

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 8304 of 2022

Swarup Chandra Bisui

vs.

State of West Bengal & Ors.

For the Petitioner

: Mr. Samim Ahmed,
: Mr. Aniruddha Singh,
: Mr. Gulsanwara Pervin.

For the D.P.S.C, Jhargram

: Mr. Ranjan Saha.

Heard on : 13/03/2024

Judgment on : 13/03/2024

Rai Chattopadhyay, J.

1. The writ petitioner in this case has challenged the order of the District Inspector of Schools (Primary Education), Jhargram, dated 08.04.2021.
2. This is an order of the said respondent authority, in compliance with the direction of the Hon'ble High Court, Calcutta dated 11.01.2021, for grant of opportunity of hearing to the writ petitioner and taking a decision as regards his prayer for withdrawing his suspension order and allowing him to join in the duties. Though, however, writ petitioner's such prayer, has been rejected by the said respondent.
3. The finding of the decision of the concerned authority is extracted as below:-

“During hearing Sri Swarup Chandra Bisui has been given an opportunity to be heard. Necessary documents in support of his representation have also been asked for submission. Sri Swarup Chandra Bisui could not produce any supportive documents.

So,

- (i) as he is alleged to have committed a grave offence.***
- (ii) as he is arrested by All Women P.S., Jhargram Case No.- 74/19 dt. 20.09.2019 U/S- 341, 354 of IPC and Section 8 of POCSO Act, detained in jail custody, enlarged on bail and the criminal case is sub-judice and***
- (iii) Considering the nature and gravity of the offence alleged to have been committed by him, revocation of his suspension order should rest on the compliance of the final verdict of the court on disposal of the said criminal case.***

Under the above noted circumstances, his representation for revocation of order of suspension could not be considered.”

- 4.** It is necessary at this juncture to narrate, in a nutshell, regarding the factual background of the case. The writ petitioner is a Head Master of the school, namely, Kumarti Primary School of Girihandi, District Paschim Medinipur. He was appointed on 30.03.1999. He was promoted to the post of Head Master on 18.12.2002.
- 5.** A criminal case was started against the writ petitioner, pursuant to lodging of an FIR, being All Women Police Station, Jhargram Case No.- 74/19 dt. 20.09.2019 under Section 341/354 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act. The petitioner was immediately arrested and subsequently on 30.10.2019 he was enlarged on bail.
- 6.** Since the writ petitioner was detained in custody for more than forty-eight (48) hours, he was deemed to have been suspended from

service in terms of Rules 7(2) of the West Bengal Primary Education (conduct of service of teacher of primary school), Rules 2001.

7. Proceedings were started before the criminal court. However, the authorities have not taken care for initiation of any disciplinary proceeding after such deemed suspension of the writ petitioner from his service. Since the writ petitioner's requests for withdrawal of suspension order went in vain, he preferred an earlier writ petition, being WPA 11276 of 2020. The same was disposed of vide order dated 11.01.2021, wherein the Court directed the District Inspector of Schools (Primary Education), Jhargram to consider writ petitioner's representation requesting withdrawal of his suspension order, within a period of three months therefrom. The resultant order is dated 08.04.2021 which is impugned in this case.
8. The concerned respondent has taken up two grounds in the impugned order. Firstly, that the writ petitioner has not been able to produce any supportive documents as regards his contentions in the representation submitted by him. Secondly, the authority had decided that in consideration of the heinous nature and gravity of the alleged offence against the writ petitioner, revocation of his suspension order would not be prudent, in so far as the writ petitioner, being charged with such grave offences, should not be allowed to discharge duties towards society by imparting education in a school, to children and future citizens of the country.
9. Mr. Samim Ahmed, learned counsel is appearing for the writ petitioner. His contention is primarily that the law as settled would not allow any person to be indefinitely suspended from his service, without initiation of any disciplinary proceeding against him and

without showing any cogent reason for such prolonged and indefinite suspension.

10. Mr. Ahmed, learned counsel for the petitioner says that the decision taken by the said respondent authority that the suspension order of the writ petitioner it continues till the time the criminal trial is completed, the same would only be arbitrary and whimsical. He says that before the criminal court coming to the conclusion of guilt of the writ petitioner, the law of the land would not permit anyone to pre-suppose the guilt of the writ petitioner in this case. The allegations against the writ petitioner are subject to proof before the Court of law. Also, that the allegations, if any, against the writ petitioner would be subject to result of the disciplinary proceeding initiated against him. However, he says that even before initiating one, the authorities have slapped a stamp of being proved guilty, upon his client.

