



GAHC010009022021

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

**Case No. : WP(C)/338/2021**

RANJIT GOGOI  
S/O LATE BISWA GOGOI, R/O JAGANNATH NIVAS, HOUSE NO. 8, UDAYAN  
PATH, RUKMINI GAON, GUWAHATI 22, DIST. KAMRUP (M), ASSAM.

VERSUS

STATE OF ASSAM AND 3 ORS.  
REPRESENTED BY THE ADDITIONAL CHIEF SECY. TO THE GOVT. OF  
ASSAM, INFORMATION AND PUBLIC RELATIONS DEPTT., DISPUR,  
GUWAHATI 781006

2:THE SECY. TO THE GOVT. OF ASSAM

INFORMATION AND PUBLIC RELATIONS DEPTT.  
DISPUR  
GUWAHATI 781006

3:THE DEPUTY SECY.D TO THE GOVT. OF ASSAM

INFORMATION AND PUBLIC RELATIONS DEPTT.  
DISPUR  
GUWAHATI 781006

4:THE DIRECTOR IN CHARGE  
INFORMATION AND PUBLIC RELATION  
ASSAM  
DISPUR  
GUWAHATI 0

**Advocate for the Petitioner : MR. D DAS SR. ADV**

**Advocate for the Respondent : GA, ASSAM**

B E F O R E

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**Date of hearing : **26.10.2021 & 28.10.2021**Date of Judgment : **18.11.2021****JUDGMENT & ORDER (ORAL)**

The extraordinary jurisdiction of this Court is sought to be invoked by filing this application under Article 226 of the Constitution of India whereby the petitioner has put to challenge the action of the respondent authorities in keeping the petitioner under prolonged suspension from service. The petitioner was placed under suspension vide an order dated 07.11.2017 and the first review of the suspension was done after nine months, that too, after an order of intervention by this Court. Subsequently, after more than a year the show cause notice was issued which was replied to by the petitioner. Thereafter even after expiry of almost four years, nothing has been done and the petitioner continues to be in the state of suspension.

2. To appreciate the issue involve in this case, it would be convenient if the facts of the case are stated in brief.

3. The petitioner was appointed as a Sub-Divisional Information Officer in the Department of Information and Public Relation in the year, 1987. Subsequently, upon a recommendation of the APSC, he was appointed as Director, Information and Public Relation, Assam vide an order dated 30.05.2011.

4. It appears that an FIR was lodged by the Chief Minister's Special Vigilance Cell on 20.10.2017 on the basis of a regular enquiry. The FIR was in connection with allegation of misappropriation in the form of false / fraudulent claims made by Media Buying Firms in respect of hoardings and making payments thereof on the part of the Director without proper verification. Allegations are also there of manipulation by the petitioner in collusion with the



Media Buying Firms involved in the project "Vision Assam Mission Assam." The aforesaid case was registered as CM Special Vigilance Cell Police Station Case No. 8/2017 under Section 120(B) / 468 / 409 of the Indian Penal Code read with Section 13(2) of the Prevention of Corruption Act, 1988.

5. It is the case of the petitioner that he was summoned by the police on 07.11.2017 and when he had appeared, he was detained. The petitioner claims that after his arrest he was sent to judicial custody and was granted bail by this Court, vide an order dated 16.03.2018. In the meantime, vide a notification dated 14.11.2017 by invoking Rule 6(2) of the Assam Services (Discipline & Appeal) Rules, 1964 (hereinafter called, the Rules), the petitioner was put under suspension. However, the petitioner claimed that neither any memorandum of charges was served nor any review of the suspension order was done. The petitioner claimed to have submitted various representations which were not acted upon leading him to approach this Court by filing a writ petition being WP(C)/7047/2018.

6. The aforesaid writ petition WP(C)/7047/2018 was disposed of by this Court vide an order dated 30.10.2018 by directing the respondents to undertake an exercise on the desirability to continue to the order of suspension.

7. Subsequently, on 12.10.2018 a show cause notice was issued to the petitioner under the provisions of Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964 which was after about 11 months from the date of suspension. Further, in compliance with the order of this Court passed in the aforesaid writ petition an order was passed on 15.12.2018 whereby the suspension was said to be reviewed and it was decided to continue with the same. Subsequently, the disciplinary authority issued another show cause notice dated 17.11.2018 to the petitioner whereby the earlier show cause notice dated 12.10.2018 was cancelled. The petitioner claims that the charges in both the notices are completely different.

