

(2019) 01 CAL CK 0095

In the Calcutta High Court

Case No : Writ Petition (W.p) No. 15801 (W) Of 2018

Asis Kumar Belel

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Citation : (2019) 01 CAL CK 0095

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Saibal Acharyya, Amar Mitra, Sougata Bhattacharyya, Pinaki Bhattacharyya

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner challenging an order of suspension dated July 7, 2018 by which the Secretary of Sheoraberia Panchberia High Madrasah, issued a letter of suspension communicating the resolution of the Managing Committee, to suspend the petitioner from the post of Teacher from the concerned Madrasah on and from July 9, 2018 due to violation of the Management Rule, Right to Education Act and Government Order.

The letter is quoted below:?

"SHEORABERIA PANCHBERIA HIGH MADRASAH

(Govt. Aided Co?educational Madrasah)

Vill.?Sheoraberia, P.O.?Lakshmanpur, Dist.?Hooghly

Regd. No.?524 M.D. dt.?30.03.07 * Index No.?07?02?03?01?2017 * Ph.?03214?245?768

Ref. No.SHEO/13/12/18

Dat

e. 7.7.2018

From : The Secretary / The Headmaster

To

Asis Kumar Belel

S/O - Late Gopinath Belel

Vill - Badesola

P.S. - Chanditala

Dist. - Hoogly

Sub: Suspension Letter

[Ref. The D.I (SE) memo no.?657/SE dt.11.05.2018, Reminder memo no.?875/SE dt.05.06.2018, D.M.E. letter no.? 2194 dt.17.11.2017, MC resolution no.? 10/17 dt.21.08.2017, vide MC No.?3/18 dt.29.06.2018, vide MC Show Cause letter No.SHEO/11/8/18 dt.29.06.2018]

Sir,

In terms of the resolution of the Managing Committee of Sheoraberia Panchberia High Madrasah resolution No.?04/2018 dt.07.07.2018 you are hereby informed that out MC gave you a show cause notice vide letter no.? SHEO/11/8/18 dt.29.06.2018. But your reply to show cause could not satisfy the Managing Committee. Due to violation of Management rule, Right To Education Act and Government order our Managing Committee has compelled to take disciplinary action against you for the sake of study of the students and maintain proper environment of education in our institution. Therefore it has been unanimously decided to suspend you from the post of teaching from our Madrasah on and from Monday, 09.07.2018.

Yours faithfully,"

Surprisingly, the said suspension order does not state what provisions of the Management Rule or Government Order, the petitioner(Teacher) might have allegedly violated, upon prima facie satisfaction of which the authority had issued the order of suspension in contemplation of a disciplinary proceeding. Moreover reference has been made in the suspension order to memoranda issued by the District Inspector of Schools by which the Headmaster was directed to take disciplinary action against the petitioner.

The Madrasah Authorities filed an affidavit?in?opposition, in which it has been stated that the authority had acted on the basis of the direction of the District Inspector of Schools (S.E.) Hooghly, who was directed by the Director Madrasah Board to ask the madrasah authorities to initiate a disciplinary proceeding against the petitioner. In compliance of the said direction given by the District Inspector of Schools (S.E.), Hooghly, the petitioner was suspended.

The Headmaster of the Madrasah in the affidavitⁱⁿ opposition stated inter alia as follows:?

"6. With reference to the statements contained in paragraph No.,8 and 9, they are denied and disputed in view of the facts that the disciplinary action against the petitioner has been taken in strict compliance of the instructions given by the District Inspector of Schools (S. E.) concerned who in obedience to the direction of the Director of Madrasah Education issued the said instruction - Memo, about which I have already stated in the foregoing paragraph No. 5. To say anything more in this regard would be mere repeating of the same facts."

It appears from the Rules for Management of recognised Non-Govt. Madrasahs (Aided and Unaided), 2002 that it is the Managing Committee of the Madrasah, which has the power to suspend a teacher or employee for drawing up of the proceedings against the person concerned. The said Rule further provides that during the period of suspension, the petitioner shall be entitled to subsistence allowance equal to 50% of the pay and allowance drawn up by him.