11. Therefore, according Mr. Ahmed, learned counsel for the petitioner, the decision of the respondent authority vide order dated 08.04.2021 is not sustainable in the eye of law being arbitrary and illegal.

12. He has relied on the following judgments in support of his contention that an unlimited suspension order should be vitiable in the eye of law and vitiated. Those are :-

i. *Ajay Kumar Choudhary vs. Union of India & Anr. reported in (2015) 7 Supreme Court Cases 291;*

ii. *Sandipta Gangopadhyay vs. Allahabad Bank & Ors. reported in 2015 SCC Online CAL 5553.*

- 13.** Mr. Ranjan Saha, learned counsel is appearing for the State respondent. He has raised strong objection on behalf of his client/State, regarding prayer of the writ petitioner in this case, that is, for revocation of his suspension order.
- 14.** Mr. Saha, learned counsel has stated that the writ petitioner has been undeniably discharging a public function and that of a high value. From such a high pedestal, he has shown gross aberration undermining the dignity of his post. Therefore, after being charged with such serious offences, like that under Section 354 of the Indian Penal Code or Section 8 of the POCSO Act, it would not be prudent to send him to his duties where he will again deal with the young blood.
- 15.** The finding in the impugned order is brusque and obtuse. Mr. Saha, learned counsel has stated that pursuant to the deemed suspension order of the writ petitioner the respondent, the District Inspector of Schools (Primary Education) shall have to initiate proceeding against the writ petitioner and assures the Court that the same would be started very soon. He has insisted that the writ petition be dismissed.
- 16.** So far as the criminal law of the land is concerned, it is a trait that the person would be treated as innocent until found guilty by the Trial Court.
- 17.** The admitted fact in this case is of the writ petitioner having been alleged of an offence of non-bailable provisions of law, that is, 354 of the Indian Penal Code as well as Section 8 of the POCSO Act. This however, does not *ipso facto* establish his involvement or finding of guilt, before such time, a Trial Court holds conclusively about his being guilty in the case.

- 18.** Suspension is not a punishment. It means keeping an employee away from workplace temporarily, for the reasons of discipline. However, it does not mean removal from service. Suspension would integrally be related with alleged misconduct and disciplinary enquiry or its contemplation. It is an interregnum arrangement, to make the work place free from any possibility of further violation by the delinquent and also to allow the management to proceed to prove charges against him. Suspension, if prolonged, without any justifiable reason, the same would bear strong stigmatic social connotations. It may be considered as an antithesis of a person's right to livelihood and thus right to life itself.
- 19.** The High Court held in the case of ***State of Orissa through its Principal Secretary, Home Dept. vs. Bimal Kumar Mohanty*** reported in (1994) 4 SCC 126, that the appointing authority or disciplinary authority should consider the attending circumstances and decide whether it is expedient to keep an employee under suspension, pending an enquiry against him. It says that it would not be as an administrative routine or an automatic order to suspend an employee.
- 20.** Pertinent here is to mention regarding the Courts finding in the case of ***Ajay Kumar Choudhary (supra)***, has referred to on behalf of the writ petitioner, i.e, :-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with

procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. *Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that — “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*

17. *The legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental enquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Code of Criminal Procedure, 1973; that it encompasses all stages viz. investigation, inquiry, trial, appeal, revision and retrial; that the burden lies on the prosecution to justify and explain the delay; that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it. Keeping these factors in mind CAT had in the case in hand directed that the appellant's suspension would not be extended beyond 90 days from 19-3-2013. The High Court had set aside this direction, viewing it as a substitution of a judicial*

determination to the authority possessing that power i.e. the Government.”

21. The decision of Calcutta High Court in **Sandipta Gangopadhyay**'s case (*supra*), is also worth mentioning and the relevant portion is here under :-

“8. An order of suspension, pending the outcome of disciplinary or criminal proceedings, works against both the employee and the employer. The employer has to maintain the employee by paying him a subsistence allowance without obtaining any services in return; the employee does not get the usual pay that he would have been entitled to by not being allowed to work when he may be willing. It is in such light that judicial pronouncements now regard a period of suspension to be limited and not continued indefinitely till the criminal trial is concluded. There are several impediments to the expeditious conclusion of a criminal trial, particularly under the said Act of 1988. It is not desirable that the State not avail of the services of an employee yet continue to pay maintenance allowance for a long period while the trial goes on. Judicial notice must also be taken of the time taken in the criminal courts, though the reasons for the delay may not always be attributable to the judiciary.

