



GAHC010013572023

Page No.# 1/15



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

**Case No. : WP(C)/455/2023**

RAFED ALI AHMED  
S/O ABDUL JALIL R/O DATIRBARI P.S. AND DIST. BARPETA ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REP. BY THE SECRETARY AND COMMISSIONER TO THE GOVT. OF ASSAM  
EDUCATION DEPTT GUWAHATI-3

2:THE DIRECTOR OF ELEMENTARY EDUCATION  
ASSAM  
KAHILIPARA GHY-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER  
DHUBRI  
ASSAM 783301

4:THE DEPUTY INSPECTOR OF SCHOOL  
SOUTH SALMARA  
MANKACHAR ASSAM 78312

Advocate for the Petitioner : Ms. R. R. Saikia, Advocate.

Advocate for the Respondents : Mr. B. Kaushik, Advocate.

**BEFORE**

**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 10.02.2023

Date of Judgment : 17.02.2023



### **JUDGMENT AND ORDER (CAV)**

Heard Ms. R. R. Saikia, the learned counsel for the petitioner and Mr. B. Kaushik, the learned Standing Counsel, Elementary Education Department for the respondent Nos.1 to 4.

2. The case of the petitioner herein is that the petitioner is the Head Teacher and was posted to 1554 Non Sandrapara LP School, Assam. On 13.09.2022, one Siddik Ali lodged an FIR before the Officer-in-Charge of Sukchar Police Station alleging that on 08.09.2022, at about 9.30 PM, the petitioner had kidnapped his minor daughter, namely, Smt. Moushumi Khushbu and forcefully detained her in an unknown place and he doubted that the petitioner had sexually molested the girl and sold her outside the State. Upon receiving the said FIR, a police case was registered being Sukchar P.S. Case No.152/2022, under Sections 457/363/368/376(3) IPC read with Section 6 of the POCSO Act. Thereupon, on 14.09.2022, the petitioner was arrested in connection with the aforesaid case.

3. It appears from the records that the petitioner filed a bail application before this Court which was registered and numbered as Bail Application No.2906/2022, and this Court, vide an order dated 07.12.2022 taking into account that the petitioner was behind the bars for 84 days and the victim has refused medical examination and the petitioner got married with the victim, granted bail to the petitioner.

4. It further appears in the meantime subsequent to the arrest of the petitioner on 15.10.2022, the petitioner was placed under suspension pending Departmental Proceedings and subject to the approval of the Director of Elementary Education, Assam on the ground that the petitioner was arrested vide Sukchar P.S. Case No.152/2022, under Sections 457/363/368/ 376(3) IPC with immediate effect.

5. The petitioner thereupon on the ground that neither a Memorandum of

Charge has been served upon the petitioner within the period of 3 (three) months nor the period of suspension was extended by the Review Committee even after the period of expiry of the 3 (three) months from the date of deemed suspension has approached this Court under Article 226 of the Constitution.

6. The entire case of the petitioner is based upon the judgment of the Supreme Court in the case of **Ajay Kumar Choudhury vs. The 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. State of Assam and Others**, reported in **(2020) 2 GLR 621** whereby the Division Bench of this Court held that law laid down in **Ajay Kumar Choudhury** (supra) would also be applicable to such deemed suspension made under the provision of Rule 6 (2) of the Assam Services (Disciplinary and Appeal) Rules, 1964 (for short, the Rules of 1964).

7. Upon the writ petition being filed, this Court vide an order dated 01.02.2023 had issued notice and the learned counsel appearing on behalf of the Elementary Education Department was directed to obtain instructions as to whether the principles laid down in the case of **Ajay Kumar Choudhury** (supra) have been duly complied with or not.

8. In the backdrop of the above pleadings, let this Court take note of the submissions of the learned counsel for the parties. It is the submission of the learned counsel for the petitioner that the Supreme Court in the case of **Ajay Kumar Choudhury** (supra) has categorically laid down that the currency of a Suspension Order should not extend beyond three months if within the said period, the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee. Further to that the Supreme Court also observed that if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension period. The learned counsel for the petitioner



further submitted that the Division Bench of this Court , in the case of **Rakibuddin Ahmed** (supra) categorically observed that in cases of deemed suspension also the principles laid down in **Ajay Kumar Choudhury** (supra) would be applicable. Therefore, it is the case of the petitioner that as the suspension order was passed on 15.10.2022 and the period of 90 days is over, the further continuance of the suspension of the petitioner is liable to be interfered with.

