspension.

It is therefore directed that all the Senior Most Secretaries of all the Departments shall ensure that the memorandum of Charges/Charge-Sheet is served on the delinquent officer/employee before the expiry of three months of period from the date of issuance of Order of suspension. They shall also ensure that the currency of the suspension order should not extend beyond three months if within the period of Memorandum of Charges/Charge-Sheet is not served on the delinquent officer/employee. If the Memorandum of Charges/Charge-Sheet is served within 3 (three) months of suspension, a reasoned order must be passed for the extension of the suspension, wherever necessary.

The officer proposing for suspension shall also ensure that the charges are framed and submitted to the Disciplinary Authority within two weeks from the date of passing order of suspension.

After issuance of Memorandum of Charges/Charge-Sheet, the Senior Most Secretaries shall undertake a review within 6 months as regards the desirability to further continued with the suspension Order.

Senior Most Sectaries will be held responsible if cases of suspension in their respective Departments are not dealt with and reviewed accordingly.

However, for those certain categories of employees for whom Disciplinary Authorities are not the Governor or the Chief Secretary, the concerned Appointing Authority as listed at Schedule in the Assam Services (Discipline and Appeal) Rules, 1964, will be held responsible if cases of suspension under the subordinate offices are not dealt with and reviewed accordingly.

All the Departments shall submit quarterly return to the personnel (B) Department with details about the suspension order issued, Memorandum of Charges/Charge-Sheet served upon the delinquent officer/employee and if any extension of suspension period is given etc. The Personnel Department will compile the reports received from all the departments and place before the undersigned for a periodical review every 3 months of the last 3 months suspension orders for further necessary action.

*Sd/- (Kumr Sanjay Krishna, IAS)
Chief Secretary to the Government of Assam*

7. 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 observations made 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.”

8. These principles laid down in Ajay Kr. Choudhury (Supra) were accepted and 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] and the Hon'ble Division Bench 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. Same view was adopted in *State of Assam & Anr Vs. Ajit Sonowal & 3 Ors.* (WA. No.114/2022) by a Division Bench of this Court by its judgment and order dated 02.03.2023 and *Rafed Ali Ahmed vs. State of Assam & 3 Ors.* by its judgment and order dated 17.02.2023 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 followed by the Hon'ble Division Bench of this Court as well as the Office Memorandum dated 04.02.2020 issued by the Department of Personnel (B), Government of Assam, there is no reason for the authority not to review the suspension of the petitioner or in terms of the OM dated 04.02.2020.

9. Under such circumstances, the respondent authorities are duty bound to

follow the law laid down by the Apex Court as well as by this Court in the aforementioned cases and pass appropriate order deciding the question of re-instatement of the petitioner.

10. Accordingly, the respondents are duty bound to re-instate the petitioner in his service since, it is evident that no review had taken place nor any disciplinary proceedings been initiated before expiry of three months for extension of the suspension of the petitioner, the respondent are bound to follow the law laid down by this Court, as discussed above, following the principles of the law laid down by the Apex Court in the case of *Ajay Kumar Choudhury (Supra)*.

11. The order re-instating the petitioner should be passed by the respondent department within a period of thirty (30) days from the date of receipt of certified copy of this order.

12. The writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant