

(2005) 09 CAL CK 0009

In the Calcutta High Court

Case No : Writ Petition No. 13947 (W) of 2005

Chhabi Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Bengal (Rural) Primary Education Act, 1930 — Section 66, 66(2)
Bengal (Rural) Primary Education Rules, 1930 — Rule 12, 13
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10
Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 306, 34, 498A
West Bengal Primary Education Act, 1973 — Section 105, 106, 107, 17(8), 18
West Bengal Primary Education Rules, 1991 — Rule 7

Citation : (2006) 1 CHN 34 : (2006) 109 FLR 909 : (2005) 2 ILR (Cal) 427

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Shyamal Kumar Das, Somnath Banerjee and Bineeta Bhattacharya, for the Appellant; Rabilal Moitra, Debabrata Chakraborty for the respondent No. 4 and Gautam Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Mitra, J.—This writ petition has been moved challenging an office memorandum dated February 23, 2004 issued by the Chairman District Primary School Council, Nadia. In the office memorandum it, has been stated that the petitioner, a Head Teacher of Raghunath Siromoni Primary School under Nabadwip P.S. has been suspended with effect from January 19, 2004 due to her detention in jail custody for period exceeding 48 hours in connection with Nabadwip P.S. Case No. 05/2004 dated January 19, 2004 u/s 498A/306/34 of Indian Penal Code as per Government Notification No. 906-S.E.(Pry) dated July 09, 2001. It has also been stated that the petitioner will be paid subsistence allowance.

2. The deemed suspension has been provided in a Government Notification which

takes the form of rule is the subject-matter of discussion here. If is to be decided as to whether this deemed suspension is permissible or not. It is also to be decided as to what would be the effective period of such deemed suspension. Initially, for guidance of service conditions of primary teachers, rules were there under 1930 and 1963 Act that is Bengal (Rural) Primary Education Act, 1930 and West Bengal Urban Primary Education Act, 1963. Under this Bengal (Rural) Primary Education Act, there was a Government Notification being No. 1493-Edn, dated July 25, 1940 (as amended). The contents of such notification is quoted hereinbelow :

14(ii) A teacher of a primary school against whom proceedings have been commenced on a criminal charge but who is not actually detained in custody (that is, a person released on bail) may also be placed under suspension. If the criminal charge is related to the official position of the teacher or involves any moral turpitude on his part, suspension shall be ordered unless there are exceptional reasons for not adopting such a course.

(iii) A teacher of a primary school who is detained in custody for a period exceeding 48 hours as a result of the proceeding on criminal charge or otherwise shall be deemed to have been suspended by an order of the appointing authority. A teacher who is undergoing a sentence of imprisonment shall also be dealt with in the same manner.

(iv) During the period of suspension, a teacher shall be entitled to:

(a) A subsistence grant at such rate not exceeding one-half of the pay of the teacher on the date of suspension as the suspending authority may decide: Provided that where the period of suspension exceeds twelve months, the suspending authority shall be competent to increase the subsistence grant for any period subsequent to the period of the first twelve months by a suitable amount not exceeding fifty percent of the subsistence grant allowed during the first twelve months. If in the opinion of the suspending authority, to be recorded in writing the period of suspension has been prolonged for reasons not directly attributable to the teacher;

(b) Dearness Allowance, if any, at the rate at which it was drawn on the date of suspension or such portion thereof as the suspending authority may direct :

Provided that no payment under Clause (a) or Clause (b) shall be made unless the teacher furnished a certificate to the effect that he is not engaged in any other employment, business, profession or vocation.

(v) In addition to the provisions for removal and dismissal from service as prescribed under Rules 12 and 13, a teacher may also be dismissed or removed from service or otherwise punished by the appointing authority with the approval of the Director of Public Instruction, West Bengal, in the event of his conviction in any Court of Law.

(vi) The teacher shall, however, be reinstated and full pay and allowance for the

period of suspension shall be paid to him when he is acquitted by the Court or when he is exonerated from the charges against him in the report of the District Inspector of Schools or a decision of the Board under Rule 12 or as a result of appeal under Rule 13. When he is awarded a punishment other than dismissal or removal from service, he may be reinstated and such portion of pay and allowance for the suspension period may be allowed as the appointing authority may decide.

(vii) Leave shall not be granted to a teacher while he is under suspension or committed to prison.

(viii) These rules shall not be applicable in the case of teachers who have been detained under any law relating to preventive detention.

3. As would appear from the notification, the same has been issued under the powers conferred u/s 66 of the Bengal (Rural) Primary Education Act, 1930. The notification which took the shape of rule was issued and/or framed in exercise of powers conferred by Sub-Section (1) and, in particular, by Clause (P) of Sub-section (2) of Section 66 of Bengal (Rural) Primary Education Act, 1930. With effect from September 20, 1974, West Bengal Primary Education Act, 1973 came into force which extended to whole of West Bengal. This Act covered rural and urban area both and became a comprehensive one.

4. Under 1973 Act rules were framed effective from 22nd November, 1991. Sections 105, 106 and 107 of the Act provide repeal clause, rule making power and, in absence of rule, notification issuing power. The said three sections are quoted hereinbelow for facilitation of discussion :

Section 105 of the said Act which contains Repeal and Continuance is quoted hereinbelow :

(1) The Bengal (Rural) Primary Education Act, 1930, the West Bengal Urban Primary Education Act, 1963 and the West Bengal (Rural) Primary Education (Temporary Provisions) Act, 1969 are hereby repealed.

(2) Upon such repeal --

(a) all properties and assets vested in the District School Board established for a district shall vest in and all rights, liabilities and obligations acquired or incurred by such District School Board before such repeal shall stand transferred to, the Primary School Council established for the district;

(b) all legal proceedings instituted or remedies enforceable by or against the District School Board established for a district before such repeal may be continued or enforced, as the case may be, by or against the Primary School Council established for the district and until such Primary School Council is established, by or against the ad hoc committee appointed u/s 93 in relation to the district;

(c) all officers, teachers and other staffs of primary schools employed by the

District School Board established for a district and continuing in office or primary schools immediately before such repeal shall be deemed to be employed by the Primary School Council established for the district on such terms and conditions as may be determined by the State Government:

Provided that until such Primary School Council is established such officers and other persons shall be deemed to be employed by the ad hoc committee appointed u/s 93 in relation to the districts.

(3) All Primary Schools recognized under the Bengal (Rural) Primary Education Act, 1930 or the West Bengal Urban Primary Education Act, 1963 and all primary schools under private ownership which receive salary for the approved teachers from the State fund and which were recognized by the competent authorities in terms of the orders issued by the Education Department or the Director of Public Instruction from time to time otherwise than the provisions of the said repealed Acts, shall continue to be recognized under this Act until the expiration of the period of recognition subject, however, to the power of the Primary School Council having jurisdiction to withdraw recognition in accordance with the provisions of this Act.

(4) Notwithstanding the repeal of the Bengal (Rural) Primary Education Act, 1930, all rules, orders and notifications made or issued from time to time under the said Act, applicable to a District School Board and continuing in force immediately before such repeal shall continue in force in so far as they are not inconsistent with the provisions of this Act, until they are repealed or amended.

Section 106. Power of the State Government to make Rules.-- (1) The State Government may, after previous publication, make rules for carrying out the purpose of this Act.

(2) In particular and without prejudice to generality of the foregoing power, such rules may provide for all or any of the following matters:

a) the manner of election of the members of the Board referred to in Clauses (c), (d), (e), (f), (h) and (i) of Section 4(aa) the conditions subject to which punishment may be awarded --

i) by the Board on the members of its staff, other than the Secretary and the Finance Officer, under Sub-section (8) of Section 17;

ii) by a Primary School Council on the members of its staff, other than the Secretary and the Finance Officer, under Sub-section (3) of Section 56;

iii) by a Primary School Council on a teacher, or a member of the non-teaching staff, of a primary school under the control of that Primary School Council;