9. On the other hand, Mr. B. Kaushik, the learned Standing Counsel, Elementary Education Department submitted that the law laid down by the Supreme court in the case of **Ajay Kumar Choudhury** (supra) as well as **Rakibuddin Ahmed** (supra) is not in issue. He, however, submitted that the petitioner upon being arrested and being in custody for a period exceeding 48 hours by virtue of Section 6(2) of the Rules of 1964, the petitioner was put under suspension pending drawal of Departmental Proceedings. The learned Standing Counsel, Elementary Education Department submitted that till the time the petitioner remains incarcerated, the provision of Rule 6(2) of the Rules of 1964 shall continue to apply and the right of the petitioner in terms with the judgment of **Ajay Kumar Choudhury** (supra) and **Rakibuddin Ahmed** (supra) would only accrue when the authority is being informed that he has been released on bail or is not otherwise in custody or imprisonment. Otherwise he submitted that if the law laid down by the Apex Court is made applicable to persons who are in custody, the very essence of Rule 6 (2) of the Rules of 1964 would be rendered nugatory. He also submitted that this aspect of the matter as to when the period of 3 (three) months would start in the case of deemed suspension have, however, not been considered in both the cases, i.e. in **Ajay Kumar Choudhury** (supra) as well as in **Rakibuddin Ahmed** (supra).

10. I have heard the learned counsel for the parties. Before dealing with the facts of the instant case, this Court deems it proper to deal with the judgment of



Supreme Court in the case of **Ajay Kumar Choudhury** (supra). In the said case, the appellant therein Mr. Ajay Kumar Choudhury assailed his suspension which was effected on 30.09.2011 and had been extended and continued ever since. The Supreme Court 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 the record, the said suspension 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. It was also observed that protracted period 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 the 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. The Supreme Court, thereafter, taking note of the Universal Declaration of Human Rights, 1948 the European Convention on Human Rights as well as the law laid down by the Constitution Bench in the case of **Kartar Singh vs. State of Punjab** and **Hussainara Khatoon (I) vs. State of Bihar** observed that right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Code of Criminal Procedure, 1973. It was observed that the legitimate expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries has been emphasised by the Supreme Court on numerous occasions. In the backdrop of

the above, the Supreme Court in the said judgment drawing the analogy from the proviso to Section 167 (2) of the Code of Criminal Procedure, 1973 thought it appropriate to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. 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/Chargesheet has not been served on the suspended person.

11. Accordingly, the Supreme Court in paragraph Nos.20 & 21 of **Ajay Kumar Choudhury** (supra) observed and directed that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. Paragraph Nos.20 & 21, being relevant, are therefore quoted herein below:-

*“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 Raghbir Singh v. State of Biha 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.”*

12. It may also be relevant from a perusal of the above quoted paragraphs that the Supreme Court had categorically observed that 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.

13. It is also relevant to take note of that in paragraph No.22 of the said judgment, the Supreme Court taking into consideration that the appellant therein was served with a charge-sheet, and, therefore, the directions given in paragraph No.21 may not be relevant to him any longer. However, the appellant therein, if so advised, was given the liberty to challenge his continued suspension in any manner known to law, and the action of the respondents would be subject to judicial review. Paragraph No.22 of the said judgment is, therefore, reproduced herein below:

*“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.”*

14. A Coordinate Bench of this Court in the case of **Rakibuddin Ahmed** (supra)



{WP(C) No. 3218/2019} had made a reference to the Larger Bench 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”?*

15. The Division Bench in the case of **Rakibuddin Ahmed** (supra) observed that the principles laid down in the case of **Ajay Kumar Choudhury** (supra) cannot be restricted to an order of suspension issued only on contemplation of drawal of Disciplinary Proceedings and not for deemed suspension and taking into account that the periodic review in case of deemed suspension is mandatory and the respondents authorities having not carried out the said exercise, the order of suspension dated 16.02.2019 was set aside. Paragraph Nos,15, 16 & 17 of the said judgment being relevant is quoted herein below:-

*“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.”*

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 called 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.

21. Now coming to the instant case, it would be seen that it was only on 07.12.2022 that the petitioner was released on bail. There is not a single mention in the writ petition to the effect that as to whether the petitioner had informed the Appointing Authority that he has been released on bail. Be that as it may, this Court having issued notice on 01.02.2023 would deem that the respondent authorities have notice that the petitioner has been released on bail on 07.12.2022. Taking into account the said date of issuance of notice, i.e. on 01.02.2023, the respondent authorities have time till 30.04.2023, i.e. 3 (three) months to take appropriate steps in terms with the observations made in paragraph No.20 herein above as well as Paragraph No.21 of the judgment in the case of **Ajay Kumar Choudhury** (supra). It is further observed that the above observations shall not preclude the Appointing Authorities to reinstate the petitioner to his office in the attending facts, if during this period upto 30.04.2023, the Appointing Authority deems it proper to reinstate the petitioner.

22. It is made clear that that if within 30.04.2023, the Memorandum of



charges/chargesheet is not served upon the petitioner, the further continuance of suspension vide the impugned order dated 15.10.2022 would be in violation to the order passed by the Supreme Court in the case of ***Ajay Kumar Choudhury*** (supra). Consequently, the concerned Appointing Authorities would have to reinstate the petitioner forthwith thereafter.

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

**JUDGE**

**Comparing Assistant**