

19.07.2023
Item No.16
gd/ssd

MAT/1043/2023
IA NO: CAN/1/2023
TIMIR BARAN SANTRA
VS
STATE OF WEST BENGAL AND ORS.

Mr. Debasish Kundu
..for the Appellant.

Mr. Supriyo Chattopadhyay,
Ms. Tapati Samanta
..for the State.

Mr. Biswabrata Basu Mallick
..for DPSC.

By consent of the parties, the writ petition is heard along with the appeal and the stay petition.

The grievance of the writ petitioner before the learned Single Judge was that he was not allowed to join the school after he was enlarged on bail in a criminal case. The writ petitioner was, however, suspended at the time when the writ petition was heard by the learned Single Judge. The petitioner was taken into custody and following the relevant rules, the school authorities suspended the writ petitioner.

The writ petitioner contended that after he was released on bail, the school authorities ought to have revoked the suspension order and allowed him to join his service.

This prayer was rejected by the learned Single Judge.

The learned Single Judge directed filing of affidavits and liberty was given to the writ petitioner to mention before the appropriate Bench after affidavits are exchanged.

This order is under challenge.

It appears from the record that the appellant embroiled in a flute which is barred and on the basis of the FIR he was arrested and taken into custody. Subsequently, he was released on bail. The offence alleged is no way connected with his employment.

The learned counsel for the appellant has submitted that the relevant rules relied upon by the school for suspending the appellant would not be applicable once the appellant is released on bail.

Moreover, having regard to the fact that he was implicated by his brother and the arrest was on the basis of such complaint which is wholly unconnected with his employment, the school authorities could not have prevented him from joining his post.

The learned counsel for the appellant has referred to the decision of the Rajasthan High Court in the case of *Ram Babu Gupta v. State of Rajasthan & Another* reported in 2016 SCC Online Raj 8293 : (2017) 2 WLC 299 and submits that in a similar situation the writ petition was allowed.

In the given facts and circumstances, the prolonged suspension is uncalled for as admittedly the

offence alleged was in no way connected with his employment. The suspension order was passed due to his arrest in a criminal case in which he was remanded in judicial custody for more than 48 hours. However, one cannot remain under suspension for indefinite period and the appointing authority is under an obligation to revoke the suspension. Ordinarily, a government servant should not be placed under suspension for an indefinite period and depending upon the facts and circumstances of the case, his suspension order may be revoked as it would not be in public interest to continue a headmaster of the school under suspension for an indefinite period.

However in view of the fact 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 merely because a suspension continues for a long period would not invalidate the suspension, [per Justice Banerjee in *Birbhum District Primary School Council & Anr. v. Md. Mokhtar Hossain & Ors.* 2009 (1) CHN 476], we direct the District Inspector of Schools (PE), Hooghly to consider his representation dated 16th September, 2022 keeping in view that he was suspended as he was taken into custody on the basis of a complaint by one of his brothers and it is in no way connected with his employment.

In view of the fact that prior to his arrest he was working as head teacher, the said representation is required to be disposed of within two weeks from date in the light of the observation made hereinabove.

In disposing of the matter the authorities shall also consider his admissible dues on and from 15th September, 2022 till he is allowed to resume his duties.

The order of the learned Single Judge is set aside.

The writ petition, appeal and the application are disposed of with the aforesaid direction.

(SOUMEN SEN, J.)

(UDAY KUMAR, J.)