



GAHC010189642021

Page No.# 1/62



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

Case No. : WP(C)/6081/2021

PRASANTA DUTTA
SON OF SRI PURNA DUTTA
HOUSE NO. 9A, BISHNU PATH MATHURA NAGAR, DOWN TOWN, DISPUR,
GUWAHATI-781006

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE HOME DEPARTMENT, GOVT. OF ASSAM,
SECRETARIAT COMPLEX, DISPUR, GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY TO THE DEPARTMENT OF HOME AFFAIRS

GOVT. OF ASSAM
SECRETARIAT COMPLEX
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
SECRETARIAT COMPLEX
DISPUR
GUWAHATI-781006

4:THE DIRECTOR GENERAL OF POLICE

ASSAM POLICE HEAD QUARTER
ULUBARI
GUWAHATI-781003.

5:THE ADDITIONAL DIRECTOR GENERAL OF POLICE



CRIME INVESTIGATION DEPARTMENT (CID)
ASSAM POLICE ULUBARI
GUWAHATI-78100

Advocate for the Petitioner : MR. K. N. CHOUDHURY, SR. ADVOCATE
: MR. J. PATOWARY

Advocate for the Respondent : MR. RAHUL DHAR

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (CAV)

Date : 07-06-2023

Heard Mr. K. N. Choudhury, the learned Senior counsel assisted by Mr. J. Patowary, the learned counsel appearing on behalf of the petitioner and Mr. Rahul Dhar, the learned Standing counsel appearing on behalf of the respondents.

2. The instant writ petition has been filed challenging the order of suspension issued vide Memo No.HMA.89/2021/50 dated 17.06.2021 and for a direction to reinstate the petitioner into regular service immediately within a such time frame as this Court may deem fit and proper.

3. The facts involved in the instant case is that the petitioner joined the Assam Police in the year 2004 as a Deputy Superintendent of Police. In the year, 2011 he was promoted to the rank of Additional Superintendent of Police. Upon his promotion, he was first posted as SSP (Border) at Silchar and thereafter transferred to Dhubri as Additional SP (HQ). It further appears from a perusal of the writ petition that the petitioner was



transferred in the Rank of Additional SP from one place to another after his promotion. The last of such transfer was on 24.05.2021 when the petitioner was transferred to 16th AP(IR) Battalion Headquarter as the 2nd in Command. Vide an order bearing No.HMA.89/2021/50 dated 17.06.2021 (hereinafter referred to as the "impugned Order"), the petitioner was put under suspension in terms with Rule 6(1)(c) of the Assam Services (Discipline and Appeal) Rules, 1964 (for short "the Rules of 1964") w.e.f. 17.06.2021.

4. At this stage, it may be relevant to state that in the impugned order, it was mentioned that there was a recommendation received from the Director of General of Police dated 22.05.2021 that the petitioner, the then Additional SP(B) Karimganj, now the 2nd in Command in the 16th AP(IR) Battalion Morigaon in connection with CID PS Case No.21/2020 registered under Sections 120B/409 IPC read with Section 66B I.T. Act added Section 201/204 IPC and Section 25(1-B) Arms Act and Section 7(1)(a)/8/12/13(1)(a)/13(2) of Prevention of Corruption Act, 2000 as amended in 2018 relating to the leakage and circulation of question papers of written examination for the post of SI(UB) of the Police prior to commencement of the examination scheduled on 20.09.2020 which is unbecoming of a Police Officer. It was therefore, on account of the said recommendation, the petitioner was put under suspension w.e.f. 17.06.2021 pending drawal of the Departmental Proceedings.

5. Before further proceedings, this Court deems it proper to refer certain details pertaining to the CID P.S. Case No.21/2020. It can be seen from the charge sheet which has been enclosed to the writ petition as Annexure-2



that the State Police Recruitment Board (hereinafter referred to as the "Board") issued a notification dated 11.04.2018 which was followed by another notification dated 06.11.2019 whereby the advertisement was published seeking online applications from eligible candidates for 597 nos. of posts of SI(UB) in Assam Police. In response to that, 90558 candidates applied for the same. Accordingly, on 02.09.2020, the Board issued notice by fixing the date for written examination on 20.09.2020 and the date of downloading E-Admit Card was fixed w.e.f. 03.09.2020 to 16.09.2020. 66,253 candidates downloaded E-Admit cards for appearing in the written test scheduled to be held on 20.09.2020. It further appears that the question papers of the written test was printed at Arya Printing Press, Ahmedabad, Gujarat and the Board formed a District Level Selection Committee (DLSC) on 14.04.2020 with the Superintendent of Police/Commandants of the nearest APBNs of the concerned districts as the Chairman/Member of the DLSC along with one Medical Officer as Member to be nominated by the Joint Director of the concerned district for conducting smooth recruitment process. For the purpose of conducting the written test of SI(UB), a consortium of 3 (three) numbers of companies namely (i) Kerala State Electronic Development Corporation (KELTRON), (ii) Amain Tech Consultants Pvt. Ltd. (ATCPL) and (iii) M/S Akhay Tel. Communication (ATC) were engaged by the authority for the recruitment process. The Kerala State Electronic Development Corporation was given the task and responsibility of invoicing and payment related activities, project management and monitoring and other activities not in the scope of Amain Tech Consultants Pvt. Ltd and M/S Akhay Tel. Communication. The Amain Tech Consultants Pvt. Ltd were to perform role of leasing/procurement of hardware CCTV

installation, integrated software for written examination, merit list, field level project execution collection and return of department documents etc. The Akhay Tel. Communications was given the task of deployment of man power, activities and computer based written exam, identification, logistics and holding of examination at all venues, silent co-ordination, managing all Optical Mark Recognition (OMR) based examination, transportation and logistics, printing OMR and question papers, preparing results and packaging and supply of question papers, OMR to district wise all venues.

6. On 10.09.2020, the Board communicated to all the Chairman of the DLSCs, Assam to depute their authorized persons on 18.09.2020 to collect the Question Papers/OMR sheets etc. from the strong room of 10th Assam Police Battalion Magazine, Kahilipara, Guwahati for the written test of SI(UB) scheduled to be held on 20.09.2020. On 16.09.2020, the printed question papers and the OMR sheet were received by the Board and kept in the safe custody at the strong room of the Magazine Guard of the 10th Assam Police Battalion. On 18.09.2020, under the supervision of one Shri David Neitham, Superintendent of Police cum Nodal Officer of the Board, the question papers and the OMR sheets were distributed to the authorized persons deputed from the concerned districts.

7. A team from Karimganj District under the command of the Assistant Sub-Inspector (ASI) of Police, one Shri Ajay Rabidas, Reserve Officer, Karimganj was deputed by the Superintendent of Police, Karimganj cum Chairman, DLSC to collect the sealed trunk containing question papers and OMR sheets from the 10th Assam Police Battalion on 18.09.2020. However, the question papers were leaked and circulated in Whatsapp for which the



written test which was scheduled to be held on 20.09.2020 from 12 PM to 3 PM was cancelled. This fact came into light on the basis of a complaint which was lodged by one Sri Pradip Kumar, the Chairman of the Board at 7.30 PM on 20.09.2020. On the basis of the said complaint, the C.I.D. P.S. Case No.21/2020 was registered under Sections 120B/409 IPC read with Section 66B I.T. Act, added Section 201/204 IPC and Section 25(1-B) of Arms Act and Section 7(1)(a)/8/12/13(1)(a)/13(2) of Prevention of Corruption Act, 2000.

8. It is further relevant to take note of that the investigation was duly carried out by the Investigating Officer and the Preliminary Charge Sheet was submitted on 18.12.2020. In the said Preliminary Charge Sheet so submitted, it was duly mentioned that the further investigation under Section 173 Cr.P.C. shall continue in the said case but upon finding sufficient material evidence against 36 accused persons, they were charged under various provisions of law. It further appears that on 23.04.2021, a Conclusive Charge Sheet was submitted and further 6 more persons were charge sheeted. Therefore, in total 42 persons were charge sheeted under various provisions of law. It may be relevant to take note of that the petitioner herein was neither arrested during the period of investigation nor the petitioner was charge sheeted. This aspect of the matter would be apparent from a perusal of Annexure-2 of the writ petition. However, pursuant to the Conclusive Charge Sheet submitted on 23.04.2021, it appears on the face of the impugned Order that the Director General of Police had made recommendation in connection with the C.I.D. P.S. Case No.21/2020 and accordingly, the petitioner was put under suspension w.e.f. 17.06.2021.



9. It further appears from the records that pursuant to the petitioner's suspension, the petitioner had submitted an appeal on 13.09.2021 to the Principal Secretary, Government of Assam, Home (A) Department under Section 14 of the Rules of 1964. On 27.09.2021, the petitioner had also submitted a representation to the Principal Secretary, Government of Assam, Home (A) Department seeking reinstatement in service. In both the appeal as well as the representation, it was the case of the petitioner that neither in the Preliminary Charge Sheet nor in the Conclusive Charge Sheet which were filed on 18.12.2020 and 23.04.2022 respectively, the petitioner's name appeared as the accused or even as a witness. It was further mentioned that at the time when the conclusive charge sheet was filed, the petitioner was posted at Silchar as Special Superintendent of Police (Border). Further to that, it was mentioned that the order of suspension was issued on 17.06.2021 and 3 (three) months have already elapsed and neither the petitioner has been served with the formal copy of Articles of Charges containing the statements of allegations nor any order of extension of the suspension. Reference was also made in the representation as regards the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India and Another reported in (2015) 7 SCC 291**. As the respondents however did not take any action on the appeal as well as the representation so submitted, the petitioner therefore had approached this Court under Article 226 of the Constitution by filing the instant writ petition on 10.11.2021.

10. It appears on record that on 22.11.2021, this Court fixed the matter on 26.11.2021 and directed Mr. Rahul Dhar, the learned counsel for the State respondents to obtain instructions. On 26.11.2021, when the matter was



listed again, Mr. Rahul Dhar appearing on behalf of the State respondents submitted a communication dated 25.11.2021. In the said communication, it was mentioned that the suspension period of the petitioner was extended for another 3 (three) months vide notification dated 08.11.2021. The learned counsel for the State sought time for 7 (seven) days time to file affidavit-in-opposition.

11. The Coordinate Bench of this Court taking into account the law laid down by the Supreme Court in the Case of **Ajay Kumar Choudhary (supra)**, the letter dated 25.11.2021 and on the ground that there was no Memorandum of Charges/charge sheet was served till then against the petitioner though approval for initiating a departmental proceedings have been given, set aside the impugned order of suspension dated 17.06.2021 and directed the reinstatement of the petitioner immediately. The Coordinate Bench of this Court further gave the liberty to the State respondents to transfer the petitioner to any department in any of its office within or outside the State so as to sever any local or personal contact that he may have which he may misuse for obstructing the investigation against him. Liberty was further given to the Government to prohibit the petitioner from contacting any person or handling records and documents till the stage of him having to prepare his defence. Further, liberty was also given to the respondents to go ahead with the departmental proceedings initiated against the petitioner as per law.

12. The Respondents herein being aggrieved preferred a Writ Appeal before the Division Bench of this Court which was registered and numbered as Writ Appeal No.353/2021. The Division Bench of this Court vide an order



dated 29.03.2022 had observed that the Writ Appeal was taken up only on the procedural aspect of the matter so raised by the writ appellants i.e. the respondent State that the impugned order was passed by the Coordinate Bench of this Court without giving an opportunity to submit the counter affidavit by the State respondents in the writ petition. On that basis, the Division Bench of this Court vide the order dated 29.03.2022 stayed the operation of the impugned order dated 26.11.2021 passed by the Coordinate Bench until further orders.

13. It further appears that the said Writ Appeal was allowed by an order dated 01.03.2023 and thereby the order dated 26.11.2021 passed by the Coordinate Bench of this Court was reversed. The writ petition was thereafter remanded back to this Court for fresh consideration on the writ petition. The Memo of Appeal supported by the affidavit was directed to be treated as pleading on behalf of the respondents herein in the writ petition. There was a request made to this Court to dispose of the writ petition as expeditiously as possible.

14. At this stage, it is relevant to take note of that in the said Writ Appeal, an affidavit-in-opposition was filed by the respondents herein who were the appellants in the said Writ Appeal. This was so done in terms with the order dated 29.03.2022 passed by the Division Bench in Writ Appeal No.353/2021. To the said affidavit-in-opposition, the communication issued by the Director General of Police to the Principal Secretary, Government of Assam dated 22.05.2021 was enclosed as Annexure-A. This documents has relevance taking into account that it is on the basis of this particular document, the impugned order of suspension dated 17.06.2021 was issued. To the said



document, the report of the C.I.D. was enclosed. It further reveals that on 21.02.2021, the Special Superintendent of Police, C.I.D. had written a communication to the Director General of Police, Assam which forms the basis of the communication dated 22.05.2021 issued by the Director General of Police, Assam to the Principal Secretary to the Government of Assam, Home and Political Department. The communication dated 21.02.2023 states about serious conduct on the part of the petitioner on the basis of a report as prepared by one Shri Jagadwish Kumar Sinha, APS, Deputy Superintendent of Police, Headquarter, C.I.D. who is also the Investigating Officer of the C.I.D. P. S. Case No.21/2020. The report of the said Jagadwish Kumar Sinha was enclosed to the communication dated 21.02.2021 issued by the Special Superintendent of Police, CID and enclosed as Annexure-B. In the said report so submitted by the said Jagadwish Kumar Sinha which is however undated, there are serious allegations made as regards the petitioner's involvement in respect to leaking of the question paper for the written examination of SI(UB). In paragraph No.5 of the said report, it was mentioned that when the tower locations and movements of all the mobile numbers were checked, it was found that one such mobile number i.e. 9707292394 displayed similar mobile tower locations and movements as those of the mobile phone numbers 8638192840 and 9435192025 owned and used by the petitioner. It was suspected on the basis of the technical findings that the petitioner was using the SIM Card having subscriber number 9707292394 and the petitioner was further suspected to have used that secret number to contact accused person Rubul Hazarika having similar secret number and this matter was being investigated in Barpeta P.S. Case No.43/2021. It was further mentioned in the said report that the petitioner



committed serious misconduct by hobnobbing with persons who are prime accused of C.I.D. P.S. Case No.21/2020 which is unbecoming of a senior Police Officer. It further appears from the said affidavit-in-opposition that there is a document dated 05.10.2021 issued by the Superintendent of Police, Barpeta which was enclosed to the said affidavit-in-opposition. This Court finds it relevant to take note of the said document as it is a part of the list of documents mentioned in the Show Cause notice dated 24.11.2021 issued to the petitioner.

15. A perusal of the said document reveals that the prime accused Shri Saroj Sarma in C.I.D. P.S. Case No.21/2020 during the course of interrogation by the Barpeta Police had stated that the SIM Card number 9707292394 was given to the petitioner. The said prime accused further stated that he came to learn from another prime accused Rubul Hazarika that the said Rubul Hazarika and Nipu Phukan were at the Police Guest House at Karimganj along with SP Sanjit Krishna and the petitioner. The other co-accused Rubul Hazarika during his interrogation also disclosed that on 18.09.2020 he along with Nipu Phukan were in the Police Guest House of Karimganj with the then SP, Karimganj, Sanjit Krishna and the petitioner. He further disclosed that the said SP Sanjit Krishna took photograph of the question papers of SI recruitment by mobile phone where the petitioner was also present and handed over the mobile handset to Nipu Phukan through his PSO. The said Rubul Hazarika further disclosed that he sent the photographs of the question papers of SI recruitment to the personal E-mail of Saroj Sarma and informed Saroj Sarma to check the E-mail with the knowledge of SP, Sanjit Krishna and the petitioner.



16. In the said report dated 05.10.2021, the SP, Barpeta further stated that upon collection of the CDRs of the mobile SIM Card No.8638192840 and 9435192025 of the petitioner, it was found that it had the same location from the date w.e.f. 26.08.2020 to 20.09.2020 with the location of SIM Card No.9707292394 which was also used by the petitioner.

17. It further appears from the records that to the said affidavit-in-opposition filed by the respondent No.1 in the instant proceedings before the Division Bench, the petitioner had filed an affidavit-in-reply on 27.05.2022. In the said affidavit-in-reply, it was mentioned that the petitioner was nowhere entrusted with any duty of custody of the papers and/or guarding of such question papers and he was posted at inter state border at Karimganj and the place of occurrence was at Karimganj. The petitioner further stated that he was thoroughly interrogated by the special investigating team in that regard and he was not found involved with the case even remotely so his name was not sent for trial while the charge sheet was submitted before the learned Trial Court. The petitioner further stated that he was not even made a witness to substantiate the prosecution case during the investigation. The special investigating team was confirmed that the petitioner was innocent having no knowledge on the complicity of the crime. As regards the FIR being Barpeta P.S. Case No.43/2021, the petitioner stated that in his affidavit-in-reply that it was nowhere possible for him to know about the said FIR relating to Barpeta P.S. Case No.43/2021. The petitioner further stated that he was never served with the FIR along with the registration and/or the GR number filed by the complainant or the status of investigation copy or the copy of the charge sheet, if any, till date. He further stated that there is no probability as to how the said complaint could



be linked with the petitioner in the said case as no logical conclusion was drawn in the said matter by the Investigating Authority nor the said case have been properly tried by any competent Court of law having its jurisdiction to try the offence as made out in the said FIR and/or the investigating report thereof. It was further mentioned in the said affidavit-in-reply that the petitioner was placed under suspension hastily without having conducted preliminary enquiry behind his back pending drawal of a formal departmental proceedings which was not tenable in the eyes of law.

18. Thereupon, this matter was listed before this Court on 22.03.2023. This Court directed the learned counsel for the respondents to apprise this Court as regards the status of the Departmental Proceedings and as to whether there has been any further review to the suspension order taking into account that vide the order dated 08.11.2021, the suspension order of the petitioner was only extended for a period of 3 (three) months. This Court further fixed the matter again on 29.03.2023.

19. On 29.03.2023, when the matter was again listed, the learned counsel Mr. Rahul Dhar for the respondents submitted that the suspension of the petitioner has been periodically reviewed and the last of such review have taken place on 09.03.2023 whereby the period of suspension have been extended by another 3 months as the Departmental Proceedings are in progress. He further submitted that a notification dated 09.03.2023 have also been issued by the Joint Secretary to the Government of Assam, Home and Political Department in that regard. This Court further fixed the matter on 20.04.2023 and the respondents were directed to bring on record the orders of review as well as the Minutes of the periodical meeting by way of



an affidavit by 19.04.2023. The respondents were further directed to indicate in the affidavit as to what is the stage of the Departmental Proceedings and by what time, the said Departmental Proceedings are likely to be completed.

20. An additional affidavit-in-opposition was filed on 19.04.2023 by the respondent No.1. In the said additional affidavit-in-opposition, it was mentioned that vide an order No.HMA.89/2021/238 dated 24.11.2021, Show Cause notice was issued to the petitioner. The said Show Cause notice was enclosed as Annexure-1 to the said additional affidavit-in-opposition.

