



GAHC010125132020

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

Case No. : WP(C)/3600/2020

PRASANTA CH. NATH
S/O- LT. PRAHLAD CH. NATH, HEADMASTER (UNDER SUSPENSION)
GANDHI ME SCHOOL, DERBY, R/O VILL- BHAKRARPAR, BERABAK PART-
II, P.O. NARSINGPUR, DIST.- CACHAR, ASSAM, PIN- 788112

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY., TO THE GOVT. OF ASSAM, DEPTT. OF
ELEMENTARY EDUCATION, DISPUR, GHY, ASSAM, PIN- 781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY
ASSAM
PIN- 781019

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CACHAR
SILCHAR
ASSAM
PIN- 788003

4:THE DY. INSPECTOR OF SCHOOLS
SILCHAR
CACHAR
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
NARSINGPUR
DIST.- CACHAR



ASSAM

6:THE DY. COMMISSIONER
CACHAR
SILCHAR
ASSAM
PIN- 78800

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT

Date : 08-12-2020

Heard Mr. B. Purakayastha, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned counsel for the Elementary Education Department and Mr. B. Deuri, learned counsel for the respondent No.6.

2. The petitioner who is the headmaster of Gandhi M.E. School in Cachar district had been placed under suspension by the order dated 08.11.2019 of the District Elementary Education Officer, Cachar. A reading of the order shows that it was pursuant to some instruction of the Additional Deputy Commissioner in-charge of Education of Cachar. The order further reveals that the suspension was made pending drawl of a departmental proceeding. The order also reflects that the suspension was subject to the approval of the Director of Elementary Education, Assam.

3. Be that as it may, the petitioner was directed to hand over the charge of headmaster to the senior most assistant teacher of the school.

4. The order of suspension dated 08.11.2019 is assailed in this petition. We have gone through the provision of 6 of the Assam Services (Discipline and Appeal) Rules, 1964 which is extracted below:-

“6. Suspension- (1) The Appointing Authority or any authority to which it is subordinate or any

other authority empowered by the Governor in that behalf may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or is pending; or*
- (b) where in the opinion of the authority aforesaid he has engaged himself in activities prejudicial to the interest or the security of the State; or*
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:*

provided that where the order of suspension is made by an authority lower than the Appointing Authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made."

5. A reading of Rule 6(1) makes it discernible that it is the appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by the Governor for the purpose may place a government servant under suspension.

6. In the instant case, it is an admitted position of the parties, including the respondents, that the petitioner being the headmaster of a M.E. School, the appointing authority is the Director of Elementary Education, Assam and not the District Elementary Education, Silchar.

7. From the said point of view, the order of suspension prima facie appears to be without jurisdiction inasmuch as, it was not passed by the appointing authority.

8. Be that as it may, the order of suspension reflects that the suspension is subject to the approval of the Director of Elementary Education, Assam who infact is the appointing authority. To justify the order, reference has been made to the proviso to Rule 6(1) which provides that in the event, where the suspension is made by an authority lower than the appointing authority such authority shall forthwith report to the appointing authority stating the circumstance in which the order was made.

9. A reading of the proviso to Rule 6(1) shows that the proviso circumscribes to the extent that the authority lower than the appointing authority may make an order of suspension, but a report thereof be submitted to the appointing authority forthwith and secondly the circumstance in which the



order was made be also stated. The proviso to Rule 6(1) is in the nature of an exception and not the rule and is to be exercised only in an exceptional circumstance where an immediate suspension is warranted in the given facts and circumstances where if such suspension is not made forthwith, the same may cause public harm. Further there is also a requirement to state the circumstance in which the authority lower than the appointing authority may make the order of suspension.

10. In the facts and circumstance of the case, no circumstance has been stated and secondly though it was subjected to the approval of the Director of Elementary Education, Assam, but such approval is stated to have been granted on 05.11.2020 i.e. almost a year later and that too after notice had been issued in this petition by the order dated 23.09.2020.

11. From the aforesaid, we find the order of suspension dated 08.11.2019 to be unsustainable in law and the same is set aside. It is stated that in the meantime, a proceeding had already been initiated against the petitioner.

12. The interference of the order of suspension dated 08.11.2019 on the aforesaid reason for being contrary to the provisions of Rule 6(1) of the Rules of 1964, including the proviso thereof, shall not preclude the respondent authorities to take a fresh decision as per law, if so advised.

Writ petition stands allowed in the above terms.

JUDGE

Comparing Assistant