

(2023) 03 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 800 Of 2023

Habibur Rahman

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 15-03-2023

Acts Referred:

Assam Service (Discipline and Appeal) Rule, 1964 — Rule 6(2)
Indian Penal Code, 1860 — Section 147, 307, 326, 427, 506
Assam Forest Regulation, 1891 — Section 24(a)(b), 25(a)(b)(c)(d)(f), 40(2)(b), 60(1)

Citation : (2023) 03 GAU CK 0025

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : A M Ahmed

Final Decision : Disposed Of

Judgement

1. Heard Mr. A. M. Ahmed, learned counsel for the petitioner. Also heard Mr. S. M. Hasan, learned standing counsel for the Forest Department.

2. The case of the petitioner is that the petitioner was put under suspension by an order dated 26.11.2021 in terms with the Rule 6(2) of the Assam Service (Discipline and Appeal) Rule, 1964. It may be relevant to mention that the petitioner was arrested in connection with the Lumding P.S. Case No. 224/2021 registered under Sections 147/427/326/506/307 of IPC read with the Section 24(a)(b) / 25(a)(b)(c)(d)(f) / 40(2)(b) / 60(1) of the AFR Act.

3. The petitioner thereupon was granted bail by this Court in Bail Application No. 3455/2021 by an order dated 20.12.2021. Subsequent thereto, the petitioner challenged the suspension order on the ground that the petitioner was not served a memorandum of charges/charge-sheet by way of a writ petition being WP(C) No. 3380/2022. This Court vide order dated 27.05.2022 had set aside the said suspension order on the ground of being violative of the law laid down in the Judgment in the case of Ajay Kumar Choudhury -vs- Union of India reported in (2015) 7 SCC 291. Thereupon, the petitioner was re-instated vide order dated

15.06.2022 pending drawl of the departmental proceedings. It further appears that the petitioner had thereupon submitted representations dated 21.07.2022, 17.11.2022 as well as 19.12.2022 for treating the said period of suspension as on duty, which are however pending before the Office of Divisional Forest Officer, Dhemaji Division, Dhemaji.

4. The case of the petitioner herein is that the respondents have not disposed of his representations and if the said period when he was suspended is treated on duty, the petitioner would be entitled to an amount of Rs.1,52,078/-. The details of which have been given in paragraph- 10 of the writ petition. Claiming the said amount the instant writ petition has been filed.

5. I have heard the learned counsels for the parties.

6. From perusal of the records, it appears that the petitioner was re-instated on the basis of order dated 27.05.2022 passed in WP(C) No. 3380/2022. However, the order dated 15.06.2022, the period of suspension has not been treated as on duty. Consequently, the question of there being any arrear salary in the opinion of this Court does not arise till the said period when the petitioner was on suspension is treated as on duty at this stage.

7. Under such circumstances, the question of issuing a direction to the respondent authorities to pay the amount of Rs.1,52,078/- as arrear salary does not arise.

8. Be that as it may, the petitioner duly have a legitimate expectation of consideration of his representations for treating the period of his suspension as on duty.

9. Under such circumstances, this Court, therefore, disposes of the writ petition with a direction to the Divisional Forest Officer, Dhemaji Division, Dhemaji to consider the representations submitted by the petitioner on 21.07.2022, 17.11.2022 and 19.12.2022 as expeditiously as possible, more so, taking into account the petitioner is going to retire on 31.03.2023.

10. The said exercise be completed within a period of 3(three) weeks from the date of certified copy of this order is served upon the Divisional Forest Officer, Dhemaji Division, Dhemaji.

11. It is made clear that if the said authority treats the period of suspension as on duty, the petitioner would be entitled to the full salary i.e. the salary during the said period after making deductions on account of payment of the subsistence allowances already made.

12. With the above observations, the writ petition stands disposed of.