8. Thereafter, vide subsequent orders dated 12.03.2019, 27.08.2019, 26.11.2019, 05.06.2020 and 05.09.2020 the order of suspension has been reviewed and it was decided to keep the petitioner under suspension.

9. It is the case of the petitioner that though subsequent orders of review have been passed from time to time, none of the orders were passed within the prescribed period and

appears to have been done in a mechanical manner.

10. On 22.01.2019, the petitioner had submitted his reply whereby the charges were denied in all respects. After such reply, vide an order dated 15.02.2019, one Shri Manoj Kumar, Secretary to the Government of Assam was appointed as the Enquiry Officer. It is the case of the petitioner that almost a year later one Smt. Arundhati Chakravorty has been appointed as the Presenting Officer. However, thereafter there is no progress in the departmental proceeding and the petitioner has been continued to be under suspension. Being aggrieved, the petitioner has approached this Court by filing the present writ petition.

11. I have heard Shri D. Das, learned Senior Counsel assisted by Shri H. Rahman, learned counsel for the petitioner whereas the State has been represented by Shri P.N. Goswami, learned Additional Advocate General, Assam assisted by Shri K.P. Pathak, learned counsel. The records of the case have also been produced by the learned State Counsel.

12. Shri Das, the learned Senior Counsel for the petitioner submits that though suspension from service *per se* is not a penalty, in the instant case, the order of suspension was issued on 14.11.2017 which is almost 4(four) years old is causing immense prejudice *inasmuch as* there is no progress in the departmental proceeding. It is submitted that apart from acting as stigma, everything has become uncertain as to how long the suspension order would be kept in operation. It is submitted that the aforesaid action in keeping the petitioner under suspension for an indefinite period is absolutely unreasonable, arbitrary and is apparently an abuse of the process. He further submits that there was no review on the necessity to extend the suspension and it was only upon intervention of the Court that such exercise of review was performed. It is further submitted that the review carried out later were not within 3(three) months and therefore, on the ground of violation of the procedure prescribed, the suspension order is liable to be interfered with.

13. In support of his submission, the learned Senior Counsel for the petitioner places reliance upon the following decisions-

i. **(2015) 7 SCC 291 [Ajay Kumar Choudhary Vs. Union of India & Anr.]**

ii. **2019 (5) GLT 600 [Rakibuddin Ahmed Vs. State of Assam {Division**

***Bench}]***

iii. **(2018) 17 SCC 677 [State of Tamil Nadu represented by Secretary to the Government (Home) Vs. Pramod Kumar, IPS & Anr.**

iv. (2020) 1 GLR 668 [State of Nagaland &amp; Ors. Vs. Chubunungsang Imchen]

14. In the case of ***Ajay Kumar Chodhury (Supra)***, the Hon'ble Supreme Court was dealing with the aspect of suspension wherein it has been laid down that the period of suspension should not extend beyond three months if within the said period a memorandum of charge is not served upon the delinquent. It has further been laid down that in case the charge memo is submitted in the meantime, a reasoned order is required to be passed justifying the necessity to extend the order of suspension.

15. A Division Bench of this Court had answered a reference in the case of ***Rakibuddin Ahmed (Supra)*** as regards the applicability of the law laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary (Supra)*** case in a case of deemed suspension by invoking the provisions of Rule 6 (2) of the Rules. The reference was answered in the affirmative by holding that the law requiring periodic review of the suspension order would be also applicable for a deemed suspension. The learned counsel has submitted that though the charge memo has been filed there is no periodic review regarding the requirement to extend the suspension and the review held are sporadic in nature and not at all adhering to the schedule laid down in ***Ajay Kumar Choudhary (Supra)*** case. The learned Senior Counsel accordingly argues that the present is a fit case for interference by this Court by directing reinstatement of the petitioner and if the exigency so demands to post the petitioner in any non sensitive post.

16. In the case of ***Pramod Kumar (Supra)***, in paragraph 24 it has been laid down that the incumbent was placed under suspension for being in custody for a period of more than 48 hours, it has been laid that there cannot be any dispute regarding the power of jurisdiction of the State Government for continuing the incumbent under suspension pending criminal trial and the gravity of the allegation was also a relevant factor. In the case of ***Chubanungsang Imchen (Supra)*** a Division Bench of this Court after discussing the case of ***Pramod Kumar (Supra)*** and ***Ajay Kumar Choudhary (Supra)*** has laid down that an order of suspension

cannot be prolonged in absence of any reasoned order passed in review.

17. *Per contra*, Shri P.N. Goswami, learned Additional Advocate General, Assam appearing on behalf of the respondents has submitted that the delay in initiating the disciplinary proceeding is not at all intentional but has occurred for reasons beyond the control of the authorities. Out of the entire period, about 2 (two) years period is affected by the Covid-19 pandemic which is still continuing which is causing immense difficulties in carrying out day to day work.

18. As regards the nature of allegations, a bare look at the records would indicate that the petitioner is involved in a huge financial scam. The allegation against the petitioner is that he is the kingpin of the process wherein crores of Government money has been misused. It is submitted that at this stage the petitioner is reinstated in his service, there would be all the scope for the petitioner to tamper with the documents and influence the witnesses who are mostly from the said office in which the petitioner is the Director. In this connection, the attention of this Court has been drawn to the memo of charge from where it appears that out of the 21 numbers of cited witnesses, 20 numbers are employees of the Directorate / Department and therefore, there is full justification not to revoke the order of suspension.

19. The learned AAG, Assam has further referred to the order dated 30.10.2018 of this Court passed in the earlier round of litigation WP(C)/7047/2018 it is contended that even after noticing the fact that no review of the suspension order was made within the stipulated period of 3 (three) months and admittedly the Memo of Charge was yet to be submitted, this Court instead of interfering with the order of suspension had only directed the concerned authorities to undertake the exercise on the desirability of continuing the suspension of the petitioner and the said exercise was directed to be undertaken within a month. It is contended that the aforesaid direction was accepted by the petitioner and therefore the direction had attained finality. In other words, the petitioner had accepted the situation wherein even after a considerable length of time the suspension could be extended by holding a review meeting and there was no requirement to adhere to the guidelines laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary (Supra)**.

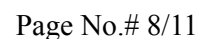
20. The learned State Counsel further submits that after the aforesaid order dated

30.10.2018 has been passed by this Court, the review were done on 15.12.2018, 12.03.2019, 27.08.2019, 26.11.2019, 05.06.2020 and 05.09.2020. The aforesaid dates would substantiate that the period stipulated by the Hon'ble Supreme Court for conducting review was not followed in spite of which no steps were taken by the petitioner. It is accordingly submitted that the petitioner by his own conduct is estopped from making the present challenge at this stage.

21. The rival submissions of the learned counsel for the parties have been duly considered and the materials before this Court including the records have been carefully examined.

22. The primary grievance of the petitioner is the order of suspension dated 14.11.2017. However, the same order was also the subject matter of challenge in the earlier writ petition namely, WP(C)/7047/2018 in which this Court vide order dated 30.10.2018 had disposed of the writ petition remanding the matter to the respondent authorities to undertake an exercise on the desirability to continue the suspension. Though, no periodic review was made to the suspension order prior to such order of this Court which according to the law laid down in the case of **Ajay Kumar Choudhary (Supra)** would have made the order unsustainable, what intrigues this Court is that the petitioner accepted the said verdict of this Court and the order dated 30.10.2018 was neither challenged nor put to review. Having accepted the Judgment dated 30.10.2018 and allowing the same to attain finality, the petitioner cannot be allowed to make a fresh challenge of the very same order of suspension dated 14.11.2017. What is also surprising is that though the petitioner has alleged that the review of the suspension has been made without following the duration, even the said action was not put to challenge at an earlier point of time. Though, the Code of Civil Procedure, 1908 is not *per se* applicable in a writ proceeding, the spirit is very much applicable and the doctrine of *res judicata* being based on the principles of common law i.e. justice, equity and good conscience, judicial decorum would not permit this Court to reopen the issue which has already been decided by this Court.

