

08.12.2021
SL No. 40
Court No. 24
(P.M.)

WPA 17553 of 2021

**Mohan Lal Shee
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Shibaji Kumar Das,
Ms. Rupsa Sreemani
... for the petitioner

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee
... for the State

Mr. Kamal Mishra,
Mr. Abhijit Basu
... for Council

The petitioner is a teacher of a primary school. He was arrested in connection with Patashpur Police Station Case No. 271 of 2021 dated 18th June, 2021 under Sections 406/409/379/506/34 of IPC. He was detained in jail custody with effect from 31st July, 2021 and was enlarged on bail on 18th August, 2021.

By an order dated 4th October, 2021 the petitioner was placed under suspension with effect from 31st July, 2021 and the order of suspension was to remain in force till the petitioner is reinstated in his post by the subsequent order from the District Primary School Council to that effect and acquittal of the charges against him or dismissed from the services by the Council by issuing a relevant order to that effect.

The petitioner submits that in the order of suspension the designation of the petitioner has been wrongly mentioned. The petitioner has been described as

Assistant Teacher whereas he happens to be the Head Master of the Primary School.

It is the further contention of the petitioner that the order of suspension ought to have come to an end the moment the petitioner is enlarged on bail.

It has been submitted that no disciplinary proceeding has been initiated against the petitioner till date. Prayer has been made for permitting the petitioner to resume his duties.

The learned advocate representing the Purba Medinipur District Primary School Council submits that the petitioner never approached the authority with his prayer for reinstatement in service. If the petitioner makes an application, the same will be considered in accordance with law.

The issue whether a primary teacher who has been suspended in terms of the G.O. No. 906-SE (Pry) dated 9th July, 2001 will be entitled to reinstatement in service on being enlarged on bail was taken up for consideration by the Hon'ble Division Bench of this Court.

The Division Bench in the matter of Birbhum District Primary School Council & Anr. – vs – Md. Mokhtar Hossain & Ors. reported in 2009(1) CHN page 476 held that the plain words of the Rules can only be understood to continue the suspension 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.

The Court while deciding the issued took into consideration the order passed by the Hon'ble Supreme Court in the matter of Union of India – vs – Rajiv Kumar AIR 2003 SC 2917.

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.

From the aforesaid it appears that the order of suspension remains valid till a further order either reviewing/modifying the same is passed.

In the instant case, there is no further order after the order of suspension which was made on 4th October, 2021.

It will be open for petitioner to approach the Council with his prayer for reinstatement.

In the event such a representation is made it will be open for the council to consider the same strictly in

accordance with law, at the earliest, in the light of the observations made hereinabove.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)