

S/L 25
20.01.2025
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 933 of 2025

Avijit Mandal

Vs.

The State of West Bengal & Ors.

Mr. Masooq Rahman

...for the Petitioner.

Mr. Diptendu Narayan Banerjee

...for the State.

Mr. Arindam Chattopadhyay

...for the DPSC, Nadia.

The petitioner is the suspended Assistant Teacher of Topla Primary School, a school under Karimpur New Circle of Nadia District Primary School Council.

The petitioner has been charged with an allegation that he has abetted the suicide of his father-in-law and has been entangled in a criminal case being Karimpur PS Case No.58 of 2022 dated March 28, 2022 under Section 306 of the Indian Penal Code, 1860.

The petitioner was arrested in connection with the said case but was subsequently enlarged on bail but in consequence of such arrest, was suspended from service, which is still continuing.

The petitioner had a pending representation before the Council praying withdrawal of the said order of suspension and allowing him to resume his duty.

A Co-ordinate Bench of this Court, by an order dated September 17, 2024 passed in WPA 11973 of 2024, had directed the Council to consider the said representation of the petitioner.

The Chairman of the Council, the respondent no. 4 herein, by the impugned order dated November 19, 2024 has disposed of the said representation by rejecting the said prayer of the petitioner on the ground that the presence of the petitioner in the school as a teacher during pendency of the criminal charges will affect the mind of the tender aged students.

Heard learned counsel for the parties, perused the materials-on-record.

Neither the school nor the service of the petitioner has a nexus with the offence with which the petitioner has been charged. This Court had the occasion to consider a similar issue

in the case of ***KHALIP ANSARY vs. THE STATE OF WEST BENGAL*** reported in **2024 (4) CHN (CAL) 857**.

In the said decision, after considering the judgments of the other co-ordinate Benches of this Court in the cases of ***GUNAMAY MAHATO vs. STATE OF WEST BENGAL & ORS.*** reported in **2015 SCC Online CAL 7503**, ***NIRANJAN MAHATO vs. STATE OF WEST BENGAL & ORS.*** reported in **2023(1) CHN (CAL) 539**, ***ANADI PRASAD MAHATO vs. STATE OF WEST BENGAL*** reported in **2014(2) CHN (CAL) 103** as well as an unreported judgment dated July 09, 2015 passed in the case of ***PRAFULLA CHANDRA MAHATO vs. STATE OF WEST BENGAL & ORS.***(W.P. 9890(W) of 2015), the Court has held that “*the criminal proceeding in which the petitioner has been found guilty has no nexus with his service and there is nothing on record to suggest that on the commission of such offence, the Government has suffered financial loss as such the prayer of the petitioner for disbursement of his retiral benefits cannot be deferred till the decision of the said appeal against the order of conviction, particularly when the sentence imposed upon the petitioner has been suspended by the appeal Court.*”

In the present case, the trial of the said criminal case though has commenced but the petitioner is yet to be found guilty, at this stage he cannot be put into suspension till a decision in the said proceeding is arrived at, nor can he be denied permission to resume his duty in the school.

The order impugned is therefore set aside. The council is directed to take steps allowing the petitioner to resume his duty upon formal withdrawal of order of suspension.

WPA 933 of 2025 is disposed of with the above terms and observations. There shall however be no order as to costs.

Since no affidavit has been invited, the allegations contained in the writ petition are deemed to have been denied by the respondents.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)