



GAHC010199332022

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

Case No. : WP(C)/6529/2022

MD. JAHIRUL ISLAM
S/O- MD. HAJARAT ALI,
R/O- VILLAGE BHUYAPATTY,
P.O AND P.S- NAGAON, DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE PRINCIPAL
ANANDARAM DHEKIAL PHUKAN COLLEGE
DIST- NAGAON

4:THE GOVERNING BODY
REP. BY THE PRINCIPAL ANANDARAM DHEKIAL PHUKAN COLLEGE
NAGAON

DIST- NAGAON

5:SUPERINTENDENT OF POLICE
CID
ASSAM
CUM OFFICER IN CHARGE
CID POLICE STATION
ULUBARI



GUWAHAT

Advocate for the Petitioner : MR D MAHANTA

Advocate for the Respondent : MR. K. GOGOI
: MR. G. ALAM
: MR. S. R. BARUAH

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (CAV)

Date : 24-02-2023

Heard Mr. D. Mahanta, the learned counsel appearing on behalf of the petitioner and Mr. K. Gogoi, the learned Standing counsel appearing on behalf of the Higher Education Department. I have also heard Mr. G. Alam, the learned counsel appearing on behalf of the respondent Nos. 3 and 4 and Mr. S. R. Baruah, the learned Government Advocate, Assam for respondent No.5.

2. The petitioner herein has approached this Court seeking a direction for setting aside the impugned Order of Suspension No. DHE/CE/Misc/81/2021/6 dated 21.10.2021 issued by the Director of Higher Education, Assam (hereinafter referred to as the impugned order) and further seeking a direction upon the respondents to reinstate the petitioner in service by revoking the impugned order of suspension.

3. The facts of the instant case is that the petitioner was appointed on 04.12.2015 as an Assistant Professor in the Department of Arabic in the Anandaram Dhekial Phookan College under the Directorate of Higher

Education, Assam. On 06.10.2021, the petitioner was arrested by the C.I.D. Assam on the basis of an F.I.R. lodged by one Sri Gautam Chandra Kumar. The said F.I.R. was registered and numbered as CID P.S. Case No.10/2021 under Sections 120(B)/420/467/468/471 of the Indian Penal Code, 1908. Thereafter, on 07.10.2021, the petitioner was produced before the learned Special Judge, Assam and after completion of police remand, he was remanded to the judicial custody.

4. In view of the provisions of Rule 6(2) of the Assam Service (Discipline and Appeal) Rules, 1964 (for short the "Rules of 1964"), the petitioner was placed under suspension vide the impugned order by the respondent No.3. Subsequent thereto, the petitioner was granted bail by the Additional Chief Judicial Magistrate, Kamrup (M), Guwahati in PRC Case No.2678/2021 arising out of C.I.D. Case No.10/2021. Upon release on bail, the petitioner submitted a representation before the respondent authorities to revoke the suspension and to reinstate the petitioner in service. The said representation was filed on 06.08.2022. It is the case of the petitioner that the petitioner still continues to remain under suspension w.e.f. 21.10.2021 and the respondent authorities have neither revoked his suspension till date nor made any periodical review on the matter of suspension of the petitioner.

5. It is the further case of the petitioner that in terms with the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India** reported in **(2015) 7 SCC 291** as well as the judgment of the Division Bench of this Court in the case of **Rakibuddin Ahmed Vs. the State of Assam and Others** reported in **(2020) 2 GLR 621**, the further continuation of the impugned order is in violation to the law laid down by the Supreme Court as

well as by the Division Bench of this Court.

6. This Court vide an order dated 29.09.2021 issued notice making it returnable by 4 (four) weeks. Further to that, on 03.02.2023, this Court upon hearing the learned counsels, directed the learned Standing counsel for the Higher Education Department to obtain instructions as to whether the principles laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** have been followed and as to whether there was any extension of the suspension order as well as, as to whether any Memorandum of Charges/Charge sheet have been submitted insofar as the petitioner is concerned. Accordingly, this Court fixed the matter on 10.02.2023.

