

Present :- Hon'ble Justice Amrita Sinha

Amal Kumar Deyati

The Chairman, Howrah District Primary School Council & Ors.

Judgment on :- 03-12-2021

The petitioner was serving as a head teacher of Sehagori Primary School. He was arrested on 7th February, 2018 in connection with Joypur Police Station case no. 21 of 2018 dated 7th February, 2018 under Sections 354/506 Indian Penal Code and S.10 of POSCO Act. The petitioner was enlarged on bail on 29th March, 2018. Chargesheet has been submitted against the petitioner and the criminal proceeding is continuing.

When the petitioner was in detention the Chairman, Howrah District Primary School Council by an office memorandum dated 19th February, 2018 invoked the provision of Rule 7(2) of the notification no. 906-SE (Pry) dated 9th July, 2001 and placed him under suspension with effect from the date of his detention and ordered that he shall remain under suspension until further orders. The office memorandum further mentions that during the period of suspension the petitioner will be entitled to get the subsistence allowance as per rules.

Learned advocate for the petitioner submits that the petitioner is due to superannuate on 30th November, 2021.

The specific case of the petitioner is that as no disciplinary proceeding has been initiated against him by his employer, he ought not to be kept under suspension for an indefinite period.

Reliance has been placed on several orders passed by the court to the effect that the period of suspension ought not to continue beyond a period of ninety days.

The petitioner prays that the order of suspension is liable to be set aside and the petitioner be allowed to resume his duties. A further prayer has been made for payment of his dues.

In support of his submission the petitioner has relied upon the following judgment:

1) **Union of India -vs- Rajiv Kumar** reported in **(2003) 6 SCC 516** paragraph 29

2) **Union of India & Ors. -vs- Dipak Mali** reported in **AIR 2010 SC 336** paragraphs 10 and 11

3) **Ajay Kumar Choudhary -vs- Union of India & Anr.** reported in **(2015) 7 SCC 291** paragraphs 20 and 21

4) **Sri Abanindra Mohanty -vs- Union of India & Ors.** reported in **(2010)4 WBLR (Cal) 366** paragraphs 12, 20-24

5) **Soma Majumder -vs- State of West Bengal & Ors.** reported in **(2011)3 WBLR (Cal) 185** paragraphs 16-18

6) **Amit Biswas -vs- State of West Bengal & Ors.** reported in **2007 LAB. I. C. 1295** paragraphs 24-26

Learned advocate for the respondents opposes the prayer of the petitioner. It has been submitted that the allegations against the petitioner are extremely grave and ugly. The criminal trial is pending. In the event the petitioner is acquitted in the criminal case, necessary steps will be taken by the respondent authorities in accordance with law.

The learned advocate for the Primary School Council relies upon the judgment delivered by this court in the matter of **Birbhum District Primary School Council & Anr. -vs- Md. Mukhtar Hossain & Ors.** reported in **2009(1) CHN 476.**

The respondents pray for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties.

FIR lodged against the petitioner, letter of complaint and the statement of witnesses are annexed to the writ petition. The allegations which are made therein are undoubtedly very serious and unpleasant. The petitioner being the head teacher of the primary school allegedly committed sexual assault on a minor girl of ten years. Be that as it may, as the criminal proceeding is sub-judice no comment is being made with regard to the allegations made in the complaint. It is for the appropriate court to decide the same.

What is to be decided in the instant case is whether the petitioner can be kept under suspension on and from the date of his arrest i.e. from 7th February, 2018 till date.

The petitioner was suspended in accordance with Rule 7(2) of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001. Rule 7 of the aforesaid Rules deals with suspension. Rule 7(1) lays down that:

7(1) Primary School Council may place a teacher under suspension – (a) Where an inquiry under sub-rule 1 of Rule 9 of the Rules against him is

contemplated by the Primary School Council or such an inquiry is pending; or
 (b) Where a case of any criminal offence involving moral turpitude against the teacher is under investigation or trial.

Rule 7(2) lays down that:

Where a teacher is detained in custody for a period exceeding 48 hours on a criminal charge or otherwise, he shall be deemed to have been suspended by an order of the appointing authority with effect from the date of his detention and shall remain under suspension until further orders. A teacher who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision as to the disciplinary action to be taken against the teacher.

Rule 7(4) lays down that:

A teacher under suspension or deemed to have been suspended shall be entitled to the following payments:-

(a) During the first three months of suspension, a monthly subsistence allowance equal to the amount of pay which he would have drawn if he had been on half-pay leave.

Provided that where the period of suspension exceeds three months, the appointing authority shall be competent to increase the amount of subsistence allowance for the remaining period of suspension by such amount, not exceeding 50 per cent of the subsistence allowance admissible during the first three months of suspension, if in the opinion of the appointing authority, the period of suspension has been prolonged for reasons to be recorded in writing.

(b) Dearness and medical and other allowances admissible from time to time on the basis of the subsistence allowance fixed by the competent authority.

In the instant case the petitioner was arrested on 7th February, 2018 and while he was in jail custody the order of suspension was issued in accordance with Rule 7(2) (supra). After the petitioner was enlarged on bail, no further order of suspension or otherwise was served upon him. He is getting his subsistence allowance.