21. Before further going ahead with the factual matrix, let this Court take note of the Show Cause notice dated 24.11.2021. It reveals that the allegations against the petitioner herein was that on IMEI search of the mobiles phones, it was found that certain SIM cards including mobile No.9707292394 were used by prime accused Saroj Sarma, Rubul Hazarika and others. It was further mentioned that when the tower locations and movements of all those mobile phone numbers were checked, it was found that one of such mobile number viz. No.9707292394 displayed similar tower locations and movements as those of the mobile phone Nos. 8638192840 and 9435192025 owned and used by the petitioner. It was alleged that on 18.09.2020, one Kumar Sanjit Krishna, APS, Superintendent of Police, Karimganj, Assam took photographs of question papers of SI recruitment by mobile phone and the petitioner was also present there and then the said Kumar Sanjit Krishna, APS handed over the mobile handset to one Nipu Phukan through his PSO. After that, Rubul Hazarika sent the photographs of the question papers of SI recruitment to the personal E-mail of Saroj Sarma and informed Saroj Sarma to check the E-mail with the knowledge of Kumar



Sanjit Krishna, APS, Superintendent of Police, Karimganj and the petitioner. It was alleged that as the petitioner was a responsible Police Officer and it was his duty to inform the Commission of the above crime of leakage of question papers of SI's recruitment to the DIG, SR or APHQrs, but he failed to do so. It was further alleged that when Rubul Hazarika mailed the photos of the question papers to Shri Saroj Sarma with the petitioner's knowledge, the petitioner neither stopped him nor intimated the APHQrs or DIG Range about the leakage of such important official documents. It was alleged that the petitioner indulged in leakage of confidential official documents which amounts to gross misconduct and dereliction of duty.

22. It further appears from the additional affidavit-in-opposition that vide Order No.HMA.89/2021/576 dated 04.06.2022, one Smti. Indrani Barua, IPS, DIGP (CID) Assam, was appointed as Inquiry Officer and Shri Ripul Das, APS, SP, SB (Z), Assam was appointed as Presenting Officer in the Departmental Proceedings. It was further mentioned that the petitioner vide representation dated 03.08.2022 submitted that in the CID P.S. Case No.21/2020, the petitioner was thoroughly questioned and that the case was supervised by the Senior Officers of the CID Department. Therefore, it was requested to change the Inquiry Officer. Accordingly, vide order No.HMA.89/2021/611 dated 08.12.2022, one Shri Lachit Baruah, IPS, IGP (SB) Assam, was appointed as the Inquiry Officer. Thereupon, another representation was filed by the petitioner on 13.01.2023 informing that Shri Lachit Baruah, IPS was serving as DIGP (CID) Assam earlier, hence he was directly supervising the investigations of CID P.S. Case No.21/2020. Under such circumstances, vide order No.HMA.89/2021/615 dated 08.02.2023, one Shri Imdadul Hussain Bora, IPS, IGP(S), Assam was appointed as Inquiry



Officer and Shri Ripul Das, APS, SP, SB(Z) Assam was appointed as the Presenting Officer. It was further mentioned that there has been certain delay in the disposal of the Departmental Proceedings but in view of the orders passed by the Supreme Court in the case of Suo Moto Writ Petition (Civil) No.3/2020 dated 10.01.2022, the benefit of the same should also be applied to disciplinary proceedings. In paragraph No.10 of the said additional affidavit-in-opposition, it was mentioned that the recording of the statements of the Prosecution Witnesses and charged officer has already started. However, the charged officer has sought for another date due to health issues. It was further mentioned that some of the Prosecution Witnesses are still in judicial custody and the permission has been sought from the appropriate authority for recording their statements. In paragraph No.12 of the said additional affidavit-in-opposition, there was a clear and categorical statement made that the Inquiry Officer had requested the Department to grant him at least 3 (three) months time for completion of the enquiry. It was mentioned that there has been periodical reviews and the period of suspension have been extended from time to time every 3 (three) months.

23. The Minutes of the Meetings and the orders of periodical review have been enclosed as Annexure-VIII (series) to the additional affidavit-in-opposition. Except in the Minutes of the Meeting held on 09.12.2021, all the Minutes of the periodical reviews insofar as the petitioner is concerned shows that in view of the pendency of the Departmental Proceedings, the period of suspension have been extended. However, in the Minutes of the periodical review dated 09.12.2021, it has been mentioned that as there was a decision taken to prefer a writ appeal against the order dated 26.11.2021 in the present writ petition, the outcome/verdict of the said Writ Appeal be



awaited inasmuch as the Writ Appeal No.WA/11186/2021 was filed on 01.12.2021. It was also mentioned that the Assam Police Headquarter vide letter dated 12.11.2021 have furnished a report of the SP, Barpeta dated 30.10.2021 in connection with Barpeta P.S. Case No.43/2021 regarding involvement of the petitioner.

24. The said additional affidavit-in-opposition so filed was taken up for consideration by this Court on 28.04.2023 and the counsels appearing on behalf of the petitioner as well as the respondents were duly heard. The learned counsel appearing on behalf of the respondents submitted that the new Inquiry Officer so appointed has stated that he would be completing the enquiry within a period of 3 (three) months and out of which 15 days have already gone. This Court upon perusal of Annexure-1 of the additional affidavit-in-opposition which is the Show Cause notice dated 24.11.2021 contains the list of witnesses put a specific query upon the learned counsel for the respondents as to whether the witnesses on behalf of the department have been examined. The learned counsel for the respondents submitted that out of the 6 witnesses mentioned therein, the witnesses at Serial No.3, 4, 5 and 6 were presently in judicial custody. Under such circumstances, this Court therefore enquired with the learned counsel for the respondents as to how the Inquiry Officer can conceive of completing the enquiry when the witnesses at Serial No. 3, 4, 5 and 6 were in judicial custody and as to whether the Inquiry Officer in terms with the Rules of 1964 would have the power to summon the said witnesses for the purpose of examination. Under such circumstances, the learned counsel appearing on behalf of the respondents sought for accommodation for a week so that he can obtain the instructions. Accordingly, the matter was fixed on 08.05.2023.



25. On the said date i.e. on 08.05.2023, this Court heard the matter extensively and reserved the writ petition for judgment.

26. Upon perusal of the materials on record and more particularly, the communication dated 05.10.2021 issued by the Superintendent of Police, Barpeta, this Court while preparing the judgment was of the opinion that it would be in the interest of justice before delivering the judgment to enquire as regards what happened to Barpeta P.S. Case No.43/2021 when there were serious allegations in the communication dated 05.10.2021 issued by the Superintendent of Police, Barpeta. Under such circumstances, this Court therefore listed the instant writ petition on 31.05.2022 in the column of "To be spoken to".

27. Upon hearing the learned counsels for the parties, it transpires that in respect to Barpeta P.S. Case No.43/2021, the Investigating Officer of the said case i.e. the Officer In-charge of the Barpeta Police Station had submitted charge sheet No.1275/2021 dated 30.10.2021. In the said charge sheet, the petitioner herein was arrayed as the accused No.3. It is relevant to take note of that in the said charge sheet, it was shown that the petitioner was arrested on 28.10.2021 and he was released on bail on 28.10.2021 itself by the Police. In the said charge sheet, it was further mentioned that pursuant to the disclosure being made by Shri Saroj Sharma, the petitioner was issued a notice under Section 41(A) of the Code of Criminal Procedure, 1973 to appear before Investigating Officer to record his statement in connection with the case. On 27.10.2021, the petitioner appeared before the Investigating Officer of Barpeta P.S. Case No.43/2021 and it was alleged that the petitioner revealed that the accused Shri Rubul

Hazarika and Shri Saroj Sharma were well known to him since his posting as Deputy Superintendent of Police, Headquarter at Bongaigaon District. It was alleged in the charge sheet that the petitioner revealed during his interrogation that he met Shri Rubul Hazarika at Police Guest House, Karimganj who had long discussion with the SP, Karimganj. It has also been alleged that the petitioner met Shri Rubul Hazarika on 18.09.2020 in the Government bungalow of SP Sanjit Krishna while the said SP Sanjit Krishna opened the sealed packet of question paper for SI recruitment (Assam Police). It has also been alleged that the petitioner took a photo of the scene but he was scolded by SP Sanjit Krishna for which he deleted the photo from the mobile phone. Later on, it was alleged that the petitioner destroyed the said mobile handset along with the SIM Card. It is under such circumstances, along with Shri Rubul Hazarika and Shri Saroj Sarma, the petitioner herein was charge sheeted under Section 120(b)/420/418/468/471 of the Indian Penal Code. The said charge sheet is kept on record and marked with the letter "A".

28. In the backdrop of the above prelude, let this Court therefore take note of the respective submissions so made by the learned counsels appearing on behalf of the parties.

29. Mr. K. N. Choudhury, the learned Senior counsel representing the petitioner submitted as hereinunder:

(I) The learned Senior counsel submitted that the petitioner was suspended vide the order dated 17.06.2021. In terms with the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** and more particularly in paragraph No.21 which stipulates that if the Memorandum of



Charges/Charge Sheet is not served upon the delinquent officer/employee within 3 (three) months, a vested right accrues upon the petitioner for reinstatement inasmuch as the Supreme Court had categorically said in the judgment that the currency of the suspension orders should not extend beyond 3 (three) months, if within the said period the Memorandum of Charges/Charge Sheet is not served upon the delinquent officer/employee. The learned Senior counsel further submitted that even if the Memorandum of Charges/Charge Sheet is served, a reasoned order must be passed for extension of the suspension. The learned Senior counsel therefore submitted that as admittedly the Show Cause notice was issued on 24.11.2021, i.e. after 5 (five) months, the respondent authorities cannot keep the petitioner under suspension. It is under such circumstances, the Coordinate Bench of this Court had vide its order dated 26.11.2021 directed the reinstatement of the petitioner forthwith. The learned Senior counsel for the petitioner however submitted that the Division Bench of this Court had only interfered with the said order on a procedural and technical ground that the respondent State was not afforded an opportunity to file their affidavit-in-opposition.

