

(2023) 06 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 324 Of 2023

Ranju Prajapati

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 09-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 311(2)

Citation : (2023) 06 GAU CK 0005

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : A M Barbhuiya

Final Decision : Disposed Of

Judgement

1. Heard Mr. A.M. Barbhuiya, the learned counsel appearing for the petitioner. Also heard Mr. B Kaushik, learned counsel appearing on behalf of respondent Nos.1, 3, 4 & 5 and Mr. B Gogoi, learned Standing counsel appearing on behalf of respondent No.2.

2. The case projected by the Petitioner in a nutshell is that he is an Assistant Teacher of Dholai Molai ME School under Katlichera Elementary Block in the district of Hailakandi. He was arrested on 06.09.2022 in connection with Katlichera PS Case No.152/2022 u/s 302/34 IPC (GR Case No.893/2022) and he was sent to judicial custody by the Court below. Since he was under arrest beyond 24 hours, the BEEO, Katlichera Elementary Block put him under suspension vide order dated 09.09.2022.

3. But the Petitioner was subsequently released on bail by order dated 25.11.2022 passed by the Learned Additional Sessions Judge, Hailakandi in Criminal Misc (B) Case No.461/2022. It is the further case of the Petitioner that after release from the jail on 25.11.2022, he submitted representation on 24.12.2022 for his reinstatement into the service which is not yet considered by the Departmental Authority. It has further been stated that the Departmental

Authority neither has initiated a Departmental Proceeding (DP) by framing charge against the Petitioner nor he has been re-instated into the service, which according to the Petitioner is against the settled proposition of law.

4. The learned counsel appearing on behalf of the petitioner, Mr. A.M. Barbhuiya has also drawn the attention of this Court to the judgment rendered in the case of Rakibuddin Ahmed Vs. The State of Assam reported in 2020 (2) GLR 621 and submitted that the principles as laid down by the Supreme Court in the case of the Ajay Kr Choudhary Vs. Union of India and another reported in (2015) 7 SCC 291 would also be applicable in the case of a deemed suspension done in exercise of the powers under Rule 6(2) of the 1964 Rules. The learned counsel therefore referred to paragraph Nos.15, 16 and 17 of the said judgment which are reproduced herein below:-

"15. We have consciously applied our mind to the query raised by the learned Single Judge. Though the case of Ajay Kumar Choudhury(Supra) is a case where suspension order was issued pending drawal of Disciplinary Proceeding and not a case of deemed suspension, the observation made by the Hon'ble Supreme Court in paragraph-20 whereby, the analogy of Section 162(2) Cr.P.C.,1976 has been brought in, we are persuaded to hold that the principles laid down in the said case cannot be restricted to an order of suspension issued only on contemplation of drawal of Disciplinary Proceeding and not for deemed suspension. In our view, the issue should be seen from the perspective of the consequence and effect of suspension which is the same in both the cases. We also feel that no prejudice, whatsoever, would be caused to the Department by such interpretation inasmuch as no blanket order of revocation of suspension is passed and it is left to the Department to make periodic review within a period of 3(three) months and decide as to whether such suspension is required to be extended or not by assigning reasons. Whether such reasons are justified and germane can be the subject matter of a separate challenge. In view of the aforesaid discussion, we answer the reference by holding that the principles laid down in the case of Ajay Kumar Choudhury(Supra) would also be applicable in case of deemed suspension under Section 6(2) of the 1964 Rules.

16. Further, in the instant case, it is seen that the order of suspension is also on account of pending drawal of Disciplinary Proceeding in which case, periodic review within 3(three) months is otherwise held to be mandatory.

17. Since we have already answered the reference holding that periodic review in the case of deemed suspension is mandatory, the requirement of remanding the matter to the learned Single Judge would be a meaningless exercise and as agreed by the parties, while answering the reference, as above, we are of the opinion that a case for interference of the impugned order dated 16.02.2019 is made out. Accordingly, the order of suspension dated 16.02.2019 issued by the Divisional Forest Officer, Guwahati Wildlife Division is hereby set aside and quashed. We, however, hasten to add that the Department would be a liberty to post the petitioner in any non-sensitive post."

5. This Court, upon filing of the instant writ petition, had issued notice on 23.01.2023 thereby directing the respondent Nos.1 & 2 to apprise this Court as regards the compliance to the law laid down by the Supreme Court in the case of Ajay Kumar Choudhury (supra).

6. It is submitted that the petitioner still remained under suspension and such suspension has not been reviewed by the competent authority till date.

7. It further transpires that the petitioner was suspended vide an order dated 09.09.2022 in terms with Rules of 1964. The petitioner was granted bail on 25.11.2022 in Misc (B) Criminal Case No.461/2022 and this aspect of the matter was duly brought to the attention of the Appointing Authority on 24.12.2022. In a recent judgment by this Court dated 17.02.2023 in the case of Rafed Ali Ahmed vs. the State of Assam & 3 Others in reported WP(C) No.455/2023, this Court has held that another condition has to be culled out on the basis of the law laid down in the case of Ajay Kumar Choudhury (supra) as well as in the case of Rakibuddin Ahmed (supra) to the effect that where the Memorandum of charges/chargesheet is not served upon the delinquent officer/employee within 3 (three) months from the date of release on bail or released from any custody or imprisonment and if the Memorandum of charges/chargesheet is served, a reasoned order must be passed for the extension of suspension. It was also mentioned that the period for applying the said condition shall be taken up for consideration by the Appointing Authority when the delinquent officer/employee brings the fact that he/she has been released on bail or otherwise not in any custody or imprisonment to the Appointing Authority who has the power to vacate the suspension order. Paragraph Nos.17 to 20 of the said judgment in Refed Ali Ahmed (Supra), being relevant, are quoted herein under:-

"17. A perusal of the above Rules would show that the Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall remain under suspension until further orders. The proviso to said Rule mandates that where the detention is made on account of any charge not connected with the delinquent officer's position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.

