

25.03.2026
Sl. No.5
Ct. No.14
ss

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

W.P.A. No. 9240 of 2024

**Md. Anesur Rahman
Versus
The State of West Bengal & Ors.**

Mr. Anindya Bose
Mr. Golam Mohiuddin
Mr. Mridul Biswas
Ms. Raina Das
Mr. Kaif Hossain
...for the petitioner

Mr. Bhaskar Prasad Vaisya, Ld. AGP
.... for the State

Mr. Kamalesh Bhattacharya
Mr. Bidhan Biswas
Mr. Surojit Basu
Ms. Jasika Alam
... for the respondent nos.7, 8 & 9

Mr. Nadeem Sulaiman
Mr. Mijanul Kabir
... for the Madrasah Board

1. By the present writ petition the petitioner seeks for withdrawal of the suspension order dated 18th January, 2024 issued by the Secretary, Shirsi I.M. Senior Madrasah, District Uttar Dinajpur upon consideration of the representation of the petitioner dated 6th February, 2024.
2. The petitioner contends that he joined as an Assistant Teacher in Shirsi I.M. Senior Madrasah (*hereinafter referred to as "the said Madrasah"*) on 15th February, 2021. During his service tenure one criminal complaint was lodged against the petitioner which is registered as Chakulia P.S. Case No. 142 of 2022

dated 18th May, 2022 under Sections 420, 465, 468 of the Indian Penal Code (*in short*, 'IPC'). The petitioner was put under suspension on 18th January, 2024. However, as no disciplinary proceeding has been initiated against the petitioner till date since the date of suspension, the petitioner has prayed for withdrawal of the suspension order dated 18th January, 2024 on such score. Hence this writ petition.

3. Mr. Anindya Bose, learned Advocate appearing on behalf of the petitioner submits that the petitioner has been put under suspension on 18th January, 2024 on the ground of initiation of a criminal proceeding against him. The criminal proceeding is still pending before the trial court. After putting the petitioner under suspension no such disciplinary proceeding has been initiated against him. As per Rule 27(3) of the Management of Recognition of Non-Government Madrasah (Aided and Unaided) Rules, 2002 (*hereinafter referred to as 'the Rules, 2002'*) the order of suspension shall not exceed 90 days and only in exceptional circumstances, the time limit may be waived by the Board after due consideration of the facts and circumstances of the case, but in no circumstances, the time limit should exceed one year. The limit provided in the aforesaid Rule has already exceeded in the present case. It is settled proposition of law that a delinquent cannot be put under

suspension for an indefinite period. To buttress his contention, he relies on the following decisions:

- i) ***Ajoy Kumar Choudhary -versus- Union of India through its Secretary and anr.***, reported in **(2015) 7 SCC 291;**
- ii) ***Sri Birchand Mondal -versus- The State of West Bengal & ors.***, reported in **2014 SCC OnLine Cal 13527.**

In view of his aforesaid submission, he seeks for withdrawal of the order of suspension and reinstatement of the petitioner in his service.

4. Mr. Kamalesh Bhattacharya, learned Advocate appearing on behalf of the respondent nos.7, 8 and 9, said Madrasah, on the contrary, submits that the suspension order was issued against the petitioner upon initiation of a criminal case under sections 420, 465, 468 of the IPC. Rule 28(3) of the Rules of 2002 empowers the Madrasah to put an employee under suspension where a case against him in respect of any criminal offence is under investigation or trial. Upon *prima facie* materials collected during investigation by the Investigating Agency, charge-sheet has been submitted against the petitioner under the aforesaid offences. The written complaint would show that there are allegations against the petitioner of taking huge sum of money from the complainant on false pretext of providing job in a government school. The alleged criminal offence directly relates to moral turpitude of the petitioner. Since the criminal charges does not relate to any

