

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

**ITANAGAR PERMANENT BENCH
WP (C) 828 (AP)2017**

Mr. Gangte Charchang,
S/ o Lt. Gangte Tai,
Vill-Leel, P.O./P.S.- Sangram,
Dist- Kurung Kumey,
Presently residing at Papu Nallah,
Naharlagun, Papumpare District,
Arunachal Pradesh.

.....Petitioner.

By Advocate:
Mr. T. T. Tara.

-Versus-

1. The State of Arunachal Pradesh, represented by Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. The Commissioner (Printing & Publication), Govt. of Arunachal Pradesh.
3. The Director, Department of Printing & Publication, Govt. of Arunachal Pradesh, Papu Nallah, Naharlagun.

..... Respondents.

By Advocates:
Mr. D. Soki, learned Addl. Sr. Govt. Advocate.

Date of Judgment & Order (Oral):29.06.2018.

**:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR
JUDGMENT & ORDER (ORAL)**

29.06.2018

By this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the impugned order No. DoP-71/2016, dated 13.01.2017, issued by the respondent No. 2/ the Commissioner (Printing & Stationary), Govt. of Arunachal Pradesh and to direct the respondents to release the full arrear amount of salary, allowances and all other financial benefits due to the

petitioner, during the period of his suspension from service, w.e.f. 10.11.2015 to 13.01.2017.

2. The Director, Information, Public Relations & Printing (IPR &P), Govt. of Arunachal Pradesh, by order No. IPR (Ptg)7/2009, dated 22.08.2005, placed the petitioner, who was working as Bindery Attendant at Govt. Printing Press, under suspension for his detention in custody w.e.f. 10.08.2005, for more than 48 (forty eight) hours, in connection with Itanagar P.S. Case No. 193/2005, in terms of Sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short 'CCS Rules'). After release on bail, the petitioner submitted petition to the authority to revoke his suspension order and allow him to join in his duty, but the Director, IPR &P, Arunachal Pradesh vide his reply, dated 21.10.2008, intimated him that the suspension order can be taken up only after disposal of the criminal case, which is pending in the Sessions Court and clearance received from the Police authority. Being aggrieved, the petitioner issued a Legal Notice, dated 19.04.2016, to the respondent No. 2/ the Commissioner (Printing & Publication), Govt. of Arunachal Pradesh and the respondent No. 3/ the Director, Department of Printing & Publication, Govt. of Arunachal Pradesh praying for the reliefs aforesaid, which was not responded. Aggrieved, the petitioner moved a Writ petition, being WP © No. 660 (AP)2016, challenging the legality of his suspension for an indefinite period. After receipt of notice in the said writ proceeding, the respondent No. 2 issued order No.DoP-71/2016, dated 13.01.2017, whereby the petitioner's suspension order was revoked and accordingly, reinstated in service. The aforesaid order was immediately followed by another order No. DoP-71/2016, dated 13.01.2017, intimating him that the salary for the suspension period will be decided as per the final decision of the Court in the criminal case, being Itanagar P.S. Case No.193/2005 under Sections 395/397/109/120B/121/123 IPC read with Section 25 (a) (1) /27 of the Arms Act and Section 4/5 of the Explosive Substances Act.

3. The petitioner has contended that even after expiry of 90 days, on 10.11.2005, the respondent authorities had kept the petitioner under suspension and deprived him of salary and other financial benefits indefinitely till date, in contravention of the CCS Rules, 1965.

4. Mr. T. T. Tara, learned counsel for the petitioner, submits that the respondent authority had neither drawn up any disciplinary proceedings, although placed under suspension w.e.f. 10.08.2005 till revoked by order, dated 13.01.2017, in connection with a criminal case, where his brother was, in fact, allegedly involved and trial of the case is going on, that is, for unjustified reason nor reviewed the suspension order, within the prescribed 90 days period. The petitioner being a government servant is entitled to full pay and allowances for the said period of suspension. Mr. Tara further submits that the respondent authority did not even give the petitioner the reasonable opportunity of hearing. Therefore, Mr. Tara also submits that placing the petitioner under suspension for an indefinite period, without giving reasonable opportunity of hearing and without drawing up disciplinary proceeding against him, as well as depriving him of salary and other financial benefits for the aforesaid period, making further, the same subject to the outcome in the criminal case, is wholly illegal. Mr. Tara, learned counsel for the petitioner, has relied upon three decisions of this Court, rendered in ***Badal Debnath Vs. State of Tripura & Ors.***, reported in ***1999 (1) GLT 489***; ***Amoy Morang Vs. State of Arunachal Pradesh & Anr.***, reported in ***2010 (1) GLT 352*** and ***Irom Binoy Singh Vs. State of Manipur & Ors.***, reported in ***2017 (1) GLT 459***.

