

Court No. 22
31.01.2023
(Item No. 89)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 16869 of 2022

Chandan Kumar Mandal
VS
The State of West Bengal & Ors.

Mr. Sutirtha Nayek
.... For the petitioner
Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey
.... For the State
Ms. Koyeli Bhattacharyya
.... For W.B.B.S.E.

Affidavit of service filed in Court today, is taken on record.

The husband and wife namely, **Sri Chandan Kumar Mandal** and **Smt. Sanchita Karanon** are the teachers at **Nayagram High School (H.S.), District Paschim Medinipur**. Out of a criminal case arising out of their matrimonial relationship lodged by the wife, the husband/petitioner suffered custody. Subsequently, by an order dated **January 5, 2022** the husband/petitioner was enlarged on bail by the jurisdictional criminal Court at **page 26** to the writ petition. Since the husband/petitioner suffered more than 48 hours custody, as a State employee he was suspended by the respondent No. 3. Such suspension still continues.

Praying for withdrawal of suspension the petitioner filed a previous writ petition being **WPA 3350 of 2022** in which a co-ordinate bench by its order dated **March 23, 2022, Annexure P-6** at **page**

35 to the writ petition directed the School authority to consider the case of the petitioner and to pass a reasoned order.

Pursuant to the said direction dated March 23, 2022 passed by the co-ordinate bench the respondent No. 8 passed its reasoned order dated **April 12, 2022** at **page 42** to the writ petition. The said impugned order is under challenge in this writ petition.

Mr. Sutirtha Nayek, learned advocate appearing for the petitioner submitted that, the criminal case is pending against the petitioner was initiated by the wife, *inter alia*, under Section 498A of the Indian Penal Code arising out of some alleged matrimonial disputes and the same was never related to or concerned with the employment of the petitioner in any manner. He, further submitted that, the impugned order passed by the respondent No. 8 dated April 12, 2022 is also a result of non-application of mind and cryptic in nature, hence, the same should be set aside.

The petitioner also prayed for setting aside the decision for suspension dated **April 5, 2022** at **page 38** to the writ petition and also the decision of the School authority not to allow the petitioner to join dated **May 12, 2022** at **page 44** to the writ petition.

Ms. Koyeli Bhattacharyya, learned counsel appeared for respondent Nos. 2 and 3.

Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader appeared for respondent Nos. 1 and 4.

Considering the submissions made on behalf of the parties and on perusal of records it is evident that, the petitioner did not suffer any proceeding arising out of his employment. The relevant observation made by the respondent No. 8 in its impugned order dated **April 12, 2022** is quoted below:

“In view of the above statement given by Sri Chandan Kumar Mandal in presence of the Headmaster I, Sri Sujit Kumar Maity President of M.C. of Nayagram High School (H.S.) considering the present situation of the institution and Teachers (Chandan & Sanchita) came to conclusion that:-

- i) It is a matter of Domestic Violence.***
- ii) It is a subjudice matter which is pending now.***
- iii) The Hon’ble President of W.B.B.S.E has suspended Sri Chandan Kumar Mandal (A.T) w.e.f. the date of his arrest. (vide memo No. DA/94/22 dated 06.04.2022)***
- iv) The present relation between husband and wife is very artificial. As a result the presence of Sri Chandan Kumar Mandal in the School will hamper the academic environment of the school.***
- v) Keeping mind all the above circumstances I consider that the petitioner (Chandan Kumar Mandal) should not join the School till the case disposed of”***

From the observation and finding made by the respondent No. 8 read with the relevant records of the criminal case pending against the petitioner at **pages 20 to 26**, it appears to this Court that, the criminal proceeding was initiated by the wife of the petitioner against him was out of a matrimonial dispute, inter alia, **under Section 498A** read with other relevant provisions of the Indian Penal Code and same was never related to or connected with the employment of the petitioner in any manner.

It is trite that, unless an employee suffers a proceeding arising out of his employment, be it judicial or quasi judicial in nature the question of taking any steps against the employee relating to his employment did not and cannot arise.

In the instant case, since the petitioner had suffered custody more than 48 hours he was suspended. The moment petitioner was enlarged on bail such suspension ought to have been lifted, which had admittedly not been done by the respondent No. 2.

On a close scrutiny of the impugned order and the observation and finding made therein by the respondent No. 8 appearing at **page 42** to the writ petition, this Court is also of the firm view that, the respondent No. 8 had failed to appreciate the law prevailing on this issue. The observation made therein, according to this Court was baseless, futile,

illegal and perverse. The impugned order cannot and should not sustain law.

In view of the foregoing reasons and discussions the ***order of suspension dated April 5, 2022 at page 38*** to the writ petition ***stands set aside and quashed***. The impugned order passed by the respondent No. 8 dated ***April 12, 2022 at page 42*** to the writ petition ***stands set aside and quashed***. The impugned decision of the respondent No. 2 ***dated May 12, 2022 at page 44*** to the writ petition ***stands set aside and quashed***.

The relevant school authority is directed to allow the petitioner to resume his employment by joining the school forthwith and positively within 48 working hours from receiving the copy of this order.

The petitioner shall be paid subsistence allowance by the relevant school authority since the date of suspension i.e. ***April 5, 2022 at page 38*** to the writ petition till the time he will be allowed to join the school by issuing a written communication to the petitioner to join, strictly in accordance with law. Such suspension allowance shall be released and paid to the petitioner by the respondent No. 4 positively within a period of four weeks from the date of joining the school by the petitioner.

It is made clear that, any observation made in this order will have no impact or effect in the trial of the pending criminal case and the jurisdictional

criminal Court shall be free to proceed without being influenced by any observation made by this Court strictly in accordance with law.

On the above terms, this writ petition being **WPA 16869 of 2022** stands allowed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)