b) the allowances and the rates of allowances, referred to in Section 18;

bb) the manner of election of the members of the Curriculum Committee referred to in Clauses (d), (e), (f) and (h) of Sub-section(1) of Section 23;

bbb) the manner of election of the members of the Evaluation Committee referred to in Clauses (e), (g), (h) and (f) of Sub-section (1) of Section 24;

c) the form of the budget estimate of the Board referred to in Sub-section (1) of Section 30;

d) the manner of keeping an account of the Board referred to in Section 34 and the manner of examination and audit of accounts of the Board referred to in Sub-section (1) of Section 35;

e) the manner of election of the members of --

i) a District Primary School Council referred to in Clauses (d), (e), (f), (h), (i) and (j) of Sub-section (2) of Section 37,

ii) the Siliguri Primary School Council referred to in Clauses (d), (e), (f), (g), (h), (i) and (f) of Sub-section (2A) of Section 37, and

iii) the Calcutta Primary School Council referred to in Clauses (c), (d), (g), (gg) and (ggg) of Sub-section (2) of Section 38;

f) the form of the budget estimate of the Primary School Council referred to in Sub-section(1) of Section 69;

g) the manner of reappropriation to be sanctioned u/s 71, the manner of keeping an account of a Primary School Council referred to in Section 73 and the manner of examination and audit of accounts of a Primary School Council referred to in Section 74;

h) the manner in which the tax referred to in Section 77 shall be levied and collected;

i) the form of the scheme referred to in and the particulars referred to in, Clause (g) of Section 80;

j) omitted;

k) any other matter which may be, or is required to be, prescribed.

(3) All rules made under this Act, shall be laid for not, less than fourteen days before the State Legislature as soon as possible after they are made and shall be subject to such modification as the State Legislature may make during the session in which they are so laid. Any modification of the said rules made by the State Legislature; shall be published in the Official Gazette and shall, unless some later date is appointed by the State Government, come into force on the date of such publication.

Section 107: Power of State Government to issue notification or order in place of making rules.--Notwithstanding anything contained in Section 106 or elsewhere in this Act, the State Government may --

a) issue any notification or order for carrying out any of the purposes of this Act

for which that Government does not consider it necessary to make rules, or

b) issue any notification or order, not inconsistent with the provisions of this Act, in place of making rules under this Act, if that Government considers it necessary so to do.

5. After 1991 rules, the question of deemed suspension didn't exist. Notification No. 149H-Edn under 1930 Act was repealed by 1973 Act and by Rule 35 of 1991 rules. Another notification has been issued by the Government being No. 906-SE(Pry) dated July 09, 2001 which took the shape of rule and that is the subject-matter of discussion. This rule was made effective from July 12, 2001. Rule 7 of this rules is relevant and Rule 7(2) is specific in this case. Rule 7(2) deals with deemed suspension while the teacher is under custody for a period exceeding; 48 hours on a criminal charge. Rule 7(2) is quoted hereinbelow :

Where a teacher is detained in custody for a period exceeding 48 hours on a criminal charge or otherwise he shall be deemed to have been suspended by an order of the date of his detention and shall remain under suspension until further orders. A teacher who is undergoing a sentence of imprisonment shall also be dealt with the same manner, pending a decision as to the disciplinary action to be taken against the teacher.

6. The question is as to whether the deemed suspension is permissible or not and if permissible what is its period of effect. The learned Counsel Mr. Moitra appearing for D.P.S.C., Nadia relied on a judgment reported in Union of India (UOI) Vs. Rajiv Kumar, relied on para 14 of this judgment which is quoted hereinbelow :