7. On 10.02.2023, the learned counsel appearing on behalf of the petitioner reiterated his specific contention that the continuation of the suspension of the petitioner on the basis of the impugned order is in violation to the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** as well as the judgment of the Division Bench of this Court in the case of **Rakibuddin Ahmed (supra)**. On the other hand, the learned counsel appearing on behalf of the Higher Education Department submitted that the judgment in the case of **Ajay Kumar Choudhary (supra)** cannot be made applicable in view of the fact that in the said judgment, the Supreme Court had not taken into consideration a Co-ordinate Bench judgment in the case of **Union of India Vs. Rajiv Kumar reported in (2003) 6 SCC 516** which particularly dealt with the issue of deemed suspension. The learned counsel referred to paragraph No.15 of the said judgment and submitted that an order of suspension does not lose its efficacy and is not

automatically terminated the moment the detention comes to an end and the person is set at large. He further submitted that in terms with the said judgment in the case of **Rajiv Kumar (supra)**, the Supreme Court had further observed upon taking into account Rule 10(5)(c) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short the "Rules of 1965") which is paramateria with Rule 6(5) of the Rules of 1964 and observed that an order of suspension could be modified and revoked by another order by the authority and until that order is made, the same continues by operation of Rule 10(5)(a) and the employee has no right to be reinstated in service.

8. The learned counsel for the Higher Education Department therefore submitted that as the judgment in the case of **Ajay Kumar Choudhary (supra)** is not a case of deemed suspension, the Division Bench of this Court in the case of **Rakibuddin Ahmed (supra)** have wrongly applied the said principles in **Ajay Kumar Choudhary (supra)** in the case of deemed suspension. He further submitted that the Division Bench of this Court in the case of **Rakibuddin Ahmed (supra)** while dealing with the applicability of the principles laid down in **Ajay Kumar Choudhary (supra)** did not consider the judgment of the Supreme Court in the case of **Rajiv Kumar (supra)** which was holding the field specifically in respect to deemed suspension.

9. This Court has perused the materials on record and have heard the learned counsels appearing on behalf of the parties. Let this Court first take into account the judgment of the Supreme Court rendered in the case of **Rajiv Kumar (supra)**.

10. The facts of the said case can be discerned from paragraph No.6 of the

said judgment rendered in the case of **Rajiv Kumar (supra)** whereupon it would appear that the said Rajiv Kumar was arrested on 26.03.1998 for allegedly accepting bribe and was released on bail on 02.04.1998. Rule 10(2) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 stipulates that the Government servant shall be deemed to have been placed under suspension by an order of appointing authority w.e.f. the date of his detention if he is detained in custody whether on criminal charges or otherwise for a period exceeding 48 hours or w.e.f. the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction. In the case of **Rajiv Kumar (supra)**, the order under Rule 10(2) of the Rules of 1965 was passed on 15.05.1998. Subsequent thereto on 02.07.2000, the said order dated 15.05.1998 was assailed before the Central Administrative Tribunal, Delhi Bench on the ground that there is no reason for his suspension taking into account that prior to the order of suspension, the petitioner-Rajiv Kumar was already released on bail. It further appears that the prosecuting agency filed a challan on 02.09.2000. Thereafter, on 11.10.2000, Rajiv Kumar filed an application for interim relief. Thereupon, on 09.11.2000, an order was passed by the authorities continuing suspension. Subsequent thereto, vide a judgment dated 14.03.2001, the Central Administrative Tribunal directed the authorities to dispose of the matter by a reasoned and speaking order. An application for Review was filed on 26.04.2001 which was however rejected vide an order dated 15.05.2001. Further to that, in terms with the Central Administrative Tribunals direction, an order was passed on 21.05.2001 and the same was stated to be the subject matter of challenge before the

Mumbai Bench of the Central Administrative Tribunal. Thereupon, on 03.08.2001, a writ petition was filed before the Delhi High Court challenging the aforesaid orders dated 14.03.2001 and 15.05.2001. However, the order dated 09.11.2000 by which the authorities passed an order of continuing suspension was not challenged.

11. The Delhi High Court thereupon vide a judgment and order dated 31.05.2002 quashed the suspension order and held that the order dated 15.05.1998 cannot be treated to be an order passed in terms with Rule 10(2) of the Rules of 1965 inasmuch as, as per the Delhi High Court, the order of suspension after release of the petitioner on bail could not have been passed under Rule 10(2) and as such, the order could have been passed only in terms with Rule 10(1). It is under such circumstances, an appeal was preferred before the Supreme Court wherein the judgment was rendered in the case of **Rajiv Kumar (supra)**. The Supreme Court interfered with the order passed by the Delhi High Court. In doing so, the Supreme Court observed the scope and ambit of the concept of deemed suspension and how it can be revoked/cancelled at paragraph Nos. 14, 15, 26 and 27 which are reproduced hereinunder:

