GAHC020002782026 2026:GAU-NL:427-DB

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

(KOHIMA BENCH)

WA No. 18 of 2026

MR. TAMA NGULLIE,
S/O MOTSUO,
RESIDENT OF PANGTI VILLAGE,
WOKHA, NAGALAND,
WORKING AS CHOWKIDAR (UNDER SUSPENSION)
IN THE GOVT. HIGHER SECONDARY SCHOOL,
SUNGRO, WOKHA, NAGALAND.

*.....**Appellant***

-***Versus***-

1. THE STATE OF NAGALAND,
REPRESENTED BY THE CHIEF SECRETARY
TO THE GOVT. OF NAGALAND

2. THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF NAGALAND,
DEPARTMENT OF SCHOOL EDUCATION & SCERT,
NAGALAND KOHIMA

3.THE PRINCIPAL DIRECTOR,
DIRECTORATE OF SCHOOL EDUCATION, KOHIMA

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

::BEFORE ::
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

For the Appellant **:** Mr. W. Marhu, Advocate

For the Respondents **:** Ms. Inaholi, Government Advocate

Date of Hearing **: 12.08.2026**
Date of Judgment **: 14.08.2026**

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

1. Heard Mr. W. Marhu, the learned counsel for the appellant. Also heard Ms. Inaholi, the learned Government Advocate appearing for the State of Nagaland.

2. This intra-court appeal has been preferred by the appellant, namely, Mr. Tama Ngullie, who was the writ petitioner in WP(C) No. 226/2025, impugning the judgment and order dated 24.03.2026, passed by the learned Single Judge in WP(C) No. 226/2025, whereby the writ petition preferred by the present appellant was dismissed.

3. The facts relevant for consideration of the instant intra-court appeal, in brief, are that the present appellant was appointed as a Chowkidar on *ad hoc* basis in the Government Secondary School, Sungro, Wokha on 13.04.1992. The service of the present appellant was regularized on 27.10.1992. On

04.02.2025, an FIR was lodged against the present appellant before the Officer-in-charge of Women Police Station, *inter alia*, alleging therein that he had sexually assaulted the daughter of the complainant. On the basis of the said FIR, Women P.S. Case No. 001/2025, under Sections 64/65(1) of BNS, 2023 read with Section 4 of the POCSO Act, 2012 was registered. The present appellant was arrested in connection with the aforesaid case on 05.02.2025.

4. On his arrest, the present appellant was placed under suspension, on 07.02.2025, in terms of Rule 6(2) of the Nagaland Services (Discipline and Appeal) Rules, 1967. The petitioner was thereafter released on bail in connection with the aforementioned case on 21.05.2025. After his release, he submitted an application to the respondent No. 3, namely, the Principal Director, Directorate of School Education, Kohima, Nagaland, on 02.06.2025, informing that he has been released on bail and his suspension order dated 07.02.2025 may be revoked accordingly.

5. Thereafter, when even after lapse of ninety days from the date of his informing the respondent No. 3 regarding the fact of his release, the suspension order was not revoked by the respondent authorities, the present appellant approached this Court by filing a writ petition seeking revocation of the suspension order. The said writ petition was registered as WP(C) No. 226/2025. However, by the judgment and order

dated 24.03.2026, passed by the learned Single Judge of this Court in WP(C) No. 226/2025, the writ petition filed by the present petitioner was dismissed. The instant writ appeal has been filed by the appellant impugning the aforesaid order of dismissal.

6. Mr. W. Marhu, the learned counsel for the appellant has submitted that the learned Single Judge has erred in dismissing the writ petition filed by the present appellant without taking into consideration that the respondent authorities, in spite of being informed about the fact of grant of default bail dated 21.05.2025 to the present appellant, on 02.06.2025, have failed to review or extend the suspension order 07.02.2025 and neither within that period any memorandum of charges were served on the present appellant.

7. He submits that the representation dated 02.06.2025 submitted by the present appellant to the respondent No. 3, wherein he requested the revocation of the suspension order dated 07.02.2025 due to non-review of the suspension order and non-furnishing of the memorandum of charges within the period of ninety days was rejected by the respondent No. 3 on 04.07.2025 relying on Rules 10(7) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. He submits that the respondent No. 3 had mis-interpreted the provisions contained in the Rule 10(7) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in as much as

the period of ninety days from the date on which the competent authority received the intimation of the petitioner's release from custody expired on 31.08.2025, however, even after that, no steps for reviewing or extending the suspension order was taken.

8. The learned counsel for the appellant submits that till filing of the WP(C) No. 226/2025 by the present appellant on 06.11.2026, no steps for reviewing or extension of the suspension order dated 07.02.2025 was taken by the respondent authority. It is only on 02.12.2025, the respondent authority constituted a review committee. He submits that the said review committee reviewed the suspension order dated 07.02.2025 and recommended extension thereof and it is only on 20.01.2026 i.e., after a lapse of 233 days from the date of intimation about release of the petitioner on bail in the connected criminal case to the respondent No. 3 i.e., on 02.06.2025, the suspension order was reviewed.

9. He further submits that the respondent No. 3 thereafter, after a lapse of 282 days from the date of intimation about the release of the present appellant to him, issued the memorandum of charges to the present appellant on 10.03.2026, which is much beyond the stipulated period of ninety days prescribed by law for the same.

10. He submits that the learned Single Judge had erred in holding that mainly because the petitioner was served with memorandum of charges, hence, the requirement of following the observations of the Apex Court in the paragraph No. 21 of the judgment in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** reported in "***(2015) 7 SCC 291***" would not be applicable. He submits that the Apex Court in the aforesaid judgment has categorically laid down the law in this context by observing that currency of 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/employees.

11. He submits that in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra), the petitioner was not given the benefit of the aforesaid observation made by the Apex Court in paragraph No. 21 as he was served with the charge-sheet. However, he submits that the learned Single Judge failed to take into consideration the facts of the case in "***Ajay Kumar Choudhary Vs. Union of India"*** (supra), where from time to time after the date of placing the petitioner under suspension, in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra), i.e., on 30.09.2011, there was periodic extension of the suspension order till 22.03.2013, when the suspension order was extended for the fourth time in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra). He, however, submits that in the

instant case till filing of the writ petition by the present appellant and till lapse of 233 days from the date of communication of the fact of release of the petitioner, on bail, to the respondent No. 3, no review of the suspension order was made.

12. He, therefore, submits that the facts of the instant case are distinguishable from the facts of the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra). He submits that the learned Single Judge also erred in not taking into consideration the fact that after arrest of the present appellant in connection with the criminal case filed against him, he was put under suspension by invoking Rule 6(2) of the Nagaland Services (Discipline and Appeal) Rules, 1967, which pertains to deemed suspension and that the principles laid down in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra) would also be applicable in case of deemed suspension.

13. He submits that after filing of the writ petition, the review committee was constituted by the respondent authorities and it is only in the meeting held on 16.12.2025, the review committee recommended the continuation of deemed suspension subject to mandatory periodic review. He submits that since meeting of the review committee was itself held much beyond the period of the ninety days from the date of suspension, the suspension order dated 07.02.2025 automatically lapses in view of the law laid down in the relevant

service rules as well as in the judgment of the Apex Court in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra). In support of his submission, the learned counsel for the appellant has cited following rulings: -

(i) "***State of Assam and another Vs. Mrigen Haloi***" reported in "***2021 (4) GLT 682***";

(ii) "***Rakibuddin Ahmed Vs. State of Assam and others***" reported in "***2019 (5) GLT 600***";

(iii) "***Rafed Ali Ahmed Vs. State of Assam and others***" reported in "***2023 (3) GLT 718***"

14. On the other hand, Ms. Inaholi, the learned Government Counsel appearing for the State Respondent had submitted that there is no infirmity in the judgment and order of the learned Single Judge justifying any interference by this Court in this intra court appeal. She submits that the learned Single Judge has rightly held that as in the instant case, the appellant has already been served with the memorandum of charges, hence, the observation made by the Apex Court in paragraph No. 21 of the judgment in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra) cannot be made applicable.

