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19.06.2024
Ct. No. 18
adeb

W.P.A. 14903 of 2024

**Ganapati Porey
Vs.
The State of West Bengal & Ors.**

Mr. Rwitendra Banerjee
Mr. Aritra Roy Chowdhury
...for the petitioner

Mr. A.K. Hazra
Ms. Sonali Chatterjee
Mr. Animesh Samanta
.....for the respondent no. 9 & 10

Ms. Koyeli Bhattacharyya
...for the WBBSE

Mr. Bhaskar Prasad Vaisya
Ms. Iti Dutta
...for the State

Affidavit of service filed on behalf of the petitioner is taken on record.

The grievance of the petitioner is his suspension with effect from 12th February, 2023 as it was communicated by the President of Adhoc Committee of the West Bengal Board of Secondary Education (for short 'Board') vide suspension order dated 8th April, 2024.

Learned advocate representing the petitioner submits that a complaint was lodged before the police authority by his sister-in-law and a criminal proceeding was initiated and in connection therewith petitioner was taken into custody from 12th February, 2023 to 24th February, 2023. Thereafter petitioner was enlarged on bail and the school authority where petitioner is serving as assistant teacher allowed the petitioner to resume his duty. But according to

the petitioner trouble started after it was brought to the notice of the concerned authority of the Board that the petitioner was under custody in connection with a criminal proceeding beyond period of 48 hours which led the President of the Board to issue impugned suspension order dated 8th April, 2024 with effect from 12th February, 2023 being the date when the petitioner was taken into custody. It has been submitted by the learned advocate for the petitioner that it is a case of deemed suspension and in the same breath it has also been submitted that since petitioner was enlarged on bail by this time he should be allowed to resume his duty as assistant teacher on withdrawal of suspension order dated 8th April, 2024 on the strength of Rule 6(3) of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018 (hereinafter referred to as said rules of 2018),

It is also submitted that at the time of instituting this writ petition petitioner was receiving full salary but as a sequel to the suspension order dated 8th April, 2024 issued on behalf of the Board payment of salary was stopped to the petitioner from the month of June, 2024. Petitioner prays for release of subsistence allowance during period of his suspension.

State-respondents, Board and respondent nos. 9 and 10 are represented by learned advocates.

Ms. Koyeli Bhattacharyya, learned advocate representing the Board submits that in terms of Rule 6(1) (a) of the said rules of 2018 Board had to take decision to suspend the petitioner which is a deemed suspension from the date petitioner was taken into custody. It is also submitted that Board responded lately since contemporaneously the issue of pendency of the criminal proceedings against the petitioner and the custody of the petitioner was not brought to the notice of the Board.

However, it has been submitted on behalf of the Board that if appropriate direction is given Board is ready to consider the issue of lifting of suspension in terms of Rule 6(3) of the said rules of 2018.

Having heard the learned advocates representing the parties and on perusal of the materials available on record Court directs the President of the Board being the respondent no. 4 to take decision on withdrawal of suspension of the petitioner and permitting him to resume his duty as an assistant teacher of the school after granting opportunity of hearing to the petitioner and the school authority or their representatives within a period of 8 (eight) weeks from the date of communication of this order.

Needless to add herein that Board is empowered under Rule 6(3) to permit the petitioner to resume his duty since he is enlarged on bail and taking note of the fact that the complaint made by the sister in law of the petitioner is not related to discharging duty of the petitioner as assistant teacher.

The respondent no. 4 shall pass a reasoned order; if, Board takes decision to withdraw the suspension of the petitioner consequential steps shall be taken by the other respondent authorities in order to permit the petitioner to resume his duty after the decision to be taken by the respondent no. 4.

If during the period of suspension subsistence allowance is not paid to the petitioner the District Inspector of Schools as well as the school authority are directed to take necessary steps for releasing subsistence allowance; however the same shall be paid to the petitioner not later than from the 6 (six) weeks from the date of communication of this order.

With the aforesaid observations and directions the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.)