

02.02.2022
SL No. 15
Court No. 24
(P.M)

**WPA 7294 of 2020
With
IA No. CAN 1 of 2020**

**Raja Mohan Sil
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Ranjan Kali,
Mr. Suraj Bhattacharjee
... for the petitioner

Mr. Pinaki Dhole,
Mr. Abhishek Prasad
... for the State

The petitioner was a primary school teacher. He was arrested by the police on 23rd July, 2015 in connection with Pandua Police Station Case No. 468/15 dated 23rd July, 2015 under Sections 341/323/326/307/506 IPC and Section 3(I)(X) of the SC/ST (Prevention of Atrocities) Act, 1989 and was detained in jail custody for more than 48 hours.

A formal order of suspension was issued and served upon the petitioner on 14th March, 2016 by the Chairman of the Hooghly District Primary School Council. The said order of suspension was to remain effective from the date of arrest till the date of disposal of the case or until further orders. The suspended teacher was entitled to receive subsistence allowance during the period of suspension.

The submission of the petitioner is that he has been enlarged on bail by the learned Court on 4th September, 2015 however, the copy of the order of enlarging the petitioner on bail is not annexed to the writ petition.

After being enlarged on bail the petitioner approached the respondent authority for permitting him to join duty and for release of his subsistence allowance.

The grievance of the petitioner is that subsistence allowance has not at all been paid in his favour and he has not been permitted to join duty.

During the period of suspension the petitioner attained his normal age of superannuation.

The learned advocate appearing on behalf of the State respondents have filed a report wherefrom it appears that the criminal case which has been filed against the petitioner is pending consideration till date.

None appears on behalf of the Hooghly District Primary School Council.

The petitioner relies upon the judgment delivered by this Court in the matter of Chhabi Chakraborty – vs – the State of West Bengal & Ors. reported in (2006) 1 CHN 34 in his support.

I have heard the submissions made on behalf of the parties.

Though the petitioner was placed under suspension in the year 2016 and he claims that he was never paid the subsistence allowance in terms of the order of suspension but it does not appear from the records that the petitioner ever approached the concerned authority for payment of his subsistence allowance. The petitioner has annexed a letter addressed to the District Inspector of Schools on 27th April, 2016 with a prayer for releasing his subsistence allowance.

There is no representation by the petitioner before the District Primary School Council who suspended him from service. The disbursing authority of the salary of the petitioner is the District Primary School Council and the District Inspector of Schools did not have a role to play with regard to the payment of subsistence allowance of the petitioner in terms of the order of suspension.

As regards the prayer of the petitioner for permitting him to join duty on being enlarged on bail the said issue was taken up for consideration by the Hon'ble Supreme Court in the matter of Union of India - Vs - Rajiv Kumar reported in (2003) 6 SCC 516. The expression "until further orders" fell for consideration

before the Court. The Court was considering as to whether the order of suspension is to remain 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 the period of detention comes 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.

A similar issue was taken up for consideration by the Hon'ble Division Bench of this Court in the matter of Birbhum District Primary School Council & Anr. – vs – Md. Mokhtar Hossain & Ors. reported in 2009 (1) CHN 476. 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 from detention. 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 drafting of the sub-Rule.

In the present case, though the petitioner was enlarged on bail but the District Primary School Council did not pass any further order permitting the petitioner to join his service.

It appears from the submissions made on behalf of the petitioner that he has since retired from service and he has not been paid his subsistence allowance and retiral dues till date.

In view of the above, leave is granted to the petitioner to approach the District Primary School Council, Hooghly by filing comprehensive representation annexing all documents in his support.

In the event, such a representation is made the said respondent shall consider the same, strictly in accordance with law and in the light of the discussion made hereinabove within a period of eight weeks from the date of receipt of the representation and pass a reasoned order and communicate the same to the petitioner immediately thereafter.

If the District Primary School Council is of the opinion that the petitioner will be entitled to any monetary benefit or the order of suspension is liable to be revoked/modified, then necessary consequential orders shall be issued by the said authority in accordance with law.

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.)