15. She further submits that the appellant has been accused of being involved in a heinous offence under POCSO Act, 2012 involving moral turpitude and as such, his continued suspension

during the pendency of the departmental proceeding against him is fully justified. She submits that the meeting of the review committee could not be held earlier as the forensic laboratory report in connection with the criminal case pending against the petitioner was not received by the office of the Superintendent of Police, Wokha. She submits that as per the recommendation of the review committee, the respondent authority, by the order dated 20.01.2026 extended the suspension of the present appellant till further order.

16. She further submits that considering the seriousness of the allegations levelled against the present appellant, mere release of the appellant on bail may not be a valid ground for revocation of the suspension order when the criminal trial is still pending against him in connection with grave offences involving moral turpitude. She further submits that under the aforesaid circumstances, there is no justification to disturb the order of the learned Single Judge by interfering with the same in this writ appeal.

17. We have considered the submissions made by the learned counsel for both sides and gone through the materials available on record. We have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

18. The point to be determined in this intra-court appeal is whether the learned Single Judge was correct in holding in the impugned judgment that as the petitioner (present appellant) has already been served with the memorandum of charge, the observations made by the Supreme Court in paragraph No. 21 of the judgment in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra) cannot be made applicable in the present case.

19. There is no dispute on the factual aspects of this case, namely, that the present appellant was put under suspension by order dated 07.02.2025, passed by the respondent No. 3 due to his arrest on 05.02.2025 in connection with the Women P.S. Case No. 1/2025 under Sections 64/65(1) of BNS, 2023 as well as Section 4 of the POCSO Act, 2012.

20. The fact that the suspension of the appellant was a deemed suspension under Rule 6(2) of the Nagaland Services (Discipline and Appeal) Rules, 1967 is also not in dispute. It is also not in dispute that the fact that the writ petitioner (present appellant) was released on default bail on 21.05.2025 was communicated to the respondent No. 3 by the present appellant by filing a representation on 02.06.2025. However, after the date of said communication, even after lapse of ninety days, which expired on 31.08.2025, the suspension order was not revoked, hence, the present appellant was compelled to approach this Court by filing the WP(C) No. 226/2025

challenging the suspension order dated 07.02.2025. It is also not in dispute that it is only on 20.01.2026, the suspension order 07.02.2025 was reviewed and it was directed for continuation of the suspension order till further orders. The said review order was made after a lapse of 233 days from the date of communication of the fact regarding release of the writ petitioner on bail to the respondent No. 3 i.e., 02.06.2025. It is also not in dispute that the memorandum of charges in the pending departmental proceeding against the present appellant was issued by respondent No. 3 on 10.03.2026, which is after a lapse of 282 days from the date of intimation of release of the petitioner from bail to the respondent No. 3 by the present appellant i.e., 02.06.2025.

21. We deem it proper to reproduce the relevant paragraphs of the judgment of the Apex Court in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra), wherein the legal proposition regarding requirement of review of the suspension order before lapse of period of three months from the date of such suspension order was laid down, 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 Raghubir Singh v. State of Bihar [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and more so of the Constitution Bench in Antulay [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , 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.

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."*

22. From perusal of the above judgment, it would be very clear that the Apex Court has categorically laid down the legal proposition in connection with a suspension order made i.e., namely, if within three months of the date of suspension, the memorandum of charges/charge-sheet is not served on the delinquent employee, the continuation of suspension order would be in violation of Article 21 of the Constitution of India. It appears that this legal proposition has been rightly restated by

the learned Single Judge in paragraph No. 8 of the impugned judgment.