(II) The learned Senior counsel further submitted that a perusal of the Charge Sheet (Annexure-2 to the writ petition) i.e. both the Preliminary Charge Sheet as well as the Conclusive Charge Sheet would clearly show that the Investigating Officer had gone in detail in respect to each and every aspect of the matter. The learned Senior Counsel submitted that the perusal of the charge sheet as a whole would not show that the petitioner is in no way involved in the crime. Referring to the Show Cause notice dated 24.11.2021, the learned Senior counsel submitted that although there are



certain allegations being made that too without any clarity but the primary allegation is on the basis of one mobile number viz.9707292394 displayed similar tower locations and movements as those of the mobile numbers used by the petitioner. The learned Senior counsel submitted that at the time when the incident happened, the petitioner was the Additional SP (Border) of Karimganj District and as such it could have been possible that in the mobile tower in question, the location of the petitioner's phone numbers may be indicated but that cannot even in the wildest of the imagination can be said that the petitioner had involvement in respect to the said crime more so when the Investigating Officer nowhere in the Preliminary Charge Sheet as well as in the Conclusive Charge Sheet had mentioned that the petitioner was present or was in any manner involved in the said crime. It was therefore the submission of the learned Senior counsel for the petitioner that the suspension of the petitioner is based upon non-existent and irrelevant materials for extraneous reasons to keep the petitioner out of his job.

(III) The learned Senior counsel submitted that if the suspension order is arbitrary, mala fide, illogical and for extraneous reasons, this Court in exercise of the powers under Article 226 of the Constitution would interfere with such orders.

(IV) The learned Senior counsel further submitted that the communication dated 05.10.2021 issued by the Superintendent of Police, Barpeta wherein it has been alleged that from the statements recorded from the prime accused Shri Saroj Sarma and Shri Rubul Hazarika, the petitioner has been implicated by them as well as the fact of filing the subsequent charge sheet on 30.10.2021 in Barpeta P.S. Case No.43/2021 are nothing but an afterthought

in order to make the impugned order of suspension dated 17.06.2021 lawful which was prior thereto arbitrary, unreasonable and illogical being based upon irrelevant and extraneous matters. The learned Senior counsel further submitted by drawing the reference to Annexure-B to the affidavit-in-opposition filed by the respondent No.1 that the said report was given on 21.02.2021 by the Special Superintendent of Police to the Director General of Police. The said report is based upon an undated report submitted by the Investigating Officer of C.I.D. P.S. Case No.20/2021. The learned Senior counsel therefore submitted that if those reports were very much available with the Investigating Officer, why there was not a single mention in the Conclusive Charge Sheet dated 23.04.2021 which was subsequent to the reports so submitted by the Investigating Officer through the Special Superintendent of Police to the Director General of Police which was on 21.02.2021. He therefore submits that this is a specific case wherein on account of vindictiveness, the petitioner has been single out. The filing of the charge sheet in Barpeta P.S. Case No.43/2021 seems to be based upon extraneous and mala fide reasons.

30. On the other hand, Mr. Rahul Dhar, the learned Standing counsel appearing on behalf of the respondents submitted as follows:

(I) On 24.11.2021, the Memorandum of Charge was served upon the petitioner and thereupon the petitioner had also submitted his Statement of Defence. It would also be seen from a perusal of Annexure-VIII(series) that from time to time, the suspension order has been reviewed and accordingly, consequential orders were passed, notifications issued thereby extending the period of suspension of the petitioner. He further submitted that initially one



Smti. Indrani Barua, IPS, DIGP (CID) Assam was appointed as the Inquiry Officer and Shri Ripul Das, APS, SP, SB (Z), Assam was appointed as Presenting Officer on 04.06.2022. It was on account of the representation submitted by the petitioner on 04.06.2022, the Inquiring Officer was changed vide an order dated 08.12.2022 and thereby one Shri Lachit Baruah, IPS, IGP (SB) Assam was appointed as the Inquiry Officer. Subsequent thereto, the petitioner had again submitted a representation on 13.01.2023 that Shri Lachit Baruah, IPS was serving as DIGP (CID), Assam earlier and he was directly supervising the investigations of CID P.S. Case No.21/2020 and it is under such circumstances, a fresh Inquiry Officer was again appointed on 08.02.2023. It is therefore the submission of the learned Standing counsel for the respondent State that the delay in disposal of the Departmental Proceedings was not on account of the respondent State solely but on account of unavoidable circumstances. Further to that, reference was made to the order passed by the Supreme Court in Suo Moto Writ Petition (Civil) No.3/2020 dated 10.01.2022 whereby the Supreme Court enlarged the limitation during the period from 15.03.2020 to 28.02.2022 and it is the submission of the learned Standing counsel for the respondent State that same principle should also be made applicable so far as the Departmental Proceedings are concerned. The learned Standing counsel further submitted that it has been categorically mentioned in the additional affidavit-in-opposition filed on 19.04.2023 that the present Inquiry Officer had requested the Department to grant him at least 3 (three) months time for completion of the inquiry.

(II) The learned Standing counsel for the respondents further submitted by drawing the attention to the affidavit-in-opposition filed by the respondent



No.1 that the materials therein clearly shows that the reasons behind the order of suspension was justified taking into account that there are serious allegations against the petitioner. He further drawing the reference to the communication dated 05.10.2021 issued by the Superintendent of Police, Barpeta drew the attention of this Court to the fact that for the period from 26.08.2020 to 20.09.2020, the admitted mobile numbers used by the petitioner had the same location with the mobile number being 9707292394 and as such it cannot be said that the petitioner had no connection with the said mobile number. Drawing the reference to Column No.13.1 of the Conclusive Charge Sheet submitted on 23.04.2021, the learned Standing counsel submitted that it was found upon investigation that the mobile number 9707292394 along with certain other numbers were used by the accused persons. Further drawing the reference to Column No.17.4 of the Conclusive Charge Sheet, the learned Standing counsel further drawn the attention that the mobile No.9707292394 upon investigation was found that the same was used to carry out the criminal activities of the instant case. The learned counsel further submitted that this aspect of the matter could come to light upon further interrogation being carried out by the Investigating Officer in Barpeta P.S. Case No.43/2021 on the basis of which the charge sheet has also been submitted against the petitioner. Under such circumstances, under Rule 6(1)(c) of the Rules of 1964 taking into account that there is a criminal case pending, the authorities are well justified to keep the petitioner under suspension for which no interference ought to be made by this Court.

(III) As regards the queries so made by this Court on 28.04.2023 as already stated in the previous segments of the instant judgment, to the effect as to



how the Inquiry Officer can conceive of completing the enquiry when the prosecution witnesses as listed in the Memorandum of Charge at Serial No. 3, 4, 5 and 6 were in judicial custody and as to whether the Inquiry Officer would have the power to summon the said witnesses for the purpose of examination of them as witnesses, the learned Standing counsel submitted that on 02.04.2023, the Inquiry Officer had also raised an issue that few of the PWs are in judicial custody and the permission was sought from the appropriate authority for their examination and recording of statements. Under such circumstances, the Inquiry Officer had requested the Additional Secretary to the Government of Assam, Home (A) Department to grant at least 3 (three) months time for completion of the enquiry subject to the approval of the appropriate authority for examination and recording of the statements of the PWs who are presently in judicial custody. The learned Standing counsel further submitted that on 04.05.2023, the Inquiry Officer again made a request to the Additional Secretary to the Government of Assam, Home (A) Department wherein reference was made to the communication dated 02.04.2023 and seeking the permission from the appropriate authority for examination and recording of the statements of the PWs who are presently in judicial custody. These documents were produced before this Court on 08.05.2023 which have been kept on record and marked with the letters "X" and "Y" respectively. It was therefore the submission of the learned Standing counsel for the respondent State that within 3 (three) months the said enquiry would be completed.

31. In the backdrop of the above submissions, the questions that arises for determination are:

(I) Whether a Government servant who has been put under suspension would be entitled to a direction for reinstatement on the basis of the law laid down in **Ajay Kumar Choudhary (supra)** even though in the meantime, the Memorandum of Charges/Charge Sheet have been served upon him?

(II) What is the right of the Government servant if the Memorandum of Charges/charge sheet is served?

(III) Whether in the facts of the case, the petitioner would be entitled to reinstatement to his services?

32. The points for determination so framed above at Serial Nos. (I) and (II) can be taken up together as they are interlinked in view of the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)**. For deciding the same, this Court finds it relevant to take into account the facts involved in the case of **Ajay Kumar Choudhary (supra)**. A perusal of paragraph Nos. 1 to 6 would show that the appellant therein was put under suspension on 30.09.2011. The said suspension continued and extended from time to time and it would be apparent from a perusal of the paragraph Nos. 2, 3 and 5. Paragraph No.6 of the said judgment categorically mentions that the charge sheet was expected to be served on the appellant before 12.09.2014. In the backdrop of the above, it is relevant to take note of paragraph Nos. 20, 21 and 22 of judgment of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** which are reproduced herein under:

“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 Raghubir 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/charge-sheet 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.

22. *So far as the facts of the present case are concerned, the appellant has now been served with a charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the respondents will be subject to judicial review."*

33. A perusal of the above quoted paragraphs would show that the Supreme Court was spurred to extrapolate the quintessence of proviso to Section 167(2) Cr.P.C., 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries. The rationale behind the same was explained by the Supreme Court that if the Parliament consider it necessary that a person to 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. The concept of right to speedy trial which is a facet of Article 21 of the Constitution was engrafted to the departmental proceedings by observing that respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal. It is under such circumstances, the Supreme Court observed in

paragraph No.21 and issued directions that the currency of a suspension order should not extend beyond three months, if within this period, the Memorandum of Charges/charge sheet is not served on the delinquent officer/employee. It was further observed that if the Memorandum of Charges/charge-sheet was served, a reasoned order must be passed for the extension of the suspension. It was also observed that the imposition of a limit on the period of suspension would not be contrary to the interest of justice. The Supreme Court, though in paragraph 21 categorically directed that the currency of the suspension order should not extend beyond 3 (three) months, if within the said period the Memorandum of Charges/charge-sheet was not served on the delinquent officer/employee, but at paragraph 22 in the given facts before the Supreme Court, it was observed that in the meantime as the charge sheet was served upon the Appellant, the directions so made in paragraph No.21 would not be relevant to the appellant any longer and thereby granted the liberty to the appellant therein, if so advised, to challenge his continued suspension in any manner known to law and this action of the respondents would be subject to judicial review. Therefore, the question arises as to what is the right of a Government servant to be reinstated if during the proceedings before the Court, the Memorandum of Charge/Charge Sheet have been served.

