

Sl. No.06
11.02.2021
Srimanta

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

WPA /2 /2020

Bablu Singha
-versus-
The State of West Bengal & Ors.

Mrs. Pratip Mukherjee, Adv.,
Mr. Jayjit Dutta.

...for the petitioner.

Mr. Bhaskar Maitra, Adv.,

...for the respondents.

The petitioner, an assistant teacher of Kumartuli Primary School was suspended from his service with effect from 20th May, 2018 on the ground that while he was in service a complaint was lodged against one of the guardians of a student of the said school on 20th May, 2018 under Section 10 and 12 and POCSO Act, 2012 was initiated against him and he was arrested during investigation. It is further stated by the petitioner that he was released on bail on 26th June, 2018 after the defacto complainant filed an affidavit stating, inter alia, that she lodged a false complaint against the petitioner as a result of some dispute and difference which cropped up between the petitioner and the guardians of the said school over the issue of distribution of midday meal. As the petitioner was in custody for more than 48 hours he was suspended by the Chairman, Siliguri Primary School Council, respondent No.2 herein under the provision of Rule 7(2) of the Primary School Rules of 2001.

The petitioner made a representation before the respondent No.2 requesting him to permit him to rejoin his service after being released on bail. But respondent No.2 failed to consider the said representation, which prompted the petitioner to file a writ petition being WP No.20093(w) of 2019. A Coordinate Bench of this Court passed an order dated 17th October, 2019 directing the respondent No.2 to consider the representation and passed a reasoned order.

The grievance of the petitioner is that the respondent No.3 passed a purported reasoned order, on 18th November, 2019. The relevant portion of which is quested below:

“The petitioner was suspended under Rule 7(2) of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rule, 2001 and in the said Rule, it is categorically mentioned that where a teacher is detained for more than 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.”

It is alleged by the petitioner that the respondent No.2 failed to show any reason as to why he rejected the representation made by the petitioner. He only quoted the provision of Rule 7(2) of the West Bengal Primary Education (Conditions of Service of Teacher of Primary School) Rule 2001.

Learned Advocate for the petitioner submits that where an employee is under deemed suspension, his suspension cannot be continued after the expiry of 60

days or 90 days as the case may be when he is entitled to be released on bail. In support of his contention learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhury vs. Union of India & Anr.** Reported in **(2015) 7 SCC 291**.

Learned Advocate for the petitioner has especially referred to paragraph 20 of the said reported decision. Paragraph 20 of the aforesaid decision is quoted 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 authorize 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 and more so of the Constitution Bench in Antulay, 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.”

Learned Advocate for the respondent No.3-4, on the other hand submits, referring to a Division Bench decision of this Court in **Birbhum District Primary School Council & Anr. Vs. Md. Mokhtar Hossain & Ors.** reported in **(2009) 1 CHN 476**, that Rule 7(2) of the West Bengal Education (Conditions of Service of Teachers of Primary School) Rules 2001 that the said provision is a deeming provision till the further order in that regard is made. The said provision cannot be interpreted in any other manner resulting there by absurdity and obscurity of the said provision. Deemed suspension shall continue “until further orders”. The respondent No.2 is authorized to withdraw the suspension order on consideration of materials. But if he thinks it fit that the order of suspension should continue, he has every authority to reject the representation submitted by the petitioner.

Having the submission made by the learned Advocates for the petitioner and respondent and on perusal of the legal provision as well as the decisions passed by the Hon’ble Supreme Court and the Division Bench of this Court, I like to record that the decision of **Ajay Kumar Choudhury** (supra) is a

subsequent decision of the Hon'ble Supreme Court which I am bound to follow. In the said reported decision, the petitioner was suspended on the ground that the criminal case was initiated against him and he was in custody for more than 48 hours. The Hon'ble Supreme Court after considering plethora of decisions on the issue as laid down the following guideline.

"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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize 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."

It is pointed out by the learned Advocate for the respondents that charge-sheet has been filed against the petitioner under Sections 10 and 12 of the POCSO Act.

Though, it is for the trial court to consider as to whether the charge against the petitioner is proved or not, I am not unmindful to note that the petitioner was released on bail on the basis of an affidavit submitted by the defacto complainant stating, inter alia, that she lodged a false case against the petitioner due to a dispute over distribution of mid-day meal. The said aspect has not been considered at all. The respondent No.2 did not assign any reason as to why the order of suspension should be extended even after the petitioner was released on bail. Pending final decision in the criminal case, preventing the petitioner from discharging the duty is against the recognized principle of human dignity.

For the reasons stated above the instant writ petition is disposed of directing the respondent No.2 to reconsider the representation made by the petitioner in the light of the observation made in this judgment hereinabove and further pass a reasoned order after giving opportunity to the petitioner or the representation of being heard.

Such representation shall be disposed of by the respondent No.2 within three weeks from the date of communication of this order and shall be communicated to the petitioner.

(Bibek Chaudhuri, J.)