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20.12.2021.
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 17799 of 2021
(Via Video Conference)**

**Anwarul Hoque
-versus
State of West Bengal & Ors.**

**Mr. Sukanta Chakraborty,
Mr. Kaustav Shome.
...For the Petitioner.**

**Mr. Md. Sarwar Jahan,
Mr. Sk. Nayeemul Hoque.
...For the Respondent No.4.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Arindam Chattopadhyay.
...For the State.**

The petitioner was appointed as an Assistant Teacher in a primary school in the year 1995. On 4th April, 2005 he was implicated in a criminal case under sections 302/114/34 of the Indian Penal Code read with sections 3 / 4 of the Explosive Substances Act.

The petitioner was taken in custody and thereafter enlarged on bail on 29th March, 2006. After being released on bail the petitioner was permitted to resume his duties in the school by an order dated 19th October, 2006 passed by the Chairman of the Murshidabad District Primary School Council. The period of absence from 21st November, 2005 to the day before joining was treated as leave without pay.

The petitioner was thereafter, appointed as the head teacher of a primary school on 4th June, 2010.

The petitioner was convicted in the criminal case that was pending against him. The appeal preferred by the petitioner challenging his conviction stood dismissed.

The petitioner thereafter was released on bail by the order of the Hon'ble Supreme Court when the Court took into consideration that the petitioner had already undergone approximately 10 years' imprisonment.

The petitioner submits that he is due to attain his age of superannuation early next year (31.01.2022). He has not been permitted to resume duties on and from July 2011 after being convicted in the criminal case. He was taken in custody and thereafter released on bail in compliance of the order passed by the Hon'ble Supreme Court on 13th September, 2021.

The petitioner has filed representation before the Chairman, Murshidabad District Primary School Council permitting him to join his duties and to process his retirement papers. The representation filed by the petitioner on 27th October, 2021 is pending consideration till date. A further representation was filed before the Sub-Inspector of School, Beldanga East Circle, Murshidabad on 29th October, 2021 and the same is also pending consideration.

The petitioner relies upon an order passed by a Coordinate Bench of this Hon'ble Court on 1st December, 2011 in W.P. 11207 (W) of 2008 in the matter of Dilip Kumar Biswas -vs- State of West Bengal reported in 2011 SCC online Cal 4827 wherein the

Court was pleased to set aside the suspension order. The Court observed that as the employee attained the age of superannuation and no disciplinary proceeding was pending against him, the order of suspension cannot be made alive.

In the present case, the petitioner is still in service and the employer does not contemplate any disciplinary proceeding at this stage.

In the instant case, it appears that the petitioner was under deemed suspension when he was taken in custody for more than 48 hours. Thereafter, being enlarged on bail the petitioner was permitted to resume his duties. He was also appointed to the post of head teacher. After he was convicted he was taken in custody and he remained in custody till he was released on bail by order of the Hon'ble Supreme Court.

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 suspension.

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

The petitioner submits that he has not been paid his subsistence allowance.

The petitioner has already filed a representation before the Chairman and the Council highlighting his grievances.

As it appears that the petitioner is due to retire on 31st January, 2022, the instant writ petition is disposed of by directing the Chairman, Murshidabad District Primary School Council being the respondent No.4 herein to take a decision in response to the representation filed by the petitioner strictly in

accordance with law, in the light of the observations made hereinabove at the earliest, but positively within a period of five weeks from the date of communication of a copy of this order.

The said respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

W.P.A. 17799 of 2021 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.)