



GAHC010262492022

Page No.# 1/4



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

Case No. : WP(C)/8260/2022

MD. ABDUL MATIN
SON OF LATE HATEM ALI,
R/O- VILLAGE- KATAHGURI,
P.O.- TUKTUKI,
P.S.- DHING, DISTRICT- NAGAON,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
DEPARTMENT OF REVENUE AND DISASTER MANAGEMENT,
DISPUR, GUWAHATI-781006.

2:THE DEPUTY COMMISSIONER
HOJAI CUM DISCIPLINARY AUTHORITY
SANKARDEV NAGAR

DIST.- HOJAI
ASSAM.

3:THE ADDITIONAL DEPUTY COMMISSIONER
MAGISTERIAL BRANCH
SANKARDEV NAGAR
HOJAI

DISTRICT- HOJAI
ASSAM.

4:THE ADDITIONAL DEPUTY COMMISSIONER
HOJAI CUM INQUIRY OFFICER



SANKARDEV NAGAR
HOJAI

DIST.- HOJAI
ASSAM.

5:THE ASSISTANT COMMISSIONER
HOJAI CUM PRESENTING OFFICER
SANKARDEV NAGAR

DISTRICT- HOJAI
ASSAM.

6:THE CIRCLE OFFICER
DABAKA REVENUE CIRCLE
DABAKA
DISTRICT- HOJAI

ASSAM

Advocate for the Petitioner : MR B CHANDA

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 10-01-2023

Heard Mr. B Chanda, learned counsel for the petitioner. Also heard Ms. P R Mahanta, learned counsel for the respondent no. 1 being the authorities under the Revenue and Disaster Management Department of the Government of Assam and Mr. H Sarma, learned Additional Senior Government Advocate for the respondents no. 2 to 6.

2. The petitioner was serving as a Lot Mandal of Lot No. 6 under the Dabaka Revenue Circle. While in service, the petitioner was taken into custody in connection with Dabaka Police Station Case No. 13/2022 under Section 120 (B)/384/409/420 of the Indian Penal Code on 29.01.2022. Consequent of being under detention beyond 48 (forty eight) hours, the

petitioner was placed under deemed suspension by the order dated 01.02.2022 of the Deputy Commissioner, Hojai at Sankardev Nagar.

3. Subsequently the petitioner was released on bail by the order dated 25.03.2022 of the competent authority. In the meantime, by an order dated 03.06.2022 the respondents no. 4 and 5, respectively, were appointed as Inquiry Officer and Presenting Officer for the purpose of disciplinary proceeding against the petitioner.

4. The petitioner retired from service on 31.03.2022. In the meantime, after the retirement, the petitioner was also issued a notice dated 27.07.2022 requiring him to appear before the respondent no. 6 pursuant to the departmental proceeding that had been initiated against the petitioner.

5. In the circumstance, this writ petition is instituted with the following prayers:

“Under the facts and circumstances it is therefore, prayed that Your Lordships” would be pleased to call for the records of the case and issue rule upon the respondents to show cause as to why a writ of or in nature of (i) Certiorari should not be issued to set aside & quashed the (a) impugned order of suspension passed by the Respondent No. 2 vide office Memo No. HJPE 25/2020 -21/48 dated 01.02.2022 (Annexure-1) in respect of the Petitioner, (b) impugned order dated 03.06.2022 passed by the Respondent No. 2 vide memo No. HJPE 25/2020 -21/62 (A) (Annexure-2) in respect of the Petitioner and (ii) Mandamus should not be issued directing the Respondent Authorities to do the needful for release of the Post – Retirement benefits of the Petitioner and/or may pass such further order orders or direction as Your Lordships may deem fit and proper.

-AND-

Pending disposal of the rule, the operation of (a) impugned order of suspension passed by the Respondent No. 2 vide office memo No. HJPE 25/2020 -21/48 dated 01.02.2022 (Annexure-1) in respect of the Petitioner and (b) impugned order dated 03.06.2022 passed by the Respondent No. 2 vide memo No. HJPE 25/2020 -21/62 (A) (Annexure-2) in respect of the Petitioner may be suspended in the interest of Justice. And for this act of kindness the petitioner as in duty bound shall ever pray.”

6. A reading of the averments made in paragraphs 6, 8 and 9 makes it discernable that it is essentially a writ petition seeking for quashing of the order of suspension of the petitioner on the ground that 90 (ninety) days had elapsed since the order of suspension and therefore, by the proposition of law laid down by the Supreme Court in paragraph 21 of the Ajay Kumar



Choudhury –vs- Union of India reported in (2015)7 SCC 291, the order of suspension is required to be vacated.

7. An order of suspension is a condition of service imposed on an employee during his tenure of service and under the law, it cannot continue beyond the date of his retirement inasmuch as an employee retires as an employee of the organization and he does not retire as a suspended employee to give a meaning that the suspension continues even after the retirement.

8. From such point of view, the present petition with a pre-dominant prayer for interfering with the suspension order is misconceived inasmuch as from the date of retirement on 31.03.2022 no suspension order is in force against the petitioner. In respect of the other prayer for retirement benefits the petitioner would now be governed under the provisions of Rule 21 of the Assam Services (Pension) Rules, 1969 and if any further grievance remains, liberty remains to the petitioner to approach again, if so advised.

9. As it is an admitted position that a disciplinary proceeding had already been initiated against the petitioner, on the question of payment of pensionary benefits to the petitioner, the Commissioner and Secretary to the Government of Assam may consider the entitlement of the petitioner to the retirement benefits in terms of the provisions of Rule 21 of the Assam Services (Pension) Rules, 1969 and pass a reasoned order thereof whether the Government of Assam intends to withhold the whole or a part of the pensionary benefits under Rule 21 of the Assam Services (Pension) Rules, 1969 or the authorities do not intend to withhold any such pensionary benefits.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant