

06.04.2022
SL No. 9
Court No. 24
(P.M)

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

WPA 2361 of 2019

**Munshi Jiauddin
Vs
The State of West Bengal & Ors.**

Mr. Kallol Basu,
Mr. Suman Banerjee
... for the petitioner

Ms. Chaitali Bhattacharyya,
Mr. Mrinal Kanti Ghosh
... for the State

None appears on behalf of the Burdwan District
Primary School Council despite service.

Leave granted to the learned advocate-on-
record of the petitioner to file affidavit of service in the
course of the day.

The petitioner was serving as a Head Teacher of
Kaity Hemnalini Jr. Basic School. He stood convicted
in a criminal case being Madhabdihi Police Station
Case No. 84 of 2012 and was detained in jail custody
from 8th May, 2013 to 6th August, 2013. He was
charged with offence under Sections
147/148/149/325/326/307/302/120B of Indian
Penal Code and Section 25/27 of the Arms Act and
Sections 3/4 E.S. Act.

He was produced before the learned Court below and was granted bail on 6th August, 2013. As the petitioner was in jail custody for more than 48 hours, he was placed under suspension with effect from 8th May, 2013 till 6th August, 2013, that is, only for the period he was detained in jail custody.

By an order dated 26th August, 2013 the Chairman of the District Primary School Council, Burdwan allowed the petitioner to resume his duties in the school forthwith. The said permission was given to the petitioner keeping in mind the interest of primary education.

The order dated 26th August, 2013 permitting the petitioner to resume duties clearly mentions that the teacher was entitled to get subsistence allowance as per extant rules, subject to the condition that, after obtaining final judgment of the Court in the pending criminal case, the question of withdrawal of suspension will be considered by the office, but the order of suspension will remain valid until further order.

In terms of the aforesaid office memo dated 26th August, 2013 the petitioner rejoined his duties and performed his work till he attained his normal age of superannuation on November, 2019. The criminal case is still sub-judice.

While the petitioner was in service he filed the present writ application praying for a direction upon the respondent authorities to withdraw the order of suspension and to pay his arrear salary and other admissible dues. A prayer was also made for making his service book ready for getting the pension and other retiral benefits immediately after his retirement.

The petitioner has annexed documents to show that he attended his duties after he was permitted to join service in August, 2013 and it is the categorical submission of the petitioner that he performed duties till his date of superannuation.

The petitioner submits that on one hand by the office memo dated 26th August, 2013 the petitioner has been allowed to rejoin his duties, but on the other hand the order of suspension was kept valid.

It has been submitted that an employee cannot be allowed to remain under suspension and also be permitted to join duty at the same time. No disciplinary proceeding was ever initiated against the petitioner.

The allegation against the petitioner has no connection with his service. As the petitioner retired in the meantime, the order of suspension lost its force and the petitioner ought to be paid his terminal benefits.

In support of his prayer the petitioner has relied upon a judgment delivered by this Court in Gunamay Mahato – Vs – The State of West Bengal & Ors. reported in 2015 SCC Online CAL 7503.

The Court was of the opinion that as the criminal proceeding in which the petitioner has been convicted has no nexus with his service and there is no allegation of pecuniary loss of the Government by the petitioner during his service tenure, accordingly, the petitioner will be entitled to his terminal benefits. The Court was pleased to direct the respondent authorities to release the terminal benefits arising out of his service.

None appears on behalf of the Council.

In the instant case, the petitioner was permitted to perform his duties in the school and was kept under suspension simultaneously. The aforesaid two activity cannot continue parallelly. An employee has to be placed either under suspension or be permitted to perform his duties.

The petitioner has averred that he attended his duties after he was permitted to do so and continued to remain in service till he attained his age of superannuation in 2019.

Admittedly, the offence in which the petitioner has been charged is no way related with his service. There is no allegation of pecuniary loss.

Though there is no formal order of revocation of the order of suspension, but the moment the petitioner was directed to rejoin school and was permitted to continue with his duties till his superannuation implies that the respondents did not intend to keep the petitioner under suspension any further. The petitioner after being enlarged on bail in August, 2013 remained in service till November, 2019. Revocation of the order of suspension was by way of implication.

In view of the above, relying on the judgment delivered by this Court in the matter of Gunamay Mahato (supra) the instant writ petition is disposed of by directing the District Primary School Council, Purba Burdwan through the Chairman of the said Council to take necessary steps to prepare and complete the service book of the petitioner and to process all claims of the petitioner relating to his terminal benefits. The school in question shall also render all necessary assistance at the time of preparation of the service book of the petitioner and thereafter forward the same to the District Primary School Council.

All consequential steps shall be taken by the Council to ensure that the petitioner receives his terminal benefits at the earliest.

The Council shall also take steps to calculate and disburse the admissible salary of the petitioner which is due and payable to him by adjusting the subsistence allowances which has already been paid to him.

The Council shall also ensure that the financial benefits which are due to the petitioner are disbursed in his favour at the earliest but positively within a period of six months from the date of communication of a copy of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)