18. The said provision, therefore, would show that if a Government servant who is in custody for a period exceeding 48 hours shall be deemed to be suspended with effect from the date of such detention by an order of the Appointing Authority and the Government servant shall continue to remain in suspension until further orders. Therefore, till the Government servant remains in custody or imprisonment after the initial period of 48 hours he/she shall continue to remain

under suspension. The judgment of the Supreme Court in the case of Ajay Kumar Choudhury (supra) neither dealt with a case of suspension under Rule 6 (2) of the Rules of 1964 nor dealt with the issue of deemed suspension which was on account of person remaining in custody or imprisonment after the initial period of 48 hours. The said judgment of the Supreme Court also do not deal with the question as how a person in custody or imprisonment can be served with the Memorandum of charges/chargesheet or for the matter whether the delinquent employee would have a reasonable opportunity as required under Article 311 (2) of the Constitution when the delinquent officer is in custody or imprisonment.

19. The above aspect of the matter can also be seen from another angle. By virtue of Section 6 (2) of the Rules of 1964, a Government servant, upon being detained in custody for a period of exceeding 48 hours, would be deemed to have been suspended with effect from the date of such detention by an order of the Appointing Authority and shall remain under suspension until further orders. The said Sub-Rule, therefore, mandates that till the Government servant who had been suspended is not released on bail or not otherwise in custody or imprisonment, shall remain suspended. The question of setting aside the suspension till the Government servant remains in custody or imprisonment cannot arise and if it is held that such Government servant is to be reinstated for not serving the Memorandum of charges/chargesheet upon completion of 3 (three) months from the date of suspension, it would be contrary to Rule 6 (2) of the Rules of 1964 which continues to hold the field. Now coming to the judgment of the Supreme Court in the case of Ajay Kumar Choudhury (supra), it would be seen that reasons behind the directions in paragraph Nos.20 & 21, as quoted above, have been spelt out in paragraph Nos.11 & 12 of the said judgment. In the opinion of this Court, the directions in paragraph No.21 of the said judgment in Ajay Kumar Choudhury (supra) can only be applied when the Government servant is released on bail or otherwise not in custody or imprisonment.

20. A very pertinent question, therefore, arises as to from which period the directions in paragraph No.21 of the judgment of the Supreme Court in the case of Ajay Kumar Choudhury (supra) shall apply in the case of Deemed Suspension. It would be seen that the judgment of the Division Bench of this Court in the case of Rakibuddin Ahmed (supra), however, with due respect, did not deal with this question. An insight to the same can be unraveled from the proviso to Rule 6 (2) of the Rules of 1964. The proviso speaks upon the following conditions upon which the Appointing Authority may vacate the suspension order when the Government servant is released on bail or is not otherwise in custody or imprisonment. They are:-

- (i) Where the detention is made on account of any charge not connected with the Government servant's position; or
- (ii) Where the detention is not likely to embarrass the Government or the Government servant in discharge of his duties; or

(iii) Where the charge does not involve moral turpitude.

However, upon applying the judgment of the Supreme Court in the case of Ajay Kumar Choudhury (supra) and the judgment of the Division Bench of this Court in the case of Rakibuddin Ahmed (supra), a fourth condition can be culled out, i.e.:-

(iv) Where the Memorandum of charges/ chargesheet is not served upon the delinquent officer/employee within 3 (three) months from the date of release on bail or released from any custody or imprisonment and if the Memorandum of charges/chargesheet is served, a reasoned order must be passed for the extension of suspension.

Now the question, therefore, arises that when the above mentioned conditions can be taken into consideration by the Appointing Authority. In the opinion of this Court, the conditions above noted can only be taken into consideration when the delinquent officer/employee brings the fact that he/she has been released on bail or otherwise not in any custody or imprisonment to the Appointing Authority who has the power to vacate the suspension order.”

8. In the instant case, it would be seen that the Appointing Authority on 09.09.2022 issued the suspension order on the ground that the petitioner was arrested on 06.09.2022 by applying Rule 6 (2) of the Rules of 1964. Thereupon, on 25.11.2022, the petitioner was released on bail which was brought to the attention of the Appointing Authority on 24.12.2022. Under such circumstances, applying of law laid down in the case of Rafed Ali Ahmed (supra), the respondent authorities having not served the Memorandum of charges/chargesheet upon the petitioner could not have continued to place the petitioner under suspension after the lapse of three months from the date of due intimation.

9. Considering the above, this Court, therefore, directs the respondent authorities to forthwith reinstate the petitioner upon a certified copy of the instant order being served upon them.

10. It is also made clear that the respondent authorities would be at liberty to transfer the petitioner to any of its offices within the State so as to sever any local or personal contacts that the petitioner may have and which he may misuse for obstructing the investigation against him. Further, the Government is also given the liberty to prohibit the petitioner from contacting any person or handling records.

11. With the above observations and directions, the instant writ petition stands disposed of.