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14.03.2022
d.p.

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

W.P.A 2068 of 2022

**Gopi Nath Saren
-versus
State of West Bengal & Ors.**

**Mr. Soumik Ganguly,
Mr. Dilip Kumar Sadhu.
...For the Petitioner.**

**Mr. Ranjan Saha.
...For the DPSC, Paschim
Medinipur.**

**Mr. Bhaskar Prasad Vaisya,
Mr, Sk. Md. Masud.
...For the State.**

The petitioner is aggrieved by the order dated 5th January, 2022 passed by the Chairman, District Primary School Council, Paschim Medinipur. By the said order, the prayer of the petitioner for reinstatement has been refused.

The petitioner is a suspended teacher. He is involved in Lalgarh P.S. Case No. 05/19 dated 19th January, 2019 under Section 376 (f)(i)(n) of IPC and Sections 6/8 POCSO Act. Presently, he is on bail. He has prayed for reinstatement before the Council.

The prayer has been refused on the ground that the criminal case is pending and the allegation against the petitioner is highly sensitive and the petitioner cannot be allowed to teach the children of the primary

school, as the primary education of the school and environment would be polluted if he be permitted to join the school.

The learned advocate for the petitioner submits, as the criminal case is pending he cannot be said to be convicted in the same. The Council ought not to have refused his prayer for reinstatement.

It has been submitted that the petitioner cannot be kept under suspension for an indefinite period. No departmental proceeding has been initiated against him till date.

The petitioner in support of his case relies upon a judgment delivered by the Hon'ble Division Bench of this Court on 24th March, 2008 in MAT 57 of 2008 (Saroj Kumar Paul -vs- State of West Bengal). The Hon'ble Division Bench sent the matter for further reconsideration as to whether suspension was necessary during the pendency of the criminal proceeding.

It appears from the judgment delivered in the case of Saroj Kumar Paul (supra) that the matter related to a proceeding under Sections 498A/320/34 of the IPC.

In the present case, the matter relates to Section 376 (f)(i)(n) of IPC and Sections 6/8 POCSO Act.

This Court decided a similar issue on 03-12-2021 in WPA 5450 of 2021 (Amal Kumar Deyati Vs. The Chairman, Howrah District Primary School Council & Ors.).

The Court took into consideration the judgment delivered by the Hon'ble Supreme Court in the matter of **Union of India –vs- Rajiv Kumar** reported in **(2003) 6 SCC 516** paragraph 29.

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 Amal Kumar Deyati (supra) the Court also took note of 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.**

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.

Here the allegation against the petitioner is such that if he is permitted to join the school at this point of time it may be viewed in a different manner and the observation of the Chairman that the environment of the school will be polluted does not appear to be unfounded.

There is no apparent error in the impugned order. The prayer of the petitioner for reinstatement was duly considered and rejected. In terms of the applicable Rule the petitioner cannot pray for reinstatement till an order to that effect is passed by the Council.

In view of the above, no relief can be granted in favour of the petitioner in the present writ petition.

The writ petition fails and is hereby dismissed.

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

(Amrita Sinha, J.)