34. It is also relevant at this stage to understand that in paragraph Nos. 11 and 12, the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** has detailed out the ignominy faced by a Government servant when put under suspension. Paragraph Nos.11 and 12 of the said judgment in the case of **Ajay Kumar Choudhary (supra)** are quoted hereinbelow:

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that — “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.”

35. A further perusal of the said judgment in **Ajay Kumar Choudhary (supra)** would clearly show that the right to speedy trial which is a facet of Article 21 of the Constitution was applied in the case of a suspension as well



as right to a speedy Departmental Proceedings. It is in that perspective one has to understand that the Supreme Court sought to moderate suspension orders in cases of departmental/disciplinary enquiries also.

36. Before further proceedings, this Court finds it relevant to take into account another very vital aspect of the matter. A perusal of the judgment in the case of **Ajay Kumar Choudhary (supra)** do not show that the said directions were made in the case of a deemed suspension. It may be relevant to mention herein that insofar the Assam Services (Discipline and Appeal) Rules, 1964, Rule 6(2) stipulates that when a Government servant is detained in custody whether on criminal charge or otherwise for a period exceeding 48 hours shall be deemed to have been suspended w.e.f. the date of such detention by an order of the appointing authority and shall remain under suspension until further orders. The Division Bench of this Court in the case of **Rekibuddin Ahmed Vs. State of Assam and Others reported in 2020 (2) GLR 621** observed that the principles so laid down in the case of **Ajay Kumar Choudhary (supra)** more particularly at paragraph No.21 would also be applicable in the case of a deemed suspension. This aspect of the matter was reiterated by the Division Bench of this Court in the case of **State of Assam Vs. Ajit Sonowal reported in 2023 SCC Online Gau 731**. It is also relevant to take note of that this Court had also in the case of **Rafed Ali Ahmed Vs. State of Assam and Others reported in 2023 SCC Online Gau 547** held that the period of 3 (three) months as mentioned in paragraph No.21 of the judgment in the case of **Ajay Kumar Choudhary (supra)** would be reckoned from the date the Government employee intimates the disciplinary authority who has suspended the Government employee that he has been released on bail or is not otherwise in custody or imprisonment. The



rationale behind the said observations made in the case of **Rafed Ali Ahmed (supra)** was that a Government employee till detained in custody would continue to remain suspended by dint of Rule 6(2) of the Rules of 1964 and in order to exercise the right to be reinstated, the disciplinary authority/appointing authority has to be informed or put to notice that the Government servant has been released on bail or is not otherwise in custody or imprisonment.

37. This Court further finds it relevant to take into consideration an Office Memorandum bearing No.ABP.13/2018/Pt/35 dated 04.02.2020 issued by the Chief Secretary to the Government of Assam, Personnel (B) Department wherein following the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** directed all the senior most secretaries of all the departments to ensure that the Memorandum of Charges/charge sheet is served upon the delinquent officer/employee before the expiry of the 3 (three) months from the date of issuance of the order of suspension. It was also stipulated in the said Office Memorandum that the senior most secretaries of all the departments shall also ensure that the currency of the suspension order should not extend beyond three months if within this period the Memorandum of Charges/charge sheet is not served on the delinquent officer/employee. Further to that, it was stipulated that, 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. In order to speed up the Disciplinary Proceedings, the officer proposing for suspension was mandated vide the said Office Memorandum to ensure that the charges are framed and submitted to the disciplinary authority within two weeks from the date of



passing of the suspension order. It was further specified that after the issuance of the Memorandum of Charges/charge sheet, the Senior most secretaries shall undertake review within 6 (six) months as regards the desirability to further continue with the suspension order. It was further stipulated that the senior most secretaries would be held responsible if cases of suspension in their respective departments are not dealt with and reviewed accordingly. Further to that, all the departments were directed to 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 was also directed to compile the reports received from all the departments and place before the Chief Secretary to the Government of Assam for a periodical review every 3 months of the last 3 months suspension orders for further necessary action.

38. Therefore, from a reading of paragraph No.21 of the judgments in the case of **Ajay Kumar Choudhary (supra)**, **Rafed Ali Ahmed (supra)** as well as the Office Memorandum dated 04.02.2020 as noted above would clearly show that a right for reinstatement accrues upon the delinquent officer upon completion of 3 months from the date of the order of suspension or the date on which the delinquent officer gives notice to the appointing authority/disciplinary authority that the delinquent officer has been released on bail or is not otherwise in custody or imprisonment, if no Memorandum of Charges/charge sheet had been served upon him/her. However, though the right accrues but there is a necessity that the right also has to be exercised by giving notice to the disciplinary authority/appointing authority that the period of 3 months have elapsed from the date of the order of suspension or

from the date the delinquent officer had put to notice the appointing authority/disciplinary authority that he/she has been released on bail or is not otherwise in custody or imprisonment and no Memorandum of Charges/charge sheet have been served upon him/her. The appointing authority/disciplinary authority upon such notice being issued by the delinquent officer is required to reinstate the delinquent officer in view of the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** as well as this Court in the case of **Rekibuddin Ahmed (supra)** and **Rafed Ali Ahmed (supra)** apart from the clear mandate in the Office Memorandum dated 04.02.2020. The inaction of the disciplinary authority/appointing authority to reinstate the delinquent officer upon such notice would render their action in contravention to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** as well as this Court in **Rafed Ali Ahmed (supra)** which would in turn render their actions subject to judicial review. The concerned disciplinary/appointing authority of the delinquent employee would also be liable for acting contrary to the Office Memorandum dated 04.02.2020. This Court directs the Chief Secretary, Government of Assam to ensure strict compliance to the Office Memorandum dated 04.02.2020 and the erring officials be brought to task if there is contravention to the Office Memorandum dated 04.02.2020 inasmuch as contravention of the Office Memorandum dated 04.02.2020 in effect contravenes the law laid down by the Supreme Court in **Ajay Kumar Choudhary (supra)** which is binding.

39. It is however also relevant to take note of that as already mentioned the rationale behind the observations in paragraph No.21 in the case of **Ajay Kumar Choudhary (supra)** is with the perspective of moderation of the

suspension orders in disciplinary/departmental proceedings. It is therefore the opinion of this Court that if the Memorandum of Charges/charge sheet is served upon the delinquent officer prior to an order of reinstatement, the right which accrued upon the delinquent officer for reinstatement for not serving the Memorandum of Charges/charge sheet within 3 (three) months from the date of suspension in normal circumstances and within 3 (three) months from the intimation that the delinquent employee is released on bail or otherwise not in custody or imprisonment in the case of deemed suspension would stand extinguished subject to the compliance that the extension of the suspension is made by a reasoned order at the time of service of the Memorandum of Charges/charge sheet.

40. This Court further finds it relevant to observe that as the right to reinstatement springs from Article 21 of the Constitution and the law declared by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)**, a delayed adjudication of such right would run counter to the law declared by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)**.

41. Now coming back to the facts of the instant case, as the Memorandum of Charges/charge sheet had already been served upon the petitioner on 24.11.2021, the question of reinstatement of the petitioner on the basis of the Memorandum of Charges/charge sheet not being served upon the petitioner on or before 17.09.2021 had become redundant.

42. The next question which arises for consideration is in respect to the second part of the declaration by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** to the effect that if the Memorandum of Charges/charge sheet is served, a reasoned order must be passed for



extension of suspension. Therefore, it is the opinion of this Court that at the time of or immediately upon the Memorandum of Charges/charge sheet is served, the Disciplinary Authority is also required to apply its mind as regards the necessity to continue the suspension or not. In such circumstances, the Disciplinary Authority is required to pass a reasoned order as to why the suspension of the delinquent employee is to be continued. This being the mandate of the law declared by the Supreme Court under Article 141 of the Constitution is binding and has to be followed in letter and spirit. It is pertinent herein to note that in the Office Memorandum dated 04.02.2020, the said aspect of the matter is mentioned. However, the authorities are required to enforce the same with all vigor else it would amount to contravention of the law declared by the Supreme Court.