“14. Rule 10(2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions. It does not speak of any period of its effectiveness. Rules 10(3) and 10(4) operate conceptually in different situations and need specific provisions separately on account of interposition of an order of a court of law or an order passed by the appellate or

reviewing authority and the natural consequences inevitably flowing from such orders. Great emphasis is laid on the expression "until further orders" in the said sub-rules to emphasise that such a prescription is missing in sub-rule (2). Therefore, it is urged that the order is effective for the period of detention alone. The plea is clearly without any substance because of sub-rules (5)(a) and (5)(c) of Rule 10. The said provisions refer to an order of suspension made or deemed to have been made. Obviously, the only order which is even initially deemed to have been made under Rule 10 is one contemplated under sub-rule (2). The said provision under Rule 10(5)(a) makes it crystal clear that the order continues to remain in force until it is modified or revoked by an authority competent to do so while Rule 10(5)(c) empowers the competent authority to modify or revoke also. No exception is made relating to an order under Rules 10(2) and 10(5)(a). On the contrary, it specifically encompasses an order under Rule 10(2). If the order deemed to have been made under Rule 10(2) is to lose effectiveness automatically after the period of detention envisaged comes to an end, there would be no scope for the same being modified as contended by the respondents and there was no need to make such provisions as are engrafted in Rules 10(5)(a) and (c) and instead an equally deeming provision to bring an end to the duration of the deemed order would by itself suffice for the purpose.

15. *Thus, it is clear that the order of suspension does not lose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. It could be modified and revoked by another order as envisaged under Rule 10(5)(c) and until that order is made, the same continues by the operation of Rule 10(5)(a) and the employee has no right to be reinstated in service. This position was also highlighted in Balvantrao Ratilal Patel v. State of Maharashtra. Indication of the expression "pending further order" in the order of suspension was the basis for the aforesaid view.*

26. *The inevitable conclusion therefore is that the order in terms of Rule 10(2) is not restricted in its point of duration or efficacy to the period of actual detention only. It continues to be operative unless modified or revoked under sub-rule (5)(c), as provided under sub-rule (5)(a).*

27. *Rule 10(5)(b) deals with a situation where a government servant is suspended or is deemed to have been suspended and any other disciplinary proceeding is commenced against him during continuance of that suspension irrespective of the fact whether the earlier suspension was in connection with any disciplinary proceeding or otherwise. Rule 10(5)(b) can be pressed into service only when any other disciplinary proceeding is also commenced than the one for and during which suspension or deemed suspension was already in force, to meet the situation until the termination of all such proceedings. In contradiction, Rule 10(5)(a) has application in relation to an order of suspension already made or deemed to have been made. Rule 10(5)(b) has no application to the facts of the present case and no inspiration or support could be drawn for the stand taken for the respondents or the decision arrived at by the High Court. It is Rule 10(5)(a) alone which has application and the deemed suspension would continue to be in force till anything has been done under Rule 10(5)(c). Similarly, Rules 10(3) and 10(4) operate in different fields and merely because a specific provision is made for its continuance, until further orders in them itself due to certain further developments taking place and interposition of orders made by court or appellate and reviewing authority to meet and get over such specific eventualities, in given circumstances and that does not in any way affect the order of suspension deemed to have been made under Rule 10(2)."*

12. Therefore, it transpires from the above quoted paragraphs that the person who is under deemed suspension in terms with Rule 10(2) of the Rules of 1965, the suspension order shall continue till anything has been

done in terms with Rule 10(5)(c). It is also apposite to refer to paragraph No.29 of the said judgment wherein the contention that the suspension was for a very long period was negated by observing that the period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued, merely because it is for a long period that does not invalidate the suspension. Paragraph No.29 of the said judgment is reproduced hereinunder.

“29. Another plea raised relates to a suspension for a very long period. It is submitted that the same renders the suspension invalid. The plea is clearly untenable. The period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued, merely because it is for a long period that does not invalidate the suspension.”

13. Before taking into consideration the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)**, this Court however finds it relevant to take note of that in the Rules of 1964 as applicable in the instant case, there is no paramateria Rule similar to Rule 10(5)(a) and 10(5)(b) of the 1965 Rules. It would further appear from a perusal of Rule 10(5)(a) of the Rules of 1965 that an order of suspension made or deemed to have been made under the said Rule shall continue to remain in force until it is modified or revoked by the authority competent to do so. On the other hand, Rule 10(5)(c) of the Rules of 1965 is paramateria to Rule 6(5) of the Rules of 1964. It is also relevant to take note of that there is no provision akin to the proviso to Rule 6(2) of the Rules of 1964 in the Rules of 1965.