The petitioner asserts that the employer did not initiate disciplinary proceeding against him. As the order of suspension continued for a prolonged period accordingly prayer has been made for setting aside the same and for permitting him to resume his duties.

Rule 7(2) though mentions about deemed suspension but at the same time it specifically mentions that suspension will be given effect from the date of detention until further orders. Admittedly in the instant case, apart from the initial order of suspension, no further order has been issued by the employer. The same implies that the petitioner is to remain under suspension until further orders; i.e., till the order of suspension is either revoked, reviewed or modified by the employer.

Rule 7(1) permits the Council to place a teacher under suspension where a case of a criminal offence involving moral turpitude is under investigation or trial. In the present case, criminal proceeding is admittedly pending against the petitioner. Allegations against the petitioner are under the provisions of the Indian Penal Code and POSCO Act.

Though no formal order under Rule 7(1) has been issued against the petitioner can the order of suspension under Rule 7(2) continue till fresh or formal order of suspension is issued under Rule 7(1)?

The Hon'ble Supreme Court in Rajiv Kumar (supra) was dealing with suspension of an employee under the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The expression 'until further orders' fell for consideration before the court. The court was considering as to

whether the order of suspension would be effective for the period of detention alone. The court categorically held that the order of suspension does not lose its efficacy and is not automatically terminated the moment detention came to an end and the person is set at large.

The court also took into consideration the plea raised relating to suspension for a very long period. The court was of the opinion that the order of suspension does not become invalid merely because it is for a long period.

In *Dipak Mali (supra)* the Supreme Court was of the opinion that by operation of sub-rule 6 of Rule 10 of the Central Civil Services (CCA) Rules, 1965, the order of suspension would not survive after the period of ninety days unless it was extended after review.

In the instant case there is no provision in the service rules of the petitioner requiring extension of the period of suspension after ninety days. On the contrary, the service rule of the petitioner provides for placing a teacher under suspension from the date of detention until further orders. Accordingly, the decision in the case of *Dipak Mali* also does not come to the aid of the petitioner.

In *Ajay Kumar Choudhury* the court directed that the suspension order should not extend beyond three months if within this period the memorandum of charges/chargesheet is not served on the delinquent officer/employee. If the memorandum of charges/chargesheet is not served, a reasoned order must be passed for extension of suspension.

In the instant case chargesheet has been filed against the petitioner and the criminal proceeding is pending. Accordingly, the said decision also does not help the petitioner.

In Abanindra Mohanty (supra) the court was considering the provisions of Rule 10 Central Civil Services (CCA) Rules, 1965. The court relied upon the decision delivered in the matter of Rajiv Kumar (supra) and decided the issue. As has been recorded that the service conditions of the petitioner being different to the service conditions under the Central Civil Services (CCA) Rules, 1965 accordingly the said decision does not help the petitioner.

In Amit Biswas (supra) the court was dealing with an employee charged under offences under Section 498A of the Indian Penal Code and held that as the offence has nothing to do with employment of the employee accordingly the employer is under obligation to see whether there are exceptional reasons for keeping the employee under suspension. The court was considering the provisions of West Bengal Service (Classification, Control and Appeal), Rules, 1971. In the instant case the allegation relates to sexual offence by the head teacher on a minor female student. The criminal case is sub-judice and the petitioner has been chargesheeted. It cannot be said that the offence is not concerned with the employment of the petitioner. Accordingly, the aforesaid decision does not help the petitioner.

In Soma Majumder (supra) the court dealt with the provisions of Rules 7 and 9 of West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001 and was of the opinion that the allegation made against the petitioner relates to a period prior to her joining service and accordingly the 2001 Rules will not be applicable in the facts of the said case. The facts of the case at hand are completely different from the facts of the case under reference. The ratio laid down in the case of Soma Majumder (supra) accordingly cannot be made applicable in the instant case.

In the matter of Md. Mukhtar Hossain (supra) the court held that merely because a suspension that commenced under the legal fiction in Rule 7(2) of the 2001 Rules continues for a long period would not invalidate the suspension or lead to any conclusion that the duration of the suspension stipulated in that

Rule is till the release of the primary teacher following the detention. The court further held that the plain words of sub-rule 7(2) of the 2001 Rules can only be understood to continue the suspension that began by virtue of the deeming provision till a further order in that regard is made. To infer that the sub-rule discontinues the suspension on cessation of detention would be to plant words therein and imply *casus omissus* when there is no case of strong necessity to presume the inadvertence in the drafting of the sub-rule.

In the present case the petitioner was deemed to have been placed under suspension on the date of his arrest and no further order being passed by the appointing authority implies that the order of suspension u/s. 7(2) is still valid and does not lose its force. No further order of suspension is required to be issued u/s. 7(1) of the Rules.

However, as it appears that the criminal trial is still under progress and in the meantime the petitioner reached superannuation, accordingly no fruitful purpose will be served by passing an order of review/revocation/modification of the order of suspension.

The writ petition fails and is hereby dismissed.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)