

Item No.4

07.12.2021
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

WPA 6675 of 2021
Murari Bera

v.

The State of West Bengal & Ors.

Mr. Swapan Kumar Nandi
Mr. Sibnarayan Chattopadhyay
... for the petitioner.

Mr. Bhaskar Prosad Vaisya
Mr. Arindam Chattopadhyay
... for the State.

Mr. Biswabrata Basu Mallick
... for DPSC, Hooghly.

The petitioner is an Assistant Teacher under the
Hooghly District Primary School Council.

By an order dated March 16, 2015 he was placed
under suspension with effect from the date of his
detention until further order.

The petitioner was in jail custody for more than
forty-eight (48) hours in connection with Arambagh P.S.
Case No. 68 dated January 19, 2015 under Sections
147/148/149/323/325/307/506 IPC, 25/27/35 Arms
Act, 3/4 Explosive Substances Act, 9(b) I.E Act.

The petitioner was released on bail by an order
dated February 13, 2015. The criminal case against the
petitioner is continuing till date.

The order of suspension clearly mentions that the suspension will be effective from the date of detention until further order. No further order has been produced before this Court after March 16, 2015 that the petitioner was at all permitted to join the school after being enlarged on bail.

The learned advocate for the petitioner submits that as he has been enlarged on bail he cannot be kept under prolonged suspension for such a long period.

The petitioner relies upon the judgment delivered by this Court in the matter of Suman Roy Chowdhury v. The State of West Bengal & Ors., reported in 2007(3) SLR 809. Reliance has also been placed on the judgment delivered by this Court in the matter of Sundar Gopal Singha v. West Bengal Board of Secondary Education & Ors., reported in 2003(6) SLR 11.

In Suman Roy Chowdhury (supra) the Court was taking into consideration the provision of Rule 7(3) of WBSF(C, C&A) Rules, 1971. The criminal proceeding was initiated against the petitioner under Sections 498A/406 IPC.

In Sundar Gopal Singha (supra) the Court was taking into consideration the provisions of Non-Government Institution (Aided and Unaided) Rules, 1969 where the petitioner was implicated in the police case under Sections 498A/306 IPC.

In both the above cases the allegation was in respect of an offence which was no way connected with the employment of the petitioners.

In the instant case the allegation against the petitioner is extremely serious under the provisions of the Arms Act, Explosive Substances Act, I.E Act as well as the Indian Penal Code.

The Hon'ble Supreme Court in Union of India –vs- Rajiv Kumar reported in (2003) 6 SCC 516 paragraph 29 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 the matter of Birbhum District Primary School Council & Anr. –vs- Md. Mukhtar Hossain & Ors.

reported in 2009(1) CHN 476 the court held that merely because the suspension 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 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 no further order has been passed either modifying or reviewing the order of suspension.

In view of the law laid down hereinabove, I am of the opinion that the order of suspension is still valid.

As it appears that the petitioner is being paid subsistence allowance from March 2015 without performing any duties and considerable period of time has elapsed in the meantime, the concerned authority of the Hooghly District Primary School Council is directed to review the order of suspension and to take a decision as to whether the petitioner is still required to be kept under suspension or not.

The respondent authority shall consider the case of the petitioner at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order. The respondent shall intimate the reasoned order to the petitioner immediately thereafter.

It is made clear that all points are left open to be decided by the said respondent at the time of reviewing the order of suspension.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)