

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

WP(C) No.6785 of 2017

Smti Kishori Baruah

..... ***Petitioner***

- Versus -

The State of Assam and others

..... ***Respondents***

B E F O R E

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

For the petitioner: Mr. D. Das, Sr. Advocate

For the respondents: Mr T. C. Chutia,
State Counsel

Date of Hearing : 13.12.2017.

Date of Judgment: **13.12.2017.**

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Das, learned senior counsel for the petitioner and also Mr. T. C. Chutia, learned Additional Senior Government Advocate appearing for the State respondent authorities.

2. The petitioner, who was serving as a District Social Welfare Officer at Guwahati and was also holding the post of Protection Officer under the Protection of Woman from Domestic Violence Act, 2005, was placed under suspension by an order dated 04.03.2017. The order states that the suspension is w.e.f. 27.02.2017 on which date, she was arrested in connection with ACB Police Station Case No.19/2016 u/s 120(B)/468/420/409 IPC r/w Section 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988.

3. A reading of the FIR in the ACB PS Case No.19/2016 shows that there are some very serious charges against the petitioner, leading to defalcation of

huge amount of public money. The charges pertain to non maintenance of accurate records for implementing the integrated child development schemes, and other charges, which are reflected in the ejahar. As it is a case, where apart from putting the petitioner under suspension on the ground of having been arrested in connection with the aforesaid police case, but such suspension order would also be justified in the public interest inasmuch as, in the event, the petitioner is allowed to remain in office, there is a possibility that there may be tempering and manipulating of the materials on record.

4. But, the unfortunate situation is that in spite of such serious charges against the petitioner and there being material with the respondent authorities to submit the memorandum of charges or charge-sheet, no such memorandum of charges or charge-sheet was submitted within a period of three months from the date of her suspension.

5. As a consequence of such non-submission of memorandum of charges and charge-sheet within a period of three months from the date of suspension, the petitioner is entitled to the benefit of the suspension order being revoked by following the proposition of law laid down by the Hon'ble Supreme Court in *Ajay Kumar Choudhary vs- Union of India*, reported in *(2015) 7 SCC 291*. Paragraph-21 of the said judgment of the Hon'ble Supreme Court is quoted below:-

"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 concerned person 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize 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. 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."

6. The law laid down by the Hon'ble Supreme Court is clear that in the event, the memorandum of charges or charge-sheet is not submitted within three months from the date of suspension order, the suspension order does not sustain any further. On the other hand, if the memorandum of charges had been submitted within the aforesaid period, a periodical review is required to be undertaken by the disciplinary authorities justifying as to whether the suspension should be further extended or not.

7. In the instant case, as already alluded herein above, no such memorandum of charges or charge-sheet had been submitted to the petitioner within a period of three months from the date of the order of suspension. It is also noticed that the suspension of the petitioner being on account of being arrested in connection with a criminal case, where definite materials are available to substantiate the charges against the petitioner, it is not understood as to why the disciplinary authority had not submitted the charge-sheet within the aforesaid period of three months.

8. In the circumstances, due to the laches on the part of the disciplinary authority in not submitting the memorandum of charges or charge-sheet within the period of three months from the date of suspension, there is no other option, but to set aside the order of suspension by following the proposition of law laid down by the Hon'ble Supreme Court in paragraph-21 of *Ajay Kumar Choudhary (Supra)*.

9. Accordingly, the order of suspension dated 04.03.2017 against the petitioner is hereby set aside. At the same time, as already indicated, it is not understood as to why the disciplinary authority had not issued the memorandum of charges or charge-sheet within the aforesaid period of three months.

10. On a query being put, nothing is forthcoming from the respondent authorities as to what prevented the disciplinary authority from issuing the memorandum of charges or charge-sheet within three months from the order of suspension. In the aforesaid premises, it is directed that the Chief Secretary to the Government of Assam shall cause an enquiry as to what lead

to the disciplinary authority in not issuing the memorandum of charges or charge-sheet against the petitioner within the required period of three months from the date of suspension order and depending upon the result of such enquiry, appropriate corrective measures be taken against the disciplinary authority.

11. It is further directed that as the order of suspension of the petitioner has been interfered with pursuant to the law laid down in paragraph-21 of *Ajay Kumar Choudhary (Supra)*, the respondent authorities shall do the further needful as required to be done under the said paragraph-21, meaning thereby, that the reinstated officer should not be posted in the place, where she was earlier posted and the place of posting should be such where she will not have any access of the records which may contain the materials against her.

In terms of the above, the writ petition stands disposed of.

JUDGE

Alam