9. Merely because the petitioner has been charged with having accepted a bribe and marked currency notes may have been recovered from the petitioner, it does not imply that the petitioner is guilty before he is pronounced as such. However self-righteous and indignant the employer may feel, it would be arbitrary and unreasonable to subject an employee to an indefinite period of suspension over a criminal trial that the employee or the employer may not be able to control. In such a situation, the employer has the right to transfer the employee to such a post where the employee may not have any opportunity to influence any witness or tamper with any evidence that may be used against him in the criminal trial; but the employer cannot say that its doors would be shut on the concerned employee merely because a criminal charge has been brought against the employee.”

The finding of the Court in **Sandipta Gangopadhyay's** case (*supra*) was affirmed in a reference vide judgment dated 30.08.2019.

22. Suspension of the writ petitioner, deemed or otherwise, has kept him out of his regular employment since 20.09.2019. It would have been considered as a justified action under the Rules of 2001, by the respondent authority, had it proposed enquiry as to the misconduct, or punishment of the writ petitioner. The purpose of the provision to keep the delinquent beyond work atmosphere is for initiating action against him, without affording him any opportunity to violate or manipulate the evidence, within that period. Therefore both should simultaneously be proceeded with. Only suspending the delinquent and not initiating any action against him would let the purpose of suspension, to be faded out in the horizon. The right of life and livelihood of the concerned person cannot be suspended such indefinitely. The authority by its conduct, should justify the purpose of the suspension of the person. Even in case of a deemed suspension under the Rules, as in case of the present writ petitioner, he cannot be left in vacuum, to suffer a stigma for an uncertain vast future period. Thus by dint of the verdict of the Courts, the period of suspension has been acknowledged to be limited and not to continue indefinitely, till the criminal trial is concluded. As it is held in **Sanditpa Gangopadhyay's** case (*supra*), that the trial in a Court may face various impediments and its period could be elongated for multifarious reasons attributable to various stakeholders. Continuing to restrain a person to join in duty and paying him allowance, would not be justifiable, in such an eventuality.

23. Under such circumstances, in accordance with the settled legal principles, the guilt of the writ petitioner cannot be preconceived or

prejudged to impose suspension as a punishment to him, on the ground that he has been charged with some offence.

- 24.** It appears from record that the FIR was lodged against the writ petitioner on 20.09.2019 and after that he had suffered custody for more than forty-eight (48) hours in connection with the said criminal case. This has caused the relevant provision of the applicable statute that is Rules 7(2) of the West Bengal Primary Education (conduct of service of teacher of primary school), Rules 2001 be invoked against him and, thus, he has been deemed to be suspended from the date of his arrest.
- 25.** He made a representation dated 2nd December, 2020 that is after one year and two months of the date of deemed suspension that writ petitioner had first moved before the authorities to pray for revocation of his suspension order.
- 26.** Admittedly, at that point of time and even today no disciplinary proceeding has been initiated against the present writ petitioner.
- 27.** At this juncture, this Court finds that the ratio of the judgments mentioned above would squarely apply in this case in so far as by dint of the same the Constitutional Courts including this Hon'ble Court has earlier held that no person would be detained indefinitely suspended.
- 28.** On consideration of the reasons as discussed above, this Court finds the decision of the respondent District Inspector of Schools (Primary Education) dated 08.04.2021 to be based on no justifiable or legal ground.
- 29.** Rather, the same is found to be arbitrary and biased in so far as the respondent authority has pre-conceived about the guilt of the

accused person in the case as alleged. The same would not be sustainable and thus the writ petition appears to be eligible to be allowed.

- 30.** The writ petition being WPA 8304 of 2022 is allowed.
- 31.** Let the order dated 08.04.2021 passed by the District Inspector of Schools (Primary Education), Jhargram be set aside.
- 32.** The respondent authority as above shall immediately allow the writ petitioner to join in service. Expectedly, the respondent authority shall proceed with the disciplinary enquiry, if any, with utmost expedition.
- 33.** With the directions as above, this writ petition is disposed of.
- 34.** All connected applications, if any, are consequently disposed of.
- 35.** Urgent Photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)