

WP(C) 3331/2017
BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI

Heard Mr. R. Islam, learned counsel for the petitioner. Also heard Ms D. Borah, learned standing counsel, Health and Family Welfare Development Department appearing for the respondent Nos. 1, 2, 3 and 4, Mr. D. Choudhury, learned counsel appearing for respondent No. 5 and Mr. B. Dekha, learned counsel appearing for respondent No. 6.

The respondent Nos. 5 and 6 are arrayed as pro-forma respondent Nos. 5 and 6. While serving as Health Educator at Sidalsuti Mini PHC attached to Civil Hospital, Bongaigaon, on the allegation of excess payment against fraudulent dietary bills, the petitioner was suspended pending drawal of departmental proceeding with immediate effect by an order dated 5.12.2015 passed by the Director of Health Services.

By this application, the petitioner prays for setting aside of the aforesaid suspension order on the ground that till date the disciplinary proceeding had not been started by issuance of the charge sheet.

Ms Borah has submitted that charge sheet had not been served upon the petitioner and the charge sheet is in the stage of being finalized.

In the writ petition, allegations are levelled against the respondent Nos. 5 and 6 and Mr. Choudhury and Mr. Dekha have submitted that by filing affidavit, they have denied the allegations.

Having regard to the nature of relief prayed for, it is not necessary for this Court to go into the allegations made by the petitioner against the respondent Nos. 5 and 6.

In the case of Ajay Kumar Choudhury vs. Union of India through its Secretary & Anr., reported in (2015) 7 SCC 291, the Supreme Court in paragraph 21 had stated as follows:

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.

Undoubtedly, under the provisions of the Assam Services (Discipline and Appeal) Rules, 1964, the appointing authority can take recourse to suspension of an officer pending enquiry or in contemplation of an enquiry. It is, however, necessary that a periodical review is made to justify continuity of the suspension because order of suspension is not passed as a measure of punishment.

As no charge sheet had been submitted although almost one year nine months have gone by from the date of suspension, in view of the judgment rendered by the Supreme Court in Ajay Kumar Choudhury (supra), the suspension order cannot be sustained in law.

The petitioner will be re-instated in service by giving him appropriate posting

without prejudice to the disciplinary proceeding that may be initiated against him.

Accordingly, the writ petition is allowed in terms of the aforesaid directions and observations.