14. This Court on the basis of the above, finds it relevant to take note of

the law as laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)**. The facts of the said case can be discerned from the first paragraph of the said judgment wherein it would transpire that when the appellant therein i.e. Ajay Kumar Choudhary was posted as the Defence Estate Officer, Kashmir Circle, Jammu & Kashmir, large portion of land owned by the Union of India and held by the Director General, Defence Estates were mutated/noted in the revenue records as defence lands. The allegation therein was that between 2008 and 2009, office notes were prepared by the appellant's staff, namely one Sri. Vijay Kumar SDO II; Smt Amarjit Kaur, SDO III; Sri Abdul Sayoom, Technical Assistant and Sri Noor Mohd., LDC that approximately four acres of land were not defence lands, but were private lands in respect of which NOCs could be issued. These NOCs were accordingly issued by the appellant. Thereupon on 03.04.2010, the appellant was transferred to Ambala Cantt. Subsequent thereto, vide a letter dated 25.01.2011, the appellant was asked to give his explanation for issuing the factually incorrect NOCs and in reply to the same, the appellant admitted his mistake however denied any malafides in issuing the NOCs and attributed the issuance of NOCs to the notes prepared by the subordinate staff of SDOs/Technical Officer.

15. It is on that background that the appellant therein received the suspension order dated 30.09.2011. The said suspension order was continued from time to time by passing appropriate extension orders. Under such circumstances, the appellant therein approached the Central Administrative Tribunal, Chandigarh Bench (CAT). The Central Administrative Tribunal directed that if no charge memo was issued to the appellant before the expiry on 21.06.2013 of the then prevailing period, the appellant would

have to be reinstated to the service. The Central Administrative Tribunal further ordered that if it was decided to conduct an enquiry, it has to be concluded in a time bound manner. The respondent therein who was the Union of India filed a writ petition before the Delhi High Court contending that the Tribunal had exercised power not possessed by it inasmuch as it directed that the suspension would not exceed if the charge memo was served on the appellant after the expiry of 90 days from 19.03.2013. The Delhi High Court allowed the said writ petition filed by the Union of India and observed that the view of the Central Administrative Tribunal was nothing but a substitution of a judicial determination to that of the authority possessing the power i.e. the Executive Government as to the justification or rationale to continue with the suspension. It is under such circumstances being aggrieved by the Delhi High Court's judgment, the appeal was preferred before the Supreme Court.

16. The Supreme Court while rendering the judgment in the case of **Ajay Kumar Choudhary (supra)** had observed that suspension, specially preceding the formulation of charges is essentially transitory or temporary in nature and must perforce be of short duration. It was observed that if it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on record, it would render such action punitive in nature. It was further observed that 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. Further to that, it was observed that 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. It was further observed that the torment of a delinquent employee 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. Further it was observed that much too often which has now become an accompaniment to retirement. The Supreme Court thereupon taking into account the Article 12 of the Universal Declaration of Human Rights, 1948, Article 6(1) of the European Convention on Human Rights as well as the Constitution Bench Judgment in the case of **Kartar Singh Vs. State of Punjab** reported in **(1994) 3 SCC 569**, **Hussainara Khatoon (I) Vs. State of Bihar** reported in **(1980) 1 SCC 81** had observed that the legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries was emphasized by the Supreme Court on numerous occasions. It was observed that view taken by the Delhi High Court could not be sustained in view of the law laid down by the Constitution Bench in the case of **A. R. Antulay and Others Vs. R. S. Nayak and Another** reported in **(1992) 1 SCC 225**. It is in the above backdrop, the Supreme Court took into consideration the proviso to Section 167(2) of the Code of Criminal Procedure, 1973 and observed that the proviso to Section 167(2) of the Cr.P.C. can be used for the purpose of moderating suspension orders in cases of departmental/disciplinary enquiries. It was observed that if the 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.

17. This Court further finds it relevant to take note of the observations to the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** to the effect that the Supreme Court had observed that various Constitution Bench have been reluctant to quash proceedings on the ground of delay and to set time limits to their duration. However, imposition of limit on the period of suspension have not been discussed any prior case law and would not be contrary to the interest of justice. It is under such circumstances that the Supreme Court had observed and directed 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. Paragraph 20 and 21 of the said judgment being relevant for the purpose of the instant case are quoted hereinbelow:

“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.”

