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19.02.2025
Ct. No. 18
adeb

W.P.A. 512 of 2025

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

Mr. Kamalesh Bhattacharya
Mr. Aninda Bhattacharya
...for the petitioner

Mr. Santanu Chatterjee
...for the State

Md. Sarwar Jahan
Mr. Asif Mehdi
Mr. Kaustav Roy
...for the respondent no. 8

Ms. Koyeli Bhattacharyya
Mr. Bibek Dutta
Ms. Keya Panja
...for the Board

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

Writ petition is heard in presence of the
learned advocates representing the parties.

By presenting this writ petition claim has
been laid by the petitioner for release of arrear
dues which accrued due to difference of salary
which was payable to the petitioner and
subsistence allowance which was actually paid to
the petitioner for the period from 21st April, 2024
to 10th September, 2024.

Petitioner is an Assistant Teacher in Rathipur Barada Banipith (H.S.), Paschim Medinipur (hereinafter referred to as “said school”) who was implicated in a criminal proceeding and taken into custody on 12th February, 2023. Petitioner remained in custody from 12th February, 2023 to 24th February, 2023 and was enlarged on bail on 24th February, 2023. Petitioner resumed duty on 25th February, 2023 as an assistant teacher of the said school. Petitioner worked post obtainment of bail from 25th February, 2023 till 20th April, 2024. President, Ad-hoc Committee of West Bengal Board of Secondary Education (hereinafter referred to as ‘Board’) issued suspension order on 8th April, 2024 and same was communicated vide memo dated 19th April, 2024 to the school authority. For giving effect to the suspension order dated 8th April, 2024 petitioner was placed under suspension with retrospective effect from 12th February, 2023 being the date when petitioner was taken into custody but petitioner could not attend the school on and from 21st April, 2024. Subsequently, taking into consideration the issue President of the Board passed order dated 10th September, 2024 withdrawing suspension order with retrospective

effect from 12th February, 2023 and the said school authority was directed to submit before the Board resolution of the Managing Committee showing that the petitioner was allowed to resume duty along with all his service benefits with effect from 25th February, 2023.

Mr. Kamalesh Bhattacharya, learned advocate representing the petitioner submits that the suspension order dated 8th April, 2024 was passed and effect of such order is retrospective suspension for a period from 12th February, 2023 till 24th February, 2023 since petitioner resumed his duty on 25th February, 2023. Reliance is placed on the relevant part of the order of the President of the Board dated 10th September, 2024 whereby Managing Committee of the said school was directed to adopt resolution for releasing all service benefits with effect from 25th February, 2023. It is the contention of the petitioner at best suspension period of the petitioner should be treated from 12th February, 2023 to 24th February, 2023 not beyond that. There is another limb of submission which is advanced on behalf of the petitioner that it is true that he could not function as assistant teacher of the school for the period from 21st April, 2024 till 10th September, 2024 but for that no fault is

attributable to the petitioner rather it was due to suspension order passed by the Board dated 8th April, 2024 with retrospective effect from 12th February, 2023. It is also submitted that for a particular period of time subsistence allowance was also not paid to the petitioner.

Mr. Sarwar Jahan, learned advocate representing the said school has drawn attention of this Court to Rule 6 of West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018 in order to contend that in terms of first proviso to Rule 6(3) during suspension period no annual increment, career advancement scheme benefit, revision of pay, any other benefit declared by the Government is required to be allowed other than subsistence allowance. Therefore, the stand taken on behalf of the school authority is petitioner is not entitled to receive difference of salary and subsistence allowance till 10th September, 2024. According to the school authority petitioner is entitled to receive those benefits from 11th September, 2024 when petitioner again started functioning after the order of revocation of suspension was passed by the President of the Board on 10th September, 2024.

Having considered the respective submissions made on behalf of the parties this Court is required to determine within which period petitioner is to be treated under suspension in view of the order of suspension dated 8th April, 2024 and revocation of suspension order dated 10th September, 2024. Facts reveal that petitioner was taken into custody from 12th February, 2023 and he remained in custody till enlarged on bail on 24th February, 2023. Petitioner resumed duty on 25th February, 2023 but order of suspension was issued by the President of the Board on 8th April, 2024 with retrospective effect from 12th February, 2023. Subsequently, President of the Board issued revocation of suspension order dated 10th September, 2024. Due to delay in issuance of suspension order petitioner could not function as assistant teacher for the period from 21st April, 2024 till 10th September, 2024. But prior to that petitioner worked from 25th February, 2023 till 20th April, 2024 and received salary. While issuing revocation of suspension vide order dated 10th September, 2024 perhaps President of the Board has taken the issue into consideration resulting in giving direction upon the said school authority to adopt resolution of the Managing

Committee in order to allow the petitioner to resume duty with all service benefits with effect from 25th February, 2023. Such decision of the President of the Board has not been assailed by the school authority. Facts also suggest that petitioner did not attend the school from 21st April, 2024 till 10th September, 2024 not in his own volition rather due to delay in taking steps by the Board. Petitioner was not permitted to function as assistant teacher of the said school for which he should not be unnecessarily penalized upon denial of monthly salaries during this period.

Taking consideration of entire gamut of the issue and the order passed by the President of the Board dated 10th September, 2024 respondent authorities including the authority of Rathipur Barada Banipith (H.S.), Paschim Medinipur are directed to release arrear salary adjusting subsistence allowance, if paid to the petitioner, for the period from 21st April, 2024 till 10th September, 2024 along with incremental benefits within a period of fortnight from the date of communication of this order.

With the aforesaid directions the writ petition stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)