43. The above observation therefore leads this Court to decide the third point for determination. For deciding the said point for determination, it is relevant to take note of the facts involved as well as the law as regards the suspension. The facts as delineated above would show that a detailed police investigation was carried out pursuant to the complaint filed by Sri Pradip Kumar, Chairman, State Level Police Recruitment Board on 20.09.2020. The Preliminary Charge Sheet as well as the Conclusive Charge Sheet so submitted on 18.12.2020 and 23.04.2021 respectively have been enclosed as Annexure-2 to the writ petition. In the Preliminary Charge Sheet so submitted on 18.12.2020 at Column 17(a) "Background of the case" has been enumerated. In column 17(b) "Conspiracy" was detailed out with precision. In Column 17(c) "Facts discovered during investigation" had been mentioned with meticulous details by corroborating the same with the "Statements so recorded under Section 164 of Cr.PC of the witnesses",

“Confessional statements under Section 164 of Cr.PC of the arrested accused persons”, “Seizure of exhibits and material evidence collection”, “Test identification parade (TIP)”, “Technical evidence”, “Concealment and destruction of evidence”, “Recreation of scene of crime”, “Individual role played by the accused persons” and about the absconding accused persons. In the entire Preliminary Charge Sheet, there is no mention whatsoever as regards the involvement of the petitioner although from a perusal of the facts discovered during investigation, the Investigating Officer with specific details had mentioned as to how the crime was committed. This Court finds it relevant to take note of the “technical evidence” so mentioned in the charge sheet dated 18.12.2020 as the same has some relevance with the Memorandum of Charges/charge sheet so issued to the petitioner for which the same is reproduced hereinbelow:

*“**Technical evidence** :- During the course of investigation, different electronic gadgets including mobile handset, laptop, hard disk other electronic device like CCTV DVR, Call Detail Reports (CDR) etc. were collected/seized from different places/different arrested accused persons and sent to CERT-In/CFSL/FSL for extraction of data and expert opinion. The reports of few seized electronic items/exhibits have already been received and reports of remaining exhibits are awaited which are being submitted as soon as received. The details of seized/collected electronic items are reflected in **table/para no. 9 and 13.***

In course of investigation, analysis of the CDRs including tower locations of the mobile phone numbers used by the arrested accused persons and others is being done with the assistance of technical team. The report of the expert would be submitted as soon as the same is received.”

44. From the above, it would be seen that during the course of



investigation different electronic gadgets including mobile handset, laptop, hard disk other electronic device like CCTV DVR, Call Detail Reports (CDR) etc. were collected/seized from different places/different arrested accused persons and sent to CERT-In/CFSL/FSL for extraction of data and expert opinion. Some of such reports have been duly received and some reports were awaited at the time of filing the Preliminary Charge Sheet. It was further mentioned that analysis of the CDRs including tower locations of the mobile phone numbers used by the arrested accused persons and others were being done with the assistance of technical team. However, the report of the expert would be submitted as soon as the same are received.

45. The Conclusive Charge Sheet which was submitted on 23.04.2021 detailed out the facts disclosed during further investigation. Column 17.3 to 17.18 mentioned as to what transpired during the further investigation. However there is no mention whatsoever as regards the involvement of the petitioner in the said crime even there also. It is also relevant herein to mention that in Column No.13.1 of the conclusive charge sheet submitted on 23.04.2021, there were various documents enclosed. In column 15.1, the Result of Laboratory Analysis and Expert Opinion Reports were said to have been reflected in Column No.17. Therefore, from a perusal of the entire charge sheet, there is nothing which shows that even after the detailed further investigation so carried out by the Investigating Officer, there was any involvement of the petitioner in respect to the crime alleged. It is also relevant to mention that in the Conclusive Charge Sheet dated 23.04.2021, the Investigating Officer had also referred to Barpeta P.S. Case No.43/2021, the reference of which has been made in the Minutes of the Meeting dated 09.12.2021.



46. The suspension order dated 17.06.2021 as mentioned hereinabove was issued on the basis of the recommendation letter received from the Director General of Police, Assam dated 22.05.2021. But it is interesting to note that the said letter was issued by the Director General of Police after the submission of the conclusive charge sheet on 23.04.2021.

47. What led to the issuance of the letter on 22.05.2021 by the Director General of Police can be seen from the affidavit-in-opposition filed by the respondent No.1 before the Appellate Court. As already stated, Annexure-A to the said affidavit-in-opposition is the recommendation made by the Director General of Police, Assam. A reading of the said communication shows that the formation of the opinion was based upon the report submitted by the Senior Superintendent of Police, C.I.D. in connection with the C.I.D. P.S. Case No.21/2020. Annexure-B is the communication dated 21.02.2021 whereby the report submitted by the Investigating Officer in CID P.S. Case No.21/2020 was forwarded. To the said document, not only the report of the Investigating Officer of CID P.S. Case No.21/2020 was enclosed but also statements of Shri Saroj Sarma, Shri Rubul Hazarika, Shri Jitul Jyoti Sandilya, Shri Bishnu Chandra Mondal as well as a copy of FIR of Barpeta P.S. Case No.43/2021 was enclosed. However, the copies of the said statements of the witnesses are not part of the present record. The report which was forwarded is undated as could be seen from a perusal of the same. In paragraph No.5 of the said report issued by the Investigating Officer of C.I.D. P.S. Case No.21/2020, he had stated that when the tower locations and movements of all the mobile phone numbers were checked, it was found that one mobile number viz. 9707292394 displayed similar mobile tower locations and movements as those of the mobile phone numbers



owned and used by the petitioner. It was further mentioned that on the basis of the technical findings, it was suspected that the SIM Card bearing subscriber No.9707292394 and the mobile phone were used by the petitioner and the petitioner has used that secret number to contact accused person Rubul Hazarika having similar secret number and this was being investigated in Barpeta P.S. Case No.43/2021. The content of the said undated report so submitted by the Investigating Officer of C.I.D. P.S. Case No.21/2020 read along with the Conclusive Charge Sheet filed in C.I.D. P.S. Case No.21/2020 on 23.04.2021 surprises this Court inasmuch as there is not a single whisper in the Conclusive Charge Sheet dated 23.04.2021 regarding the involvement of the petitioner though the undated report of the Investigating Officer of the C.I.D. P.S. Case No.20/2021 which was the report forwarded vide the communication dated 21.02.2021 by the Senior Superintendent of Police to the Director General of Police had serious allegations of the Petitioner's involvement in the crime.

48. The materials on record as transpired from the affidavit-in-opposition filed by the respondent No.1 includes the communication dated 05.10.2021 issued by the Superintendent of Police, Barpeta. At this stage, if this Court takes into account the Show Cause notice dated 24.11.2021, it would be seen that the said document dated 05.10.2021 was mentioned in the list of documents. This Court in the previous segments of the instant judgment had in great detail dealt with the communication dated 05.10.2021 wherein also various serious allegations have been made against the petitioner.

49. It further reveals that on 30.10.2021, the Charge Sheet No.1275/2021 was submitted in connection with Barpeta P.S. Case No.43/2021. The details



of the said charge sheet have been mentioned in paragraph No.27 of the instant judgment. Briefly stated that the petitioner was charge sheeted as Accused No.3 pursuant to the interrogation of the petitioner on 27.10.2021 and his alleged statements so made before the Investigating Officer. However, strangely enough in the affidavit-in-reply filed by the Petitioner on 27.05.2022, there is not a single whisper about he being interrogated in connection with Barpeta P.S. Case No.43/2021.

50. From the above, it would therefore be seen that the investigation so carried out in CID P.S. Case No.21/2020 and the contents of both the Preliminary and Conclusive Charge Sheets are diagonally opposite to the charge sheet so submitted in Barpeta P.S. Case No.43/2021 as well as the communication dated 05.10.2021 issued by the Superintendent of Police, Barpeta. Mr. K. N. Choudhury, the learned Senior counsel though submits that the report dated 05.10.2021 of the Superintendent of Police, Barpeta as well as the charge sheet filed on 30.10.2021 in Barpeta P.S. Case No.43/2021 are nothing but cooked up stories in order to legalize the suspension order dated 17.06.2021 which had otherwise no legs to stand as the same was without any basis but in the opinion of this Court as the instant proceedings is only limited to consideration as to whether the order of suspension as well as the continuation of the suspension is to be interfered under Article 226 of the Constitution, such submissions cannot be gone into herein. Under such circumstances, this Court therefore has to proceed with the adjudication of the instant dispute taking into account that in C.I.D. P.S. Case No.21/2020, there is no involvement of the petitioner in respect to the said case as per the Preliminary and Conclusive Charge Sheets submitted and on the other hand, there are serious allegations in Barpeta

P.S. Case No.43/2021 wherein the charge sheet has been submitted and the petitioner has been charge sheeted as Accused No.3.

51. In the backdrop of the above therefore, this Court finds it relevant to take note of the scope of interference under Article 226 of the Constitution as regards an order of suspension. It has to be borne in mind that during suspension, the relationship of master and servant continues between the employer and the employee; however the employee is forbidden to perform his official duties. Therefore, a suspension order does not put an end to the service. It only means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In the case of ***State of Orissa Vs. Bimal Kumar Mohanty reported in (1994) 4 SCC 126***, the Supreme Court explained why an order of suspension is passed and when an order of suspension is required to be passed. Paragraph No.13 of the said judgment is quoted hereinbelow:

“13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed

to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

52. From the above, it would therefore be seen that the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of the superior authority are there or there is a strong prima facie case against him, if proved, would ordinarily result in the reduction in rank, removal or dismissal

from service. The authority while exercising the powers of suspension should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent employee to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the enquiry. In short, the law on suspension can be summarized to the effect that the suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. the serious act of commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness or for ulterior motive. The effect on the public interest due to the employee's continuation in office is also a relevant and determining factor. Therefore, the facts of each case has to be taken into consideration and no formula of universal application can be laid down in that regard. It is also relevant that suspension order should be passed only when there is a strong prima facie case against the delinquent employee and if the charges hence proved would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service or reduction in rank etc.

53. It is also relevant to take note of an order passed by the Supreme Court in the case of ***The State of H.P. Vs. B. C. Thakur reported in (1994) SCC (L&S) 835*** wherein the Supreme Court taking into account that the respondent therein was suspended for a period of 2 (two) years and there was no substantial progress in the disciplinary proceedings affirmed the order of the Tribunal which struck down the order of suspension. Paragraph No.3 of the said order being relevant is quoted hereinunder:

“3. Having heard learned counsel for the parties, we are satisfied that in the facts and circumstances of the case, the impugned order of the Tribunal

quashing the order of respondent's suspension does not call for any interference, even though the other part of the Tribunal's order quashing the charge-sheet issued to the respondent cannot be sustained. The quashing of the charge-sheet by the Tribunal is not on the ground of want of authority to issue the charge-sheet or any other inherent defect therein. This being so, the question of going into the merits of the charges, which are yet to be investigated in the departmental proceedings, did not arise for consideration or adjudication by the Tribunal at this stage. This being so, the Tribunal's order quashing the charge-sheet as well, on reaching the conclusion that the suspension order had to be set aside, is unwarranted. The respondent had been under suspension for nearly two years on the date of the Tribunal's order and another year has elapsed since then. Setting aside the suspension order in this situation, particularly when no substantial progress in the disciplinary proceedings has been made as yet, does not, therefore, call for any interference."