23. For making the aforesaid observation, this Court has found support in the law laid down by the Hon'ble Supreme Court in the case of **Daryao v. State of U.P.**, reported in **AIR 1961 SC 1457**, where the following has been laid down-



*Under the sub-rule aforesaid it is clear that a member of the service can be placed under suspension if against him an investigation, inquiry or trial relating to criminal charges is pending. The expression 'investigation' 'inquiry', or 'trial' are wellknown in*



*the realm of the criminal law under the Code of Criminal Procedure. In the instant case when a First Information Report was filed against the appellant and steps were taken for obtaining a search warrant for the search of his house, investigation within the meaning of Rule 7(3) became pending on and from November 24, 1967. The suspension order, therefore, made on November 28, 1967 was well within the ambit of the power of the government under the said provision of law. Most of the charges levelled against the appellant, and at this stage, we do not know whether they were right or wrong, true or false, were in relation to his alleged acts of corruption and misuse of his official position.*

*10. In our view the making of the suspension order against the appellant under Rule 7 (3) of the Rules was legal and valid. But did it come to an end, if so, when? The rule provides that the suspension order may last "until the termination of all proceedings relating to" the charges. Appellant's counsel submitted that, as mentioned in one of the letters of the State Government to the Central Government, the investigation was complete on November 23, 1968, hence on the termination of the investigation the suspension order terminated. We have no difficulty in rejecting this argument as unsound. Under Rule 7 (3) the suspension order can be made to continue until the termination of all proceedings viz., investigation, inquiry or trial which may follow the investigation. Strictly speaking, the investigation could not be said to be complete until the submission of the Charge-Sheet. Factual completion of the investigation in November, 1968 did not terminate all proceedings in relation to the charges levelled against the appellant. But obviously the suspension order came to an end by the compulsory retirement of the appellant. After retirement from service he could no longer be deemed to be under suspension."*

25. In the case of **Director General and Inspector General of Police, Andhra Pradesh, Hyderabad & Ors. Vs. K. Ratnagiri** reported in **(1990) 3 SCC 60**, the Hon'ble Supreme Court was dealing with a similar provision in the A.P. Civil Service (CCA) Rules, 1963. In the said case, it was held that an order of suspension does not come to an end automatically and has to be revoked and there is no justification to contend that an order of

suspension will continue only till a particular period. The relevant part of paragraph 3 of the said Judgment is extracted hereinbelow-

“3. ....

.....

.....

*R. 13(1) provides power to keep an officer under suspension from service pending investigation or enquiry into grave charges, where such suspension is necessary in the public interest. Proviso thereunder requires the authority who made the order of suspension to report to the Government where the investigation into the charges and the action proposed to be taken against the officer has not been completed within the period of six months from the date of suspension. Upon receipt of the report, the Government may make such orders as they deem fit having regard to the circumstances or development in the case. Proviso thus imposes only an obligation on the authority to report to the Government, but it does not limit the period of suspension. It does not state that the suspension order comes to an end by the end of six months. It may be noted that the suspension order is not an interim suspension. Nor the R. 13(1) limits its operation only for six months. R. 13(5) provides that the order of suspension may, at any time, be revoked by the authority who made or is deemed to have been made the order or by any authority to which that authority is subordinate. That apparently suggests that the order of suspension once made will continue to operate till it is revoked by an appropriate order. Therefore, there appears to be no justification to contend that the order of suspension would not last beyond six months. It has been passed by the competent authority who shall report to the Government if the action is not completed within six months. The Government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority.”*

26. What transpires from the aforesaid decision of the Hon'ble Supreme Court is that it would be within the jurisdiction and competence of the authorities to continue with an order of suspension until the termination of all proceedings and further that an order of suspension will not automatically come to an end after a particular period. Further, though a Division



Bench of this Court had answered a Reference in the case of ***Rakibuddin (Supra)*** that the law laid down by the Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhuary (Supra)*** would also be applicable in a case of deemed suspension, the mandate of an outer limit of 3 (three) months is only for the purpose of drawing up a departmental proceeding and the requirement to undertake an exercise of review prior to the said period of 3(three) months. However, in the instant case, the petitioner had accepted the direction of this Court in the first round of litigation wherein there was no interference with the same order of suspension.

27. In view of the above, this Court is of the opinion that no case for interference is made out by the petitioner and accordingly, the writ petition is dismissed.

28. However, before parting with the records, this Court would like to observe that prolonged suspension is also not desirable as it is neither beneficial to the employer nor to the employee. Therefore, though no interference has been made in this case, it is expected that the disciplinary proceeding which has been initiated be completed expeditiously and within an outer limit of 6 (six) months from today. If the disciplinary proceeding is not completed within the period of 6 (six) months, the suspension order dated 14.11.2017 would stand vacated and the petitioner has to be reinstated in service. However, taking into account the seriousness of the charges, the petitioner may be posted in any non-sensitive post to be decided by the authorities.

29. The records of the case are returned herewith to the learned State Counsel.

**JUDGE**

**Comparing Assistant**