

Form No.J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

**WPA 1088 of 2023
Rupan Das
Versus
State of West Bengal & Ors.**

For the petitioner : Mr. Siddhartha Sankar Mondal
Mr. Arijit Ghosh
Ms. Arunima Das Sharma

For the State : Mr. Hirak Barman
Ms. Debshruti Bose

For the District Primary : Mr. Bikramaditya Ghosh
School Council Ms. Supriya Singh

Heard on : 26th April, 2024 & 30th April, 2024.

Judgment on : **30th April, 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, praying for revocation of the order of suspension dated 12th November 2018, issued by the respondent no. 5, being the Secretary, District Primary School Council.
2. The petitioner had joined as an Assistant Teacher in Simlabari SPL/C Primary School Alipurduar. Records reveal that the petitioner was placed under suspension by an order dated 12th

November 2018. According to the petitioner he had been falsely implicated in a criminal case vide FIR no. 381 dated 30th October 2018 under Sections 341/506 of the Indian Penal Code as also under the Provisions of Sections 25(1)(a)/27 of the Arms Act, 1959. It also appears that the petitioner was detained in police custody for a period between 1st November 2018 till 12th November 2018. At present, though the petitioner had been enlarged on bail, the criminal proceeding initiated against the petitioner on the basis of the FIR being, Alipurduar Police Station Case no. 381 dated 30th October 2018 is still pending.

3. Mr. Mandal, learned advocate representing the petitioner in support of the present writ petition submits that the aforesaid order of suspension has been issued in violation of the provisions of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001¹. By drawing attention of this Court to the order of suspension, he submits that the said order of suspension does not identify either explicitly or impliedly that the same had been issued in contemplation of any enquiry proceeding. According to Mr. Mandal, the petitioner has been kept under illegal suspension since, 30th October, 2018.
4. It is still further submitted that the suspension cannot continue indefinitely without the respondents initiating a disciplinary proceeding against the petitioner. Admittedly in this case no

¹ Hereinafter referred to as the “said Act”

disciplinary proceeding has been initiated and the aforesaid order of suspension should be revoked.

5. In support of his aforesaid contention Mr. Mandal has relied on an unreported judgment delivered by a Coordinate Bench of this Hon'ble Court on 13th March 2024 in the case of ***Swarup Chandra Bisui vs. State of West Bengal of Bengal & Ors.*** passed in WPA 8304 of 2022.
6. By placing reliance on the provisions of the said Rules and the order of suspension dated 12th November, 2018, it is submitted that the suspension of the petitioner had been effected under Section 7(2) of the said Rules. Although, the same authorizes the appointing authority to place a teacher under suspension in the event the said teacher is detained in custody for a period exceeding 48 hours on criminal charges or otherwise such detention cannot be unnecessarily prolonged without reconsideration thereof. By drawing attention of this Court to the representation dated 20th February, 2023, Mr. Mondal submits that although, the petitioner had made a representation before the Chairman, District Primary School Council for revocation of the order of suspension, the same has not been considered at all.
7. According to Mr. Mondal, the alleged offence for which the petitioner has been falsely implicated, does not involve moral turpitude and, as such, the respondents cannot keep the petitioner under suspension till disposal of the criminal

proceedings. In support of his aforesaid contention, he has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Allahabad Bank & Anr. Vs. Deepak Kumar Bhola** ²

8. *Per contra*, Mr. Ghosh, learned advocate appearing for the District Primary School Council, on instructions, submits that although, the aforesaid order of suspension was issued immediately upon the petitioner being arrested by invoking the provisions of Rule 7(2) of the said Rules, the same had not been issued in contemplation of any enquiry proceeding against the petitioner. He submits that at present the respondents do not intend to initiate any disciplinary proceeding against the petitioner in connection with the criminal offence for which the petitioner had been implicated. He, however, submits that it is within the domain and jurisdiction of the appointing authority to keep a teacher under suspension when the teacher concerned has been arrested and is detained in custody for a period exceeding 48 hours on criminal charges or otherwise. In support of his aforesaid contention, he has placed reliance on a judgment passed by the Hon'ble Division Bench of this Court in the case of **Birbhum District Primary School Council & Anr. Vs. Md. Mokhtar Hossain & Ors.**³ He has also placed reliance on an unreported judgment delivered by the Hon'ble Division Bench of

² (1997) 4 SCC 1

³ (2009) 1 CHN 476

this Court in the case of ***Gadadhar Kundu vs. The State of West Bengal & Ors.***, in ***FMA 317 of 2022*** on 28th March, 2022.

Mr. Ghosh further submits that although, the initial order of suspension was issued under Rule 7(2) of the said Rules, the order of suspension can be continued by invoking the provisions of Section 7(1)(b) of the said Rules till such time the teacher concerned is under investigation or trial in a criminal offence. While distinguishing the unreported judgement delivered in the case of ***Swarup Chandra Bisui*** (*supra*), he submits that Rule 7(2) of the said Rules was not considered. In the facts as stated above, he submits that the writ petition should be dismissed with costs as being premature since the criminal proceeding is yet to reach a logical conclusion.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. It is noticed that the petitioner was detained in custody for a period exceeding 48 hours. Having regard to the aforesaid, I do not find any illegality on the part of the District Primary School Council in invoking the provision of Rule 7(2) of the said Rules for placing the petitioner under suspension.

10. I may, however, note that the issue that falls for consideration in the present writ petition is, a little different. The petitioner complains that the petitioner has been placed under suspension and the same is being continued for an indefinite period without

reconsideration thereof. The trial in the criminal case has not yet commenced and the same is unlikely to be concluded in near future.