54. The Supreme Court in the case of ***Union of India and Another Vs. Ashok Kumar Aggarwal*** reported in **(2013) 16 SCC 147** had also explained the scope of interference by the Court with an order of suspension. Paragraph Nos. 26 and 27 of the said judgment are quoted hereinbelow:

“26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of M.P. v. Shardul Singh, P.V. Srinivasa Sastry v. Comptroller & Auditor General, ESI v. T. Abdul Razak, Kusheshwar Dubey v. Bharat Coking Coal Ltd., Delhi Cloth & General Mills Ltd. v. Kushal Bhan, U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan, State of Rajasthan v. B.K. Meena, Prohibition and Excise Deptt. v. L. Srinivasan and Allahabad Bank v. Deepak Kumar Bhola, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent

authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

27. *Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on*

factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.”

55. In the above quoted paragraphs of the judgment in the case of **Ashok Kumar Aggarwal (supra)**, the Supreme Court though held that the scope of interference is limited but observed that when the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. It was further observed that in case the Court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of the sufferings for the delinquent employee, the Court may issue directions. The Court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, it was also observed that mere delay in conclusion of the enquiry or trial cannot be a ground for quashing suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question. It is also relevant that the Supreme Court further observed in paragraph No.27 that the suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. The said judgment in the case of **Ashok Kumar Aggarwal (supra)** was rendered by the Supreme Court on 22.11.2013.



56. Subsequent thereto, on 16.02.2015, the Supreme Court rendered the judgment in the case of **Ajay Kumar Choudhary (supra)**. The details of the said judgment have been already dealt with supra. At the cost of repetition, it is reiterated that the Supreme Court in order to moderate the suspension orders in cases of departmental/disciplinary enquiries engrafted the principles of right to speedy trial to departmental/disciplinary enquiries also and therefore the declaration of law in paragraph Nos. 20 & 21 of the said judgment.

57. The Supreme Court in the case of **State of Tamil Nadu Vs. Promod Kumar, IPS and Another reported in (2018) 17 SCC 677** taking into account the judgment in the case of **Ajay Kumar Choudhary (supra)** wherein the practice of protractive suspension was frowned and the necessity for the suspension period for short duration was reiterated. The facts of the said case would further show that the respondent No.1 in the said proceedings was under deemed suspension for being in custody for more than 48 hours and there were periodic reviews which were conducted for his continuance under suspension for which the respondent No.1 therein continued to remain in suspension. The Supreme Court therefore taking note of the judgment in the case of **Ajay Kumar Choudhary (supra)** and on the basis of the materials on record observed that no useful purpose would be served by continuing the respondent No.1 under suspension any longer and his reinstatement would not be a threat for a fair trial and reiterated the observations of the High Court that the State should reinstate the respondent No.1 therein with a liberty to appoint him in a non-sensitive post. Paragraph No.24 to 27 of the said judgment would be relevant for which the same are reproduced



hereinunder:

“24. The first respondent was placed under deemed suspension under Rule 3(2) of the All India Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr P. Chidambaram, learned Senior Counsel appearing for the first respondent fairly submitted that we can proceed on the basis that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first respondent are serious in nature. However, the point is whether the continued suspension of the first respondent for a prolonged period is justified.

25. The first respondent has been under suspension for more than six years. While releasing the first respondent on bail, liberty was given to the investigating agency to approach the Court in case he indulged in tampering with the evidence. Admittedly, no complaint is made by CBI in that regard. Even now the appellant has no case that there is any specific instance of any attempt by the first respondent to tamper with evidence.

26. In the minutes of the Review Committee meeting held on 27-6-2016, it was mentioned that the first respondent is capable of exerting pressure and influencing witnesses and there is every likelihood of the first respondent misusing office if he is reinstated as Inspector General of Police. Only on the basis of the minutes of the Review Committee meeting, the Principal Secretary, Home (SC) Department ordered extension of the period of suspension for a further period of 180 days beyond 9-7-2016 vide order dated 6-7-2016.



27. *This Court in Ajay Kumar Choudhary v. Union of India has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the appellant State has the liberty to appoint the first respondent in a non-sensitive post.”*

58. This Court further finds it relevant to take note of the Manual of Departmental Proceedings issued by the Government of Assam, Department of Personnel. Clause 2.1.3 and 2.1.4 stipulates the General Principles behind suspending a Government servant. Clause 2.1.3 and 2.1.4 being relevant are reproduced hereinunder:

2.1.3. *Public interest should be the guiding factor in deciding to place a Government Servant under suspension. The Disciplinary Authorities should not suspend a Government Servant lightly and without sufficient justification. They should exercise their discretion with utmost care.*

2.1.4. *Although suspension is not a punishment by itself, it cannot be denied at the same time that in such cases the officers placed under suspension suffer a lot. Apart from this, suspension of a Government Servant is a liability on the part of the Government. The idea behind placing an officer under suspension is not to inflict punishment, which can be done only when the charges are proved, but to safeguard against further loss to Government, manipulation of records, intimidation of witnesses or embarrassment to Government in the public eye, as in the case, where moral turpitude is involved. In all cases of suspension the elementary justice demands that the period of suspension should be reduced to the barest*

minimum. It is, therefore, necessary to conclude proceedings drawn up as quickly as possible and in any case if it is not possible to do so due to reasons beyond control, the persons proceeded against may be allowed to resume their duties, where possible in places away from their former place of duty, vacating the suspension order so as to save Government expenditure in the event of his acquittal."

59. Clause 2.1.5 enumerates four conditions when a Government servant can be placed under suspension even when the case is under investigation and before a prima facie case has been established. Clause 2.1.5 and Clause 2.1.6 being relevant are quoted hereinbelow:

"2.1.5. By way of clarification of the general principle enunciated above, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government Servant Under suspension. These are only intended for guidance and should not be taken as mandatory.

[ABP. 186/69, dated 2nd March, 1971]

- (i) cases where continuance in office of a Government Servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering of documents and intimidation of witnesses);*
- (ii) where the continuance in office of a Government Servant is likely to seriously subvert discipline in the office in which the Government servant is working;*
- (ii) where the continuance in office of a Government servant will be against the wider public interest (other than the cases covered by (i)*

and (ii) above) such as there is a public scandal against him and it is necessary to place the Government Servant under suspension to demonstrate the policy of Government to deal strictly with officers involved in such scandals, particularly corruption;

- (iv) where allegations have been made against a Government servant and the preliminary enquiry has revealed that a prima facie case is made out which would justify his prosecution or his being proceeded against in departmental proceedings and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.*

2.1.6. In the first three circumstances enumerated above, the Disciplinary Authority may exercise his discretion to place a Government Servant under suspension even when the case is under investigation and before a prima facie case has been established.”

60. On the other hand, Clause 2.1.8 stipulates certain principles which would require strict compliance. It is relevant herein to take note of that the Clause 2.1.8 also contains the same principles which the Supreme Court had also observed and declared in the case of **Ajay Kumar Choudhary (supra)**. Clause 2.1.8 being relevant is reproduced hereinunder:

“2.1.8. The following principles and procedure with regard to suspension need strict compliance-

(i) Suspension should be resorted to only in cases where a major punishment is likely to be imposed if the charges are proved;

(ii) Charges and the statement of allegations should be served within three

months from the date of suspension failing which the Government Servant concerned should be reinstated; and

(iii) In cases where it is not reasonably practicable to prepare the charges for service within three months from the date of suspension and the continued suspension of the Government servant is considered necessary in the public interest, the authority concerned should move the Personnel Department through Administrative Department well before the expiry of the period of three months with a letter detailing the nature of the allegations and the reasons for which charges could not be prepared so that the Personnel Department could advise whether any further extension of the period of suspension should be permitted or not.

.....”

61. Therefore, from the above settled principles of law as well as the Manual for Departmental Proceedings issued by the Government of Assam and the Office Memorandum dated 04.02.2020 as already referred to hereinabove, the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. It is only in cases where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out orders of superiors or when there is a strong prima facie case against the delinquent employee, if proved, would ordinarily result in reduction in rank, removal or dismissal from service, then the power for suspension should be exercised. It is further relevant that the authority while exercising the power for suspension should also take into account the available materials for the purpose of

passing an order of suspension inasmuch as without materials supporting the order of suspension, the decision to suspend the delinquent employee would be illogical, arbitrary and unreasonable. It is to be borne in mind that an order of suspension is an administrative order and judicial review is limited and circumscribed. However, if an order of suspension and even its continuation on the basis of periodical reviews is not based on relevant matters but on the basis of irrelevant and extraneous matters, this Court can very well exercise the powers of judicial review.

62. The Supreme Court in the case of ***Jayrajbhai Jayantibhai Patel Vs. Anilbhai Nathubhai Patel and Others*** reported in **(2006) 8 SCC 200** explained the power of judicial review in respect to administrative decisions. The said decision is relevant taking into account that an order of suspension is an administrative decision. It was observed by the Supreme Court that when an administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the Court in a sense that it is in defiance of logic or moral standards, the power of judicial review can be exercised. It was further observed that though judicial restraint, albeit self-recognized is the order of the day, yet an administrative decision or action which is based on wholly irrelevant consideration or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at on the given material, such administrative decisions or actions may be struck down. The Supreme Court further observed that when the Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to interfere. Paragraph No.18 of the said judgment being relevant is reproduced hereinunder:

“18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.”

