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07.11.2022
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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

WPA 2654 of 2022

Sri Bhabesh Chandra Barman
-vs.-
The State of West Bengal & Ors.

Ms. Suman Sehanabis (Mandal) ...for the Petitioner
Mr. Hirak Barman,
Ms. Bedashruti Bose ...for the State
Mr. Deborshi Dhar ...for DPSC, Cooch Behar

Petitioner at the relevant point of time was working as a primary teacher at Khengchi A P School at Baradhaperchatra, Cooch Behar.

It appears that a criminal case was instituted by the State against the petitioner along with some other persons under Sections 120B /121 /121A /122 /123 /124A/147/148/149/447/341/342/431/186/183/35 3/323/333/307 of the Indian Penal Code, 1860 read with Sections 3/4 of the Explosive Substance Act read with Sections 10/13/17 of the Unlawful Activities (Prevention) Act read with Sections 9/10 of the Maintenance of Public Order Act and Sections 146/151/152/174 of Indian Railway Act and the petitioner was detained in custody beyond 48 hours in connection with that case.

In view of his detention in custody beyond 48 hours, the petitioner was suspended from the service by the Chairperson, District Primary School Council, Cooch Behar.

Ms. Suman Sehanabis (Mandal), learned counsel appearing for the petitioner submits that the petitioner is under suspension since 2016 and despite several representations being made, his suspension order has not been revoked by the District Primary School Council, Cooch Behar.

Mr. Deborshi Dhar, learned counsel appearing for the District Primary School Council, Cooch Behar relies upon a judgment reported at **(2009) 1 CHN 476 (Birbhum District Primary School Council v. Md. Mokhtar Hossain)** to justify the suspension order dated August 31, 2016 passed against the petitioner.

The suspension of the petitioner from the service may be justified in view of the judgment delivered in *Birbhum District Primary School Council* case (supra), but the said suspension order cannot be continued for an indefinite period without any justifiable reason.

It has been submitted by Ms. Bedashruti Bose, learned counsel appearing for the State that no charge sheet has yet been submitted by the Investigating Agency in this case against the petitioner. When the State has failed to file any charge sheet against the petitioner even after lapse of more than six years from

the date of registration of the case, it is very difficult to sustain the suspension order, which was passed against the petitioner solely on the ground of his detention in custody in connection with the said case beyond 48 hours.

I do not see any justification to allow the said suspension order dated August 31, 2016 to continue even after six years. Fact remains that the petitioner is getting subsistence allowance at the rate of 50% of his basic salary without his service being utilised as a teacher of the relevant schools.

In that view of the matter, suspension order dated August 31, 2016 appearing at page 24 (annexure-P/4) of this writ petition issued by the District Primary School Council, Cooch Behar is set aside. Respondent nos. 6 to 8 shall allow the petitioner to join his service within a period of seven days from the date of communication of this order.

Accordingly, **WPA 2654 of 2022** is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Kausik Chanda, J.)