

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

WPA 2112 of 2022

Ashis Kumar Banerjee
vs.
The State of West Bengal & Ors.

For the petitioner : Ms. Pampa Dey (Dhabal),
Ms. Sangita Banerjee

.....Advocates

For the State : Mr. Suman Dey

.....Advocate

Heard on **21st May, 2025**

Judgment on : 2nd July, 2025.

Arindam Mukherjee, J.:

Facts of the case

1. The petitioner was a Group-D employee in the office of the Sub-Divisional Officer, Bishnupur, Bankura since 18th January, 2011. Prior to such appointment, the petitioner was a Night Guard in the said office since 14th April, 1987. On 20th April, 2017, Sri Uday betal, father-in-law of Suman Banerjee, being the son of the petitioner, of village Haldi, P.S. Kotulpur, Bankura lodged a complaint before the Kotulpur Police Station bearing FIR no. 87/2017 dated 20th April, 2017 under Sections 498A/304B/302/34 of the Indian Penal Code (in short IPC).

2. The criminal case was, therefor, in connection with the daughter-in-law of the petitioner (Ashis Kumar Banerjee) namely, Annapurna Betal, being the wife of Suman Banerjee, the son of the petitioner Ashis Kr. Banerjee (petitioner). On the basis of such complaint, the petitioner was arrested and was in custody for 107 days. The petitioner was enlarged on bail by an order dated 09th September, 2017 passed by this Court in CRM 8768 of 2017. Pursuant to such criminal case, the District Magistrate, Bankura in its office order dated 19th December, 2017 suspended the petitioner. Challenging the said suspension order, this writ petition has been filed.

Petitioner's case

- I) It is the case of the petitioner that the suspension order is bad and is required to be set aside and/or quashed particularly, in view of the fact that till 4th February, 2022 being the date of filing of the writ petition, the suspension order continued without initiation of any disciplinary proceedings. The petitioner on having been enlarged on bail, the suspension order ought to have been withdrawn and the petitioner should have been allowed to perform his normal duties.
- II) The petitioner has also submitted that suspension for an indefinite period cannot continue even if, the criminal case is pending, as the petitioner as an employee should be considered to be innocent unless he is convicted. It is also the case of the petitioner that there was no embargo in initiating the disciplinary proceedings

even during the pendency of the criminal case. Having not done so, the petitioner cannot be left to suffer in definite suspension. The petitioner in support of his argument has relied upon the following judgments:

- i) 1999 (6) SCC 257 [K. Sukhendar Reddy vs. State of A.P. & Anr.]**
- ii) Judgment dated 14-11-2000 delivered in WP.ST No. 51 of 1999 [Akhilendu Ghosh vs. State of West Bengal & Ors.]**
- iii) Judgement delivered on 11-4-2011 in AST no. 539 of 2009 with ASTA No. 78 of 2009 [Akhilendu Ghosh vs. State of West Bengal & Ors.]**
- iv) Judgment delivered on 07-03-2011 in WP NO. 16312(W) of 2008 [Mithun Saha vs. The State of West Bengal & Ors.]**
- v) Judgment delivered on 30.08.2019 in FMA No. 3541 of 2015: 2019 SCC Online Cal 2717 [Allahabad Bank vs. Sandipta Gangopadhyay].**

Respondent's case

On behalf of the state, it is submitted that the concerned department on the petitioner being implicated in a criminal case, had lost confidence on the petitioner as a consequence whereof, the petitioner has been suspended. The departmental inquiry has not been initiated since the criminal case is pending. In as much as, charges of criminal incidents were levelled against the petitioner, the

petitioner was rightly suspended and the suspension order should not be withdrawn.

Analysis with conclusion.

- A. During the pendency of the writ petition, the petitioner has reached the age of superannuation on 31st March, 2024. The employer-employee relationship is, therefore, has come to an end. No disciplinary proceedings can be initiated after the petitioner has reached his age of superannuation and it is an admitted fact that till the date of the petitioner being in service, no disciplinary proceedings has been initiated.
- B. Apart from the judgments cited by the writ petitioner, the following judgments are also taken into consideration wherein the Hon'ble Supreme Court has discussed about the suspension, its impact as also the issue of prolonged suspension for an indefinite period.
 - 1. (1999) 6 SCC 259 [Union of India & Ors. vs. M.V. Valliappan & Ors.]
 - 2. CRR 260 of 1999 [Santosh Bhattacharjee vs. State of West Bengal]
 - 3. (2018) 17 SCC 677 [State of Tamil Nadu (Represented by Secretary to Government (Home)) vs. Promod Kumar, I.P.S. & Anr.]
 - 4. (2015) 7 SCC 291 [Ajay Kumar Choudhury vs. Union of India (Through its Secretary) & Anr.]