63. At this stage, this Court also has to take note that the Supreme Court in its judgment in the case of **Ajay Kumar Choudhary (supra)** applied the concept of right to speedy trial which is a facet of Article 21 of the Constitution as well as the principles behind Section 167(2) of the Code of Criminal Procedure, 1973 for the purpose of moderation of the suspension orders in disciplinary/departmental proceedings. The said principle was again reiterated by the Supreme Court in the case of **Promod Kumar, IPS (supra)** wherein also there was a criminal proceedings initiated against the respondent therein and the Supreme Court directed reinstatement on the ground that no useful purpose would be served in keeping the delinquent employee under suspension.



64. Now, coming to the facts involved in the instant case, it cannot be said that the recommendations so made by the Director General of Police on 22.05.2021 which was the basis of the impugned order of suspension dated 17.06.2021 to be without any materials. As observed earlier, the undated report of the Investigating Officer of C.I.D. P.S. Case No.21/2020 was one of the materials taken for the purpose of making recommendation. A perusal of the Show Cause Notice dated 24.11.2021 shows that it is also based upon the undated communication report of the Investigating Officer of C.I.D. P.S. Case No.21/2020 as well as the report of the Superintendent of Police, Barpeta dated 05.10.2021. The fact that in the Preliminary as well as in the Conclusive Charge Sheets dated 18.12.2020 and 23.04.2021 respectively, there was no allegation against the petitioner cannot be a ground to interfere with the order of suspension dated 17.06.2021 inasmuch as it is well settled that when no conclusions can be arrived that the charges are baseless, mala fide or vindictive, the limited scope of jurisdiction available to this Court cannot be exercised to interfere with the order of suspension; the power that can be exercised in that circumstance would be directing the enquiry to be completed within a stipulated period.

65. The additional affidavit-in-opposition so filed by the respondent State and taking into account Annexure VIII (series), it would be seen that the respondent authorities have been periodically reviewing the suspension order thereby extending the suspension of the petitioner. It would also be seen that other than in the Minutes of the Meeting held on 09.12.2021, the authorities concerned had extended the period of suspension merely on the ground of pendency of the departmental proceedings. The facts further



disclosed show that the prosecution witnesses as listed in the Memorandum of Charge at Serial Nos. 3, 4, 5 and 6 are presently in judicial custody. The Rules of 1964 as it stands however do not empower the Inquiry Officer so appointed under Rule 9(4) of the Rules of 1964 to summon any witness that too a witness who is in judicial custody. These difficulties have also been expressed by the Inquiry Officer in its communications dated 02.04.2023 and 04.05.2023 for which the Additional Secretary to the Government of Assam, Home (A) Department was requested to provide the appropriate permission so that the evidence of the Prosecution Witnesses at Serial Nos. 3, 4, 5 and 6 of the Memorandum of Charge could be taken. The facts further discloses that till the last date of hearing i.e. on 31.05.2023, the respondent authorities have not taken any steps in that regard so that the Inquiry Officer is in a position to examine and record the evidence of the Prosecution Witnesses at Serial Nos. 3, 4, 5 and 6 of the Memorandum of Charge. It is further seen from the communications dated 02.04.2023 and 04.05.2023 issued by the Inquiry Officer which have been kept on record and marked with the letters "X" and "Y" wherein the Inquiry Officer had stated that he would be able to complete the enquiry within 3 (three) months after obtaining the approval from the appropriate authority for examination and recording of the statements of the prosecution witnesses who are presently in judicial custody. Therefore, unless and until such approval/permission is not granted, the Inquiry Officer would not be in a position to complete the enquiry proceedings. This Court cannot also lose sight of the rights of the delinquent employee as contained in Rule 9(6) of the Rules of 1964 whereby he has a right to cross-examine the prosecution witnesses. Therefore, merely recording the statements of the said prosecution witnesses would not



suffice for the purpose of completion of the enquiry but an opportunity of cross-examination has also to be given to the petitioner/delinquent employee as it is the mandate of Rule 9(6) of the Rules of 1964. Therefore, the respondent authorities concerned have to take a decision as to what steps are required to be taken so that the Inquiry Officer is in a position to examine the prosecution witnesses at Serial Nos. 3, 4, 5 and 6 coupled with the right to be given to the petitioner to cross-examine the said prosecution witnesses. If effective steps are not taken by the respondent authorities concerned in that regard thereby enabling the Inquiry officer to examine the prosecution witnesses at Serial Nos. 3, 4, 5 and 6 of the Memorandum of Charge coupled with the right to be given to the petitioner for cross examination, the culmination of the disciplinary proceedings would be in the realm of uncertainty.

66. This Court further finds it relevant to observe taking into account Clause 2.1.3 and Clause 2.1.4 of the Manual of Departmental Proceedings issued by the Government of Assam, Department of Personnel which have already been quoted hereinabove. A perusal of the said Clauses would show that an order of suspension not only entails sufferings to the delinquent employee but the suspension of a Government servant is also a liability upon the State. This is a very important aspect of the matter which the respondent authorities have also to take note of inasmuch as the legal consequences of an employee being placed under suspension is that he continues to retain or hold the lien over the said post. The vacancy caused in the post due to the suspension of the incumbent is only temporary during the period of suspension since the employee continues to retain or hold lien

over the post, he is being paid subsistence allowance during the period of suspension. However, on account of the suspension, the delinquent employee is forbidden from carrying out his/her duties. Therefore, when a post falls vacant due to suspension of the incumbent, such vacancy is purely temporary and cannot be filled up on permanent basis. Any appointment made to such a vacancy would be subject to the outcome of the suspension. If the suspension is revoked, the subsequent appointee will have to move out. Therefore, the various judicial pronouncements from time to time have frowned upon the practice of protractive suspensions inasmuch as it not only results in public shame or disgrace to an employee but also results in causing a void to the post on which the employee holds lien. This is a pertinent aspect which the respondent authorities are therefore to take note of.

67. The judgment of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** have sought to moderate suspension orders by applying the principles of right to speedy trial which is a facet of Article 21 of the Constitution. The said judgment in the case of **Ajay Kumar Choudhary (supra)** further observed in paragraph No.21 that how an employee can be accommodated pending disposal of the disciplinary proceedings by transferring him to any of the offices of the department 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. It was further observed by the Supreme Court that the Government may also prohibit the delinquent employee from contacting any person or handling records and documents till the stage of his having to prepare his defence.

The Supreme Court further observed that by taking these steps, the interest of the Government in the prosecution and the principles of human dignity and right to speedy trial can be balanced. This is another aspect which the Disciplinary Authority is required to take note of.

68. It is also pertinent herein to observe that the settled principles of law do not envisage that merely because there is a criminal proceedings pending against the delinquent employee, he has to be kept under suspension. This aspect can very well be seen from the judgment of the Supreme Court in the case of **Promod Kumar, IPS (supra)** wherein the Supreme Court even after taking into account that the said officer was arrested and there was a criminal proceedings pending against him and taking into account the judgment in the case of **Ajay Kumar Choudhary (supra)** have directed reinstatement of the officer (the respondent therein) to a non-sensitive post. This is also a vital aspect of the matter which needs to be taken into consideration by the respondent authorities.

69. Another aspect of the matter which also requires the consideration of the Respondent Disciplinary Authority that the investigation in both C.I.D. P.S. Case No.21/2020 and Barpeta P.S. Case No.43/2021 are complete and the evidence have been duly collected. Under such circumstances, whether the further continuation of suspension of the Petitioner would be required in the attending facts of the case.

70. The observations made hereinabove are relevant and pertinent aspects which ought to have been and is required to be taken into account at the time of reviewing as to whether the further suspension of a delinquent



employee is required. Merely because a disciplinary proceedings are pending, the authorities cannot keep the delinquent employee under suspension for an indefinite period as the same would not only be affecting the rights of human dignity of the delinquent employee but would also affect the administrative exigencies of the Respondent State.

71. In the instant case, it would be seen that the respondents while reviewing the suspension orders, merely on the ground that there is a departmental proceedings pending, the period of suspension have been extended from time to time. The respondent authorities have not taken into consideration the relevant aspects which have been observed hereinabove. Under such circumstances, this Court therefore is of the opinion that as the respondent authorities i.e. the disciplinary authority has a right to take a decision as to whether in the above mentioned parameters, the petitioner is required to be kept under suspension or not, an opportunity is therefore required to be given to the Respondent Authorities for the ends of justice. This Court therefore disposes of the instant writ petition with a direction to the disciplinary authority i.e. the respondent No.1 to take a decision by passing a reasoned order on the basis of the above observations so made within a period of 15 days from the date of the instant judgment.

72. Before parting with the records and taking into account that on regular basis, there are litigations before this Court on the ground of violation of the principles laid down in **Ajay Kumar Choudhary (supra)** as well as the Office Memorandum dated 04.02.2020, this Court finds it relevant to reiterate the observations made in the paragraph Nos. 38 and 43 of the instant judgment



whereby this Court had directed the Chief Secretary to the Government of Assam to ensure strict compliance to the Office Memorandum dated 04.02.2020 and the erring officials be brought to task if there is contravention to the Office Memorandum dated 04.02.2020 inasmuch as contravention of the Office Memorandum dated 04.02.2020 in effect contravenes the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** which is binding. The said directions in the opinion of this Court would help in speeding up the departmental proceedings wherein the delinquent employee is put under suspension which are essential for the interest of the respondent State as well as preventing the violation of the right to live a life with human dignity of the delinquent employee.

73. The Registry is directed to transmit a copy of the instant judgment to the Chief Secretary, Government of Assam for due notice and effective compliance.

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

JUDGE

Comparing Assistant