11. Having regard to the stand taken by the respondents that the respondents do not intend to initiate any disciplinary proceeding against the petitioner and in the facts as noted hereinabove, the justifiability of the action of the respondents to continue with the order of suspension is under scrutiny. I find that although, Mr. Ghosh, learned advocate representing the District Primary School Council has submitted that the power to continue with the suspension is available under Rule 7(1)(b) of the said Rules, the said provision has, however, not been invoked. From the FIR it would transpire that the petitioner has been charged with offences under the relevant provisions of the Arms Act 1959. Having regard to the judgment delivered in the case of **Allahabad Bank & Anr.** (*supra*), I do not find that the petitioner has been charged with an offence involving moral turpitude. In view thereof, there cannot be any question on the part of the respondents to continue with the order of suspension even by issuing any further order under the relevant provisions of Rule 7(1)(b) of the said Rules.

12. I have been able to ascertain from the learned advocates appearing on behalf of the respective parties that charge-sheet has been filed in connection with FIR No. 381 dated 30th October,

2018, trial is, however, yet to commence. The allegations against the petitioner are not in relation to discharge of his duties and it is more unlikely than not that the same shall interfere with the regular discharge of duties by the petitioner. Admittedly, the order of suspension is not a punishment. The petitioner continues to be on the role of Simlabari, SPL/C Primary School, Alipurduar. The respondents have, however, not taken any steps on the basis of the representation made by the petitioner on 20th February, 2023. Although, Mr. Ghosh by placing strong reliance on the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Birbhum District Primary School Council (supra)***, has attempted to justify the order of suspension, I find that the question that fell for consideration before the Division Bench was entirely different. In the said case the question that fell for consideration was whether immediately upon release of the teacher, placed under deemed suspension from custody, the order of deemed suspension comes to an end. It is in this context the Hon'ble Division Bench in paragraphs 22, 23 and 24 had observed as follows:-

“22. In the most absurd situation, an order of suspension that had come into effect under the deeming provision of Rule 7(2) of the said 2001 Rules may not be expressly terminated even though the proceedings relating to which the detention of more than 48 hours occurred may have been dropped. The conduct of the appointing

authority in then failing to revoke the suspension in such a situation would be called into question in appropriate proceedings and is likely to be frowned upon and the suspension undone. But the fact that Rule 7(2) of the 2001 Rules leaves open a possibility that an order of suspension that started by virtue of the deeming provision could be allowed to linger indefinitely by mere inaction on the part of the appointing authority, is not a relevant consideration in how the provision may be construed.

23. *There can be no guidelines laid down in a strait-jacket as to how an appointing authority should deal with the suspension of a primary teacher where the suspension commenced by virtue of the deeming provision in Rule 7(2) of the 2001 Rules. The conduct of the appointing authority would be justiciable and open to question in proceedings under Article 226 of the Constitution. It could well be that in a given case the prolonged suspension on account of sheer inaction on the part of the appointing authority may be unjustified. The period of suspension should ordinarily not be unnecessarily prolonged but it could also be that plausible reasons exist for the prolonged suspension and the appointing authority may be able to justify its opinion that the suspension needs to be continued. Merely because a suspension that commenced under the legal fiction in Rule 7(2) of the 2001 Rules continues for a long period would not invalidate the suspension or lead to any conclusion that the duration of the suspension stipulated in that rule is till the release of the primary teacher following the detention. The fact that the provision is prone to misuse will not have a telling impact on the purport of the provision or in the matter of construction thereof.*

24. *In the present case, the learned Single Judge relied on the Basudev Malik, Chhabi Chakraborty and Malay Kumar Laha judgments to hold that the writ petitioner could not be kept under suspension after he was enlarged on bail as the suspension came to an end immediately upon the release of the writ petitioner from detention. The relevant rule does not appear to have been appropriately construed in the Basudev Malik, Chhabi Chakraborty and Malay Kumar Laha judgments and the judgments in all three cases are contrary to the law laid down by the Supreme Court in the Rajiv Kumar matter.”*

13. It may, however, be noted that the Hon'ble Division Bench had categorically stated that the conduct of the appointing authority in failing to revoke the order of suspension can be called in question in appropriate proceeding and it could well be that in the given facts the prolonged suspension on account of sheer inaction on the part of the appointing authority may be unjustified. In this case, there is nothing which has come from the respondents to justify continuance of suspension. It is true, that the order of suspension under Rule 7(2) of the said Rules does not invalidate on the release of the teacher from the custody. However, the same cannot at the same time authorize the District Primary School Council to continue with the order of suspension when there is no justifiable reasons to continue with the same, at least none has been disclosed, as such the respondents were bound to review their decision. The above also

finds support from the judgment delivered by the Hon'ble Division Bench in the case of **Gadadhar Kundu** (*supra*).

14. Having regard to the stand taken by the District Primary School Council through its advocate and having regard to the fact that the criminal trial is unlikely to be concluded in the near future and the fact that the respondents have failed to justify the continuance of the order of suspension against the petitioner, I am of the view that the aforesaid order of suspension appears to be unjust and oppressive to say the least. Although, ordinarily the matter could have been remanded back to the authorities for reconsideration of their decision to continue with the order of suspension, however, having regard to the stand taken by the District Primary School Council, through the learned advocate, I am of the view that no fruitful purpose will be served to send back the matter to the authorities for reconsideration of the decision, since, the respondents have failed to justify the continuance of order of suspension. Having regard to the aforesaid, I am of the view that the aforesaid order of suspension cannot be sustained, the same is accordingly set aside and quashed.

15. The respondents are directed to issue appropriate orders and reinstate the petitioner in service. It shall, however, be open to

the respondents to take further action on the basis of the final order to be passed in connection with the criminal proceeding.

16. With the above observations and directions the writ petition is disposed of.

17. There shall be no order as to costs.

18. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)