

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNCHAL PRADESH)
ITANAGAR PERMANENT BENCH.

W.P. (C) 777 (AP) 2017

Appeal From
Writ Petition (Civil)

Appellant
Petitioner.

Shri Tani Tonkey

----VERSUS----

Respondent
Opposite Party

State of A.P.S. Arun.

Counsel for the Appellant

Petitioner

M. Pestin, Sr. Advt.
K. Dabi C. Gongo
L. Perme D. Talak
J. Dulom L. Kamsi
H. Toygo Y. Kiso
K. Dubey

Counsel for the Respondent P. Tamin

Opposite Party

CA (AP)

Noting by Officer or Advocate	Serial	Date	Office not, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

-AND-

IN THE MATTER OF

Shri Tani Jonkey,

Joint Commissioner (Under Suspension)

Department of Tax & Excise,

Vivekvihar, Itanagar,

Dist.: -Papumpare, Arunachal Pradesh.

M. No:- 7005392400

.....Petitioner

-VERSUS-

1. The Govt. of Arunachal Pradesh
represented through the Chief Secretary, Govt.
of Arunachal Pradesh, Itanagar.

2. The Commissioner,
Department of Tax & Excise,
Govt. of Arunachal Pradesh,
Itanagar.

..... Respondents

:::BEFORE:::

The HON'BLE MR JUSTICE AJIT BORTHAKUR

07.03.2018

Heard Mr. M. Pertin, learned Sr. counsel for the petitioner and also heard Ms. R. Basar, learned Govt. Advocate appearing for the state respondents.

2. By preferring this petition, under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the respondent authorities to revoke his suspension order and reinstate him in service after expiry of 90 days from the date of his suspension i.e. 22.08.2017, which expired 21.11.2017 but the respondent authorities have not reinstated him in service by invoking, the **Sub Rules (6) and (7) of Rule 10 of the Central Civil Service (Classification, Control and Appeal) Rules 1965.**

3. The petitioner's grievance is that while he was working as Joint Commissioner in the Department of Tax and Excise, Govt. of Arunachal Pradesh, an allegation was lodged against him pertaining to the provision under The Protection of Children from Sexual Offence Act, 2012 (POCSO), pursuant to which, The Itanagar Women Police Station Case No.-57/2017 under Sections 341/354 of the IPC read with Section of the POCSO Act was registered. Thereafter, the Department placed him under suspension contemplating disciplinary proceeding against him for his misconduct on 22.08.2017. Since then his suspension order has not been revoked thereby he continued to remain on suspension even after the prescribed period of 90 days. According to the petitioner, within a period of 90 days, the suspension order ought to have been revoked or modified by the review committee of the Department but the same has not been done till date.

4. Ms. Basar, learned Govt. Advocate submits that pursuant to the registration of the case, as stated above, the departmental inquiry has already been done and the disciplinary authority has drawn up a disciplinary proceeding against the petitioner. According to the learned Govt. Advocate, the approval for initiation of the disciplinary proceeding against the petitioner was accorded by the State Govt. on 07.08.2017, which is much before the submission of his representation dated 18.09.2017 for revocation of the said suspension order by invoking **Rule 10 of CCS (CCA) Rules 1965**. It has been contended by the learned Govt. Advocate that the representation, dated 18.9.2017, submitted by the petitioner was duly examined by the state respondents and accordingly, disciplinary proceeding has been drawn-up and the same is going on.

5. Mr. Pertin, learned Sr. counsel appearing for the petitioner submits that as per the provision contained in **Rule 10 of the CCS(CCA) Rules 1965**, the review for modification/revocation of the suspension order was required to be done before the stipulated period of 90 days from the date of the order of suspension and as categorically provided in Sub-rule (7), the order of suspension made or deemed would not be held valid after a period of 90 days unless it was extended by a review committee. In the case of the petitioner, the suspension order was issued on 22.08.2017, which means that the prescribed time limit expired on 21.11.2017 but till date, no review has been carried-out by the state respondents, in respect of the petitioner's suspension.

6. Therefore, Mr. Pertin submits that the suspension order would not survive after the expiry of 90 days. By operation of the CCS (CCA), Rules, the petitioner is entitled for reinstatement in service w.e.f 21.11.2017, with all consequential benefits including arrears of pay and allowances. The relevant paragraphs in the decision cited by the Apex Court, as referred to by Mr. Pertin, learned Sr. counsel, is quoted hereunder for ready reference:

In the **Union of India and Ors. Vs. Dipak Mali** reported in 2010 SSC, the Apex Court holds as follows:

"10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioner's case came up for review on 20-10-2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

11. The case sought to be made out on behalf of the petitioner Union of India as to the cause of delay in reviewing the respondent's case, is not very convincing. Section 19(4) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension".

7. In view of the above principle as propounded by the Apex Court in the above cited case, the respondent authorities are hereby directed to revoke the suspension order issued against the petitioner vide order No Tax (E)-48/2017, dated 22.08.2017, and reinstate him in service immediately w.e.f. 21.11.2017. Resultantly,

the respondents shall pay the petitioner all the consequential service benefits including arrears of pay and allowances due, to the petitioner as per law.

With the above direction, the writ petition stands **disposed** of.

JUDGE

Bikash/Yabii/victoria