5. Per contra, Mr. D. Soki, learned Addl. Sr. Govt. Advocate appearing on behalf of the respondent Nos. 1 and 2, contends that the petitioner underwent custodial detention for 104 days, w.e.f. 10.08.2015 to 21.11.2015 and now, on revocation of his suspension vide order No. DOP-71/2016, dated 13.01.2017, the petitioner is getting full duty pay and allowance from the date of joining. Mr. Soki submits that to avoid any future complicity that may arise for payment of the arrear pay and allowances for the said suspension period, the authority is awaiting for the exoneration of the petitioner from the criminal case, which is pending trial in the Sessions Court and therefore, the arrear salary and allowances for the suspension period could not be released. Mr. Soki, further submits that F.R. 54-B (3) empowers the competent authority to grant full pay and allowances for the suspension period, if it is of opinion that suspension of the employee was wholly unjustified, even where such employee, who is placed under suspension is concerned with a criminal case, and after trial, acquitted in the case. Mr. Soki has relied upon the ratio of the judgment of the Apex Court rendered in ***Greater Hyderabad Municipal***

Corporation Vs. M. Prabhakar Rao, reported in **(2011) 8 SCC 155** and the principle laid in the judgment of this Court in **Saru Ram Saikia Vs. State of Assam & Ors.**, reported in **2010 (1) GLT 614**.

6. I have duly taken note of the facts averred in the petition and the affidavit-in-opposition filed by the respondent Nos. 1 and 2 and further, the arguments advanced by the learned counsel of both the sides.

7. Perusal of the order, dated 22.08.2005, whereunder the petitioner was placed under suspension, was passed in exercise of the power vested in the respondent authority under Sub-Rule (2) 10 of the CCS Rules, 1965 for his detention in custody for a period exceeding forty eight hours on a criminal charge, with effect from the date of such detention on 10.08.2005. However, till date neither any departmental proceeding has been drawn up against the petitioner, nor review was undertaken and the criminal case is disposed of by the learned Sessions Judge. It is, therefore, the contention of the petitioner that the petitioner's suspension was wholly unjustified under F. R. 54-B (3) and (4) entitling him to full salary and allowances for the period of suspension w.e.f. 10.08.2005 till revoked by order, dated 13.01.2017. The respondents resisted the plea under Sub-rule (3) of F. R. 54-B, which is based on the rule that during the period of suspension an employee does not work and as such, he is not entitled to any pay unless after the termination of the criminal proceeding, the competent authority forms an opinion that the suspension of the petitioner was wholly unjustified.

8. In the case of **Union of India Vs. Dipak Mali**, reported in **(2010) 2 SCC 222**, the Supreme Court dealt with a similar fact situation of that of the petitioner and in Para 2, whereby under Rule 10 of the CCS Rules, 1965 amended by Notification, dated 23.12.2003, sub-rule (6) and (7) were inserted. As the same are relevant to facts of this case, the same are extracted herein below:-

"10...(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, on the recommendation of the Review Committee constituted for the purposes and pass orders either extending or revoking the suspension. Subsequently reviews

shall be made before the expiry of the extended period of hundred and eighty days at a time.

"(7) Notwithstanding anything contained in sub-rule (5), an order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days".

In the above reference case, the Hon'ble Apex Court of India had set aside and quashed the suspension order issued by the authorities stating inter-alia that the 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".

9. In the cases of ***Badal Debnath (Supra)*** and ***Amoy Morang (Supra)***, this Court categorically made it clear that the competent authority is well within its right to deny full pay and allowances, after revocation of the order of suspension in view of the mandate of F.R. 54-B, until an opinion is formed that the suspension of the government servant was wholly unjustified.

10. Illustrating Sub-rule (3) of F. R. 54-B, the Supreme Court in ***Greater Hyderabad Municipal Corpn. Case (Supra)*** held that under it, power is vested on the competent authority to order reinstatement to form an opinion, whether suspension of a government servant was wholly unjustified and if, in its opinion, the suspension of such government servant is wholly unjustified, such government servant will be paid with the full pay and allowances to which he would have been entitled, had he not been suspended. For better appreciation, Sub-rule (3) of F. R. 54-B is extracted herein below (relevant portion):

"54-B (3), where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended".

11. Sub-rule (8) of F.R. 54-B referred in the said provision, provides that the payment of the allowances, under the applicable sub-rule (3) is subject to all other conditions, under which such allowances are admissible.

12. In *Union of India Vs. K. V. Jankiraman*, reported in **(1991) 4 SCC 109**, the supreme Court held that even in cases, where acquittal in the criminal proceedings is on account of non-availability of evidence, the authorities concerned are vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which he deserves it. Similar view was taken by this Court in the case of Saru Ram Saikia (Supra).

13. In that view of the matter in entirety, this Court is of the considered opinion that the impugned order, dated 13.01.2017, whereunder the petitioner's right to salary for the period of suspension is made subject to the final decision of the Court of law, in respect of the criminal case pending in the Court of Sessions Judge vide Itanagar P.S. Case No. 193/04 under Sections 395/397/109/120B/121/122/123 IPC read with Section 25 (1) (a) / 27 of the Arms Act and Sections 4/5 of the Explosive Substances Act, does not require any interference. The respondents, however, would cause necessary steps to be taken to expedite the completion of the trial of the criminal case.

The writ petition, thus, **dismissed**. No costs.

JUDGE

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