5. (2013) 16 SCC 147 [Union of India & Anr. Vs. Ashok Kumar Agarwal]

6. (2013)16 SCC 173 [Mina Lalita Barua vs. State of Orissa & Ors.]

C. On a reading of the aforesaid judgment and the ratio laid down therein, it is apparent that an employee is suspended when his acts and activities has shaken the confidence of the employer for which the employer does not want the employee to participate in his regular affairs for discharging his duties and/or job assignments . A disciplinary proceedings is also contemplated when an employee is suspended. In the instant case, the writ petitioner was not suspended for any negligence or misconduct while discharging his official duties. It is only a criminal complaint made by the father-in- law of his son which has triggered the suspension. In the order of suspension, no specific allegation of misconduct or negligence is apparent. He has been suspended as appears from the order of suspension for the criminal charges levelled against him. The employer was free to initiate disciplinary proceedings against the writ petitioner on the basis of the criminal charges against him leading to arrest and enlarged on bail after considerable period of time. Even though the suspension and the disciplinary proceedings may had stemmed out of the same set of facts which resulted in the criminal case there was no embargo in doing as has been clarified by the Hon'ble Supreme Court in several of its judgments. No disciplinary proceedings had been

initiated even after expiry of more than 6 years from the suspension. The Hon'ble Supreme Court has deprecated the employer's action to keep an employee under prolonged or indefinite suspension without initiating disciplinary proceedings as will be apparent from the various judgments considered hereinabove. Since there was no embargo in initiating the disciplinary proceedings within a reasonable period of time from the suspension, the act of keeping the writ petitioner suspended for an indefinite period without initiating disciplinary proceedings is unsustainable. It is a different issue as to whether the disciplinary proceedings can or could have been continued when it originates from the same set of facts pertaining to the criminal case as the Hon'ble Supreme Court in some of the judgments have held in favour of staying the disciplinary proceedings so that defence in the criminal case is not divulged before hand in the disciplinary proceedings when both such cases are based on same set of facts. It is also settled principle of law that an accused in a criminal case should be considered to be innocent until the charges are proved against him and he is held guilty resulting in his conviction. The writ petitioner has produced the order sheet of the criminal case wherefrom, it appears that the criminal case was pending even at the time of his superannuation. Thus he was also not held guilty and had been convicted during the long years between his suspension and superannuation. Indefinite or prolonged suspension without initiation of disciplinary proceedings is also an

act on the part of the employer like in the instant case as a burden on the Government exchequer when the employee is prevented from rendering his regular services but is receiving subsistence allowance during the period of suspension and the employer is not getting any benefit and of his services. In case of suspension, the employee has no choice to offer his services as he is prevented from performing his duties and is not a case where the employee abstain from performing his duties or is absent in an unauthorized manner. The order of suspension therefore is required to be interfered with in the facts of the instant case. The order of suspension dated 19th July, 2017 is set aside and/or quashed.

- D. Taking cue from the judgment of the Division Bench of our Court in **Akhilendu Ghosh** (supra) I am inclined to allow the petitioner all his service benefits from the date of his suspension till his superannuation save and except the period of about 107 days for which the writ petitioner was in custody and did not attend his work. The period for which the petitioner remained absent on having been arrested should be adjusted from the accumulated leave of the petitioner as on the date of his suspension. The balance leave after such adjustment will for the basis on which the leave salary of the petitioner will be computed on the petitioner having retired.
- E. The petitioner shall be treated to be under regular service between from 19th December, 2017 till 31st March, 2024 being his date of superannuation.

- F. The petitioner shall be paid the difference between the regular salary and the subsistence allowance received during the suspension period within a period of two months with interest at the rate of 6 per cent on the difference amount from 19th December, 2017 till actual repayment. The petitioner shall be paid all his regular retiral benefits, if not already paid within six months from date, failing which, interest will accrue thereon from the date immediately succeeding the petitioner's superannuation until repayment at the rate of 6 per cent per annum.
- G. The writ petition is accordingly disposed of.
- Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)