The said Rule also provides that steps taken in the matter shall be referred to the concerned Board within 7 days for its approval. The Madrasah authorities cannot act on the dictates of either the District Inspector of Schools or the Director of Madrasah Education.

In this regard, the relevant Rule is set out below:?

"(i) to suspend a teacher or an employee where such suspension is in the interest of the Madrasah, pending drawal of proceedings against the person concerned within ninety days from the date of suspension; and during the period of suspension, the person concerned shall be paid pay and allowances equal to fifty per cent of the pay and allowances drawn by him immediately before such suspension. Such steps shall be referred to the Board within seven days of such approval. The person affected by the decision of the Committee may, however, make his representation to the Board. The proposal seeking Board's approval with regard to suspension of any member of teaching, non-teaching staff shall contain the following particulars, ? (a) name and designation of the person concerned; (b) Date of appointment against a sanctioned post; (c) date of order of suspension; (d) copy of the resolution of the Managing Committee recommending such suspension;

(e) information about the payment of subsistence allowance to the person concerned; (f) details of previous record of suspension and/or punishment against him, if any. The order of suspension shall normally be issued to a member of the teaching/non-teaching staff under this clause, when his presence in the Madrasah is likely to vitiate the inquiry and the charges brought or to be brought against him her;

The order of suspension shall automatically stand withdrawn in case the proceedings are not drawn within a period of ninety days, provided that in

exceptional circumstances this time limit may be waived by the Board after due consideration of the facts of the case, but under no circumstances the time limit shall be waived beyond the limit of one year.

Where the period of suspension exceeds 90 (ninety) days, the amount of subsistence allowance shall be increased after the expiry of ninety days to seventy-five per cent of the pay and allowances drawn immediately before such suspension. The suspended person shall not be entitled to any subsistence allowance if he accepts employment during the period of suspension elsewhere;

However, a member who is detained in custody for a period exceeding 48 (forty eight) hours under any law providing for preventive detention or as a result of proceeding on a criminal charge or otherwise, shall be deemed to have been suspended by an order of the appointing authority with effect from the date of his detention and shall remain under suspension till disposal of the matter by court of law;"

The proposal of the Madrasah for drawing up the proceeding against the petitioner, has not been referred to the concerned Board for approval within 7 days. This is in violation of the Rules. It is a simpliciter order of suspension, without mentioning the alleged insubordination and/or violation of the rules that may have been committed by the delinquent teacher.

Suspension order is generally issued when the disciplinary proceedings against a particular employee are contemplated or have started or charge-sheet is given. This is regulated by the service rules. When the rules provide that a servant against whom an enquiry is contemplated or proceedings have started may be placed under suspension pending enquiry, then he can be suspended only as per the rules.

Although the suspension order was issued on July 7, 2018 nothing is on record to show that charge sheet has been issued. The Rules clearly state that if within 90 days disciplinary proceedings are not drawn up then the suspension order will automatically be withdrawn. In this case, there was an interim order of stay of the suspension by an order dated August 29, 2018 but, disciplinary proceedings had not been stayed. Moreover subsistence allowance was also not paid to the teacher in terms of the rules. In the affidavit in opposition the head master has not taken the plea that the charge sheet could not be issued due to the interim order passed by this court. There is nothing on record to show that the matter was even referred to the Board.

Under such circumstances, the letter dated 7th July, 2018 is not in conformity with the rules and the settled principles of law and therefore, the same stands set aside.

The Madrasah authorities are given liberty to proceed against the petitioner as per the rules if materials exist.

The period under which the petitioner has remained under suspension, shall be

treated as on duty and he shall be entitled to join the concerned School.

The petitioner shall also be entitled to receive his salary during the period he was under suspension and such salary will be released to the petitioner forthwith.

The writ application is, thus, allowed to the extent as indicated above.

There will, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties at an early date.