18. This Court also finds it relevant to take note of that during the said proceedings before the Supreme Court, the appellant therein (Ajay Kumar Choudhary) was served with the charge sheet and the Supreme Court therefore observed that the observations made in paragraph 21 may not be relevant to him any longer. However liberty was given to the appellant if so advised that he may challenge his continued suspension in any manner known to law, and this action of the respondents would be subject to judicial review. Paragraph 22 of the judgment in the case of **Ajay Kumar Choudhary (supra)** being pertinent is quoted hereinbelow:

“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.”

19. It further appears that the Co-ordinate Bench of this Court in the case of **Rakibuddin Ahmed Vs. State of Assam and Others** [WP(C) No.3218/2019] had made a reference to the Larger Bench with the following question.

“Whether in a case covered by Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964, the decision of the Hon’ble Supreme Court in the case of Ajay Kumar Choudhury (supra) would have automatic application.”?

20. The Division Bench of this Court on the basis of the said Reference made, observed that the principles laid down in the said case of **Ajay Kumar Choudhary (supra)** cannot be restricted to an order of suspension issued only on contemplation of drawal of Disciplinary Proceedings and not for deemed suspension. Accordingly, instead of remitting the matter back to the learned Single Judge, the Division Bench of this Court had set aside the order of suspension dated 16.12.2019 with a direction that the department would be at liberty to post the petitioner in any non-sensitive post. Paragraph Nos. 15 to 17 of the said judgment in the case of **Rakibuddin Ahmed (supra)** is reproduced hereinbelow:

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

also be applicable in case of deemed suspension under Section 6(2) of the 1964 Rules.

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

17. *Since we have already answered the reference holding that periodic review in the case of deemed suspension is mandatory, the requirement of remanding the matter to the learned Single Judge would be a meaningless exercise and as agreed to by the parties, while answering the reference, as above, we are of the opinion that a case for interference of the impugned order dated 16.02.2019 is made out."*

21. In the backdrop of the above, it would be seen that the judgment in the case of **Rajiv Kumar (supra)** was rendered in the context of Rule 10(2) of the Rules of 1965. Although Rule 10(2)(a) is paramateria to Rule 6(2) of the Rules of 1964 but Rule 10 does not have a corresponding provision similar to the proviso to Rule 6(2) of the Rules of 1964. In the same breath, it is also relevant to take note of that Rule 10(5)(a) of the Rules of 1965 which categorically mandates that the order of suspension made or deemed to have been made under the said Rule shall continue to remain in force until it is modified or revoked by the authority competent to do so. Such a provision however is not available in Rule 6 of the Rules of 1964. Furthermore, the issue involved in the case of **Rajiv Kumar (supra)** was whether an order of suspension under Rule 10(2) of the Rules of 1965 could be passed after release of the petitioner therein?

22. On the other hand, a perusal of the judgment in the case of **Ajay**

Kumar Choudhary (supra) deals with the concept of the torment and sufferings of a person put to suspension for protracted period of suspension and accordingly, the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** deemed it proper to apply the proviso to Rule 167(2) of the Cr.P.C., 1973 to moderate suspension orders in cases of departmental and disciplinary enquiries also. It is with that perspective, the Supreme Court directed and laid down the law that the currency of suspension order should not extend beyond 3 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 extension of the suspension. The Division of this Court in the case of **Rakibuddin Ahmed (supra)** have held that the principles laid down in the case of **Ajay Kumar Choudhary (supra)** shall also be applicable to deemed suspension.

23. At this stage, this Court also finds it relevant to take note of the judgment dated 17.02.2023 in the case of **Rafed Ali Ahmed Vs. State of Assam** [WP(C) No.455/2023] wherein this Court observed at paragraph Nos. 16, 17, 18, 19, 20 which being relevant are quoted hereinbelow:

*“16. This Court, at this stage, would take note of the fact that the judgment in the case of **Ajay Kumar Choudhury (supra)** did not deal with the issue of deemed suspension. However, the Division Bench of this Court in the case of **Rakibuddin Ahmed (supra)** opined that the case of deemed suspension also the principles as laid down in the case of **Ajay Kumar Choudhury (supra)** would be applicable. However, the Division Bench in the case of **Rakibuddin Ahmed (supra)** did not deal with the question as to how the judgment in the case of **Ajay Kumar Choudhury (supra)** would apply and from when the period of three months would be reckoned. This*

Court finds it relevant at this stage to take note of Rule 6 (2) of the Rules of 1964 which is quoted herein below:-

“6(2). A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

Provided that where the detention is made on account of any charge not connected with his position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.”

