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

**W.P.A 18791 of 2021
(Via Video Conference)**

**Sabuj Kanti Manna
-versus
The State of West Bengal & Ors.**

**Mr. Apurba Krisnha Das.
...For the Petitioner.**

**Mr. Ranjan Saha.
...For DPSC.**

**Mr. Bhaskar Prasad Vaisya.
...For the State.**

The petitioner is an assistant teacher of a primary school. He was involved in Debra P.S. Case No. 01/2021 dated 1st January, 2021 under sections 143, 341, 325, 307, 506 and 34 IPC. He was placed under suspension on and from 2nd January, 2021 as he was detained in custody beyond 48 hours as per Rule 7(2) of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001.

The Chairman-in-charge of the District Primary School Council, Paschim Medinipur in the Office Memorandum dated 9th February, 2021 mentions that the order of suspension shall remain in force until he is reinstated by a subsequent order from the Council to that effect on acquittal of the charges levelled against him or dismissed from service under this Council by

issue of relevant order to that effect. The petitioner shall receive monthly subsistence allowance as per Rules.

The petitioner submits that he was enlarged on bail by an order dated 25th January, 2021 by the Learned Sessions Judge, Paschim Medinipur.

The petitioner submits that as he has been released on bail, accordingly, he ought to be reinstated in service.

The petitioner made a representation before the Chairman of the Council on 16th November, 2021 and prays for a direction upon the Council to consider the said representation.

The learned advocate appearing for the respondents opposes the prayer of the petitioner.

The petitioner in support of his case relies upon 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.

This Court in the matter of Amal Kumar Deyati – vs- The Chairman, Howrah District Primary School Council & Ors. (WPA 5450 of 2021) delivered judgment on 3rd December, 2021 involving similar issue.

The Court took into consideration the order passed by the Hon'ble Supreme Court in the matter of Union of India -vs- Rajiv Kumar reported in (2003) 6 SCC 516 paragraph 29 wherein the Court 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 was of the opinion that the order of suspension does not become invalid merely because it is for a long period.

In Md. Mukhtar Hossain (*supra*) the Court held that to infer that the sub-rule 7(2) of the 2001 Rules 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, the Chairman-in-charge by an order dated 9th February, 2021 clearly mentioned that the order of suspension shall remain in force till the petitioner is reinstated by a subsequent order or till he is dismissed from service.

Admittedly, no disciplinary proceeding has been initiated against the petitioner till date.

It will be open for the Chairman of the District Primary School Council to take a decision with regard to the representation filed by the petitioner on 16th November, 2021 strictly in accordance with law.

Necessary order may be passed by the Chairman within a period of ten weeks from the date of communication of a copy of this order.

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.)