23. It is also relevant to observe herein that in similar circumstances of deemed suspension though under the provisions of Rule 6(2) of Assam Service (Discipline and Appeal) Rules, 1964, which are provisions in *pari materia* with provision 6(2) of the Nagaland Services (Discipline and Appeal) Rules, 1967, the Division Benches of this Court have held in the cases, (i) "***State of Assam and another Vs. Mrigen Haloi***" (supra) and (ii) "***Rakibuddin Ahmed Vs. State of Assam and others***" (supra) that the principle of law laid down by the Apex Court in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra) will be applicable even in the case of deemed suspension and accordingly, if no review of suspension has been made within ninety days, such deemed suspension and its continuation will be vitiated and would be liable to be interpreted.

24. Further, a learned Single Judge of this Court in the case of "***Rafed Ali Ahmed Vs. State of Assam and others***" (supra) has also held that where the memorandum of charges/charge-sheet is not served upon delinquent officer/employee within three months from the date of his release on bail or release from custody or any custody or imprisonment and if the memorandum of charges/charges-sheet is served, the reasoned order must be passed for extension of such suspension. The said condition can only be taken into consideration when the

delinquent officer/employee brings the fact that he has been released on bail or otherwise not in custody or imprisonment to the appointing authority who has the power to vacate the suspension order. We fully agree with this legal proposition.

25. The legal proposition laid down by the Apex Court in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra) and it was clarified by the Division Benches of this Court in the cases of "***Rakibuddin Ahmed Vs. State of Assam and others***" (supra) and "***State of Assam and another Vs. Mrigen Haloi***" (supra) was that the that even in the cases of deemed suspension, the requirement of review of suspension order within a period of ninety days is there for continuation of such suspension order and if there is any lapse on the part of the appointing authority or any competent authority empowered to place a government servant under suspension, such continuation of suspension order would be violative of Article 21 of the Constitution of India and would be liable to be set aside.

26. The Apex Court has laid down this legal proposition in paragraph Nos. 20 and 21 of the judgment in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra). However, what it did in the said case has been reflected in paragraph No. 22 of the said judgment which is in context of the facts of the said case and same may not have a binding effect in cases with distinguishable facts.

27. Whereas, in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra), the petitioner was placed under suspension on 30.09.2011 and thereafter the said suspension orders were extended on 28.12.2011, 26.06.2012, 21.12.2012 and 22.03.2013, however, in the instant case no such extension of suspension order dated 07.02.2025 was made till 20.01.2026, which is after a lapse of about 233 days from the date when the fact of release of the present appellant from custody in connection with the criminal case filed against him was communicated to respondent No. 3, i.e., 02.06.2025.

28. As such, we are of the considered opinion that the learned Single Judge erred in not applying the legal proposition laid down by the Apex Court in paragraph Nos. 20 and 21 of the judgment in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra) and instead followed what the Apex Court did in the said case as reflected in paragraph No. 22 of the said judgment, without taking into consideration the distinguishable facts of the case in hand.

29. In view of the discussions made and reasons stated in the foregoing paragraphs, we are constrained to hold that the learned Single Judge erred in dismissing the writ petition and allowing the continuation of suspension order dated 07.02.2025 to continue in spite of the fact that such a continuation amounts to violation of the fundamental rights guaranteed to the petitioner under Article 21 of the Constitution of India in

view of the law laid down by the Apex Court in the case of "***Ajay Kumar Choudhary Vs. Union of India"*** (supra).

30. The impugned judgment is accordingly set aside and the suspension order dated 07.02.2025 issued by respondent No. 3 and its subsequent extension on 20.01.2026 are hereby quashed and set aside.

31. This writ appeal is, accordingly, allowed.

JUDGE **JUDGE**

COMPARING ASSISTANT

Amita Sharma

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