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

18. *The said provision, therefore, would show that if a Government servant who is in custody for a period exceeding 48 hours shall be deemed to be suspended with effect from the date of such detention by an order of the Appointing Authority and the Government servant shall continue to remain in suspension until further orders. Therefore, till the Government servant remains in custody or imprisonment after the initial period of 48 hours he/she shall continue to remain under suspension. The judgment of the Supreme Court in the case of **Ajay Kumar Choudhury** (supra) neither dealt with a case of suspension under Rule 6 (2) of the Rules of 1964 nor dealt with the issue of deemed suspension which was on account of person remaining in custody or imprisonment after the initial period of 48 hours. The said judgment of the Supreme Court also do not deal with the question as how a person in custody or imprisonment can be served with the Memorandum of charges/chargesheet or for the matter whether the delinquent employee would have a reasonable opportunity as required under Article 311 (2) of the Constitution when the delinquent officer is in custody or imprisonment.*

19. *The above aspect of the matter can also be seen from another angle. By virtue of Section 6 (2) of the Rules of 1964, a Government servant, upon being detained in custody for a period of exceeding 48 hours, would be deemed to have been suspended with effect from the date of such detention by an order of the Appointing Authority and shall remain under suspension until further orders. The said Sub-Rule, therefore, mandates that till the Government servant who had been suspended is not released on bail or not otherwise in custody or imprisonment, shall remain suspended. The question of setting aside the suspension till the Government servant remains in custody or imprisonment cannot arise and if it is held that such Government servant is to be reinstated for not serving the Memorandum of charges/chargesheet upon completion of 3 (three) months from the date of suspension, it would be contrary to Rule 6 (2) of the Rules of 1964 which*

*continues to hold the field. Now coming to the judgment of the Supreme Court in the case of **Ajay Kumar Choudhury** (supra), it would be seen that reasons behind the directions in paragraph Nos.20 & 21, as quoted above, have been spelt out in paragraph Nos.11 & 12 of the said judgment. In the opinion of this Court, the directions in paragraph No.21 of the said judgment in **Ajay Kumar Choudhury** (supra) can only be applied when the Government servant is released on bail or otherwise not in custody or imprisonment.*

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

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

*However, upon applying the judgment of the Supreme Court in the case of **Ajay Kumar Choudhury** (supra) and the judgment of the Division Bench of this Court in the case of **Rakibuddin Ahmed** (supra), a fourth*

condition can be culled out, i.e.:-

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

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

24. In that view of the matter, this Court is of the considered opinion that the principles laid down in the case of **Ajay Kumar Choudhary (supra)** which have been held to be applicable for deemed suspension by the Division Bench of this Court in **Rakibuddin Ahmed (supra)** and further the observations made by this Court in the case of **Rafed Ali Ahmed Vs. State of Assam** has to be applied to the facts of the instant case. With due respect, taking into consideration that a paramateria Rule 10(5)(a) of the Rules of 1965 does not exist in the Rules of 1964, the ratio in the case of **Rajiv Kumar (supra)** cannot be applied in the case of deemed suspension under the Rules of 1964.

25. Let this Court take into consideration the facts involved herein. As already observed that the petitioner was arrested on 06.10.2021 and the

impugned order of suspension was made on 21.10.2021. Thereupon, the petitioner was released on bail on 22.12.2021. Subsequent thereto, the petitioner had submitted a representation on 06.08.2022. Applying the law as laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** which was made applicable to deemed suspension by the Division Bench of this Court in **Rakibuddin Ahmed (supra)** and the observations of this Court in the case of **Rafed Ali Ahmed (supra)** as within period of 3 months, there has been no Memorandum of Charges/Charge sheet served upon the petitioner, the further continuation of the impugned suspension order is in violation to the law as laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** and **Rakibuddin Ahmed (supra)**.

26. Accordingly, this Court therefore directs the respondent authorities to reinstate the petitioner forthwith upon service of a certified copy of this order upon the respondent No.2. In doing so this Court further observes that the respondent authorities would be free to transfer the petitioner to any of its offices within the State so as to sever any local or personal contact that the petitioner may have and which he may misuse for obstructing the investigation against him. The respondent authorities may also prohibit the petitioner from contacting any person or handling records and documents till the stage of having to prepare his defence.

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

JUDGE

Comparing Assistant