misconduct in the Madrasah, hence no disciplinary proceeding could be initiated under the conduct rules. Be that as it may, previously the petitioner moved a writ petition being WPA 7318 of 2022 seeking for his appointment as Superintendent of the said Madrasah. Pursuant to order passed in the said writ petition, a reasoned order was passed by the Director of Madrasah Education, Government of West Bengal rejecting the prayer of the petitioner to join as a Superintendent in the said Madrasah considering the criminal offence. Such order has not been challenged before this Hon'ble Court. The order of the Director of Madrasah Education, Government of West Bengal clearly records that the appearance of the petitioner in any educational institution may have a detrimental effect on the students as well as environment of the institution. The said order passed by the Director of Madrasah Education, pursuant to the order passed in the writ petition, has been suppressed in the present writ petition. Thus, the prayer of the petitioner for withdrawal of impugned order of suspension is not sustainable and as such the writ petition ought to be dismissed in *limini*.

5. Mr. Nadeedm Sulaiman, learned Advocate appearing on behalf of the West Bengal Board of Madrasah Education submits that the delinquent is receiving subsistence allowance but due to such suspension, his services could not be utilized despite money in form of subsistence allowance been given to the

petitioner. Such suspension is also affecting the day-to-day imparting of education to the students. A person cannot be put under suspension for an indefinite period without there being any departmental proceeding.

6. Upon hearing the learned Advocates for the respective parties, the only issue which falls for consideration whether the suspension order issued by the respondent nos.7, 8 and 9 dated 18th January, 2024 is sustainable or not.
7. It is not in dispute that the petitioner was put under suspension on 18th January, 2024 upon initiation of a criminal case against him under Sections 420, 465 and 468 of IPC. Undisputedly, upon completion of investigation charge-sheet has already been submitted by the Investigating Agency under the similar provision of law. The criminal case is pending. From the affidavit-in-opposition filed by respondent nos. 7, 8 & 9 being annexure R1 at page 9 it is found that previously the petitioner filed a writ petition being WPA 7318 of 2022 wherein the petitioner sought for joining as Superintendent of the said Madrasah. Pursuant to a direction issued in the writ petition, the Director of Madrasah Education, Government of West Bengal passed order on 11th August 2023, rejecting the prayer of the petitioner to join as a Superintendent in the said Madrasah as well as observing that he cannot be considered/allowed to join in any Madrasah till the disposal of criminal case

initiated against him and unless he is acquitted from the charges against him. It is pertinent to note that the authority concerned in its order dated 11th August, 2023 has considered the aspect of pending criminal case and it has been observed that the presence of the petitioner in the educational institution may cause a detrimental effect among the students as well as environment of the institution. Although the petitioner in the present writ petition has disclosed the earlier writ petition, but the aforesaid order passed by the Director of Madrasah Education has not been disclosed in the instant writ petition which has a direct bearing with the present writ petition and is a material fact. Admittedly, there is no challenge to the aforesaid order of rejection.

8. In ***Business Enterprises (P) Ltd. versus State of Bihar and others*** reported in **(2004) 7 SCC 166**, it is held by the Hon'ble Supreme Court that suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief.

The relevant portion is extracted hereinbelow:

'13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material from the consideration of the court, whatever view the court may have taken '

The order passed Director of Madrasah Education as noted in the earlier paragraph above which is a material consideration of the court has been suppressed by the petitioner. Bearing in mind the aforesaid proposition laid down by Hon'ble Supreme Court, such suppression of a material fact by the petitioner disqualifies him from obtaining any relief as prayed for in the present writ petition.

9. Although the proposition of law in the cited decisions, as pressed into service, on behalf of the petitioner are settled principles, however, those are factually distinguishable from the case at hand in view of the discussion made in the foregoing paragraph.
10. In light of the above, the writ petition falls short of merit.
11. Accordingly, the writ petition being **WPA 9240 of 2024** stands dismissed.
12. Interim order, if any, stands vacated.
13. All connected applications, if any, stand disposed of.
14. There shall be no order as to costs.
15. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
16. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)