Rule 10(2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions. It does not speak of any period of its effectiveness. Rules 10(3) and 10(4) operate conceptually in different situations and need specific provisions separately on account of inter position of an order of a Court of Law or an order passed by the appellate or reviewing authority and the natural consequences inevitably flowing from such orders. Great emphasis is laid on the expression "until further orders" in the said sub-rules to emphasize that such a prescription is missing in Sub-rule (2). Therefore, it is urged that the order is effective for the period of detention alone. The plea is clearly without any substance because of Sub-rule (5)(a) and (5)(c) of Rule 10. The said provision referred to an order of suspension made or deemed to have been made. Obviously, the only order which is even initially deemed to have been made under Rule 10 is one contemplated under Sub-rule (2). The said provisions under Rule 10(5)(a) makes it crystal clear that the order continues to remain in force until it is modified or revoked by an authority competent to do so while Rule 10(5) (c) empowers the competent authority to modify or revoke also. No

exception is made relating to an order under Rules 10(2) and 10(5) (a). On the contrary, it specifically encompasses an order under Rule 10(2). If the order deemed to have made under Rule 10(2) is to lose effectiveness automatically after the period of detention envisages comes to an end, there would be no scope for the same being modified as contended by the respondent as there was no need to make such provision as are engrafted in Rules 10(5)(a) and (c) and instead an equally deeming provision to bring an end to the duration of the deemed order would by itself suffice for the purpose.

7. Mr. Moitra submitted that similar provision of "deemed suspension" is there in C.C.S. (C.C.A) Rule 62 for custodial detention exceeding 48 hours. The Rule 10 of C.C.S (C.C.A) with its sub-rules are quoted hereinbelow :

Rule 10 is the pivotal provision around which the controversy revolves and it reads as follows :

10. Suspension.--(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President by general or special order, may place a Government servant under suspension--

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial :

Provided that, except in case of an order of suspension made by the Comptroller & Auditor General in regard to a member of the Indian Audit & Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit & Accounts Service), where the order of suspension is made by the authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority --

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.--The period of forty-eight hours referred to in Clause (b) of this sub-

rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued to force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory, retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

8. It is to be seen as to whether the provisions of Rule 10 with its sub-rules are in pari materia with the provision of Rule 7(2) of the rules framed under the West Bengal Primary Education Act, 1973 under Government Notification No. 906 - SE(Pry) dated July 09, 2001. Rule 10 contains in its Sub-rules (5)(a) to 5(c) regarding the period of deemed suspension and it has been stated there that an order of suspension may be modified or revoked at any time by the authority.

This rule, therefore, makes two things clear, one is there must be a specific order suspending the incumbent concerned and the other is the suspension will continue till it is withdrawn by another specific order of the authority. In this rule and/or sub-rules nowhere it has been provided that the deemed suspension will be effective from the date of custody or detention, that is the suspension will not have retrospectivity. But as it appears from the provisions of Rule 7(2) of the Primary Education Rules the order is to be passed and the order will be effective from the date of his detention that is the order if subsequently passed also it may have retrospective effect.

9. It is settled position of law that suspension cannot have retrospectivity in its effectiveness.

10. Rule 7(2) of the Primary Education Rules has its vagueness and it confers the authority to pass an order in support of the deemed suspension with retrospective effect. The Court cannot read any statutory provision in its own way and the provision is to be read in plain. In this regard, I am tempted to quote paragraphs 18 and 19 of the case of Rajiv Kumar (supra) which has been cited by Mr. Moitra, the learned Government Pleader appearing for the Nadia District Primary School Council :

Para 18 : It is a well-settled principle in law that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute or any statutory provision is the determinate factor of legislative intent of policy-makers.

Para 19: Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the legislature or the authority enacting it. (See *Institute of Chartered Accountants of India v. Price Waterhouse*.) The intention of the makers is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, Courts cannot aid the legislature's defective phrasing of an Act; they cannot add or mend and by construction make up deficiencies which are left there. (Also see *State of Gujrat v. Dilipbhai Nathbhai Patel*.) It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock v. Frank Jones (Tiopton) Ltd.*] Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself (Per Lord Loreburn, L.C. in *Vickers Sons and Maxim Ltd. v. Evans*, quoted in *Jumma Masjid v. Kodimaniandra Deviah*.)

11. In the plain reading, Rule 7(2) of the Primary Education Rules does not establish that the same is in pari materia with the provisions of Rule 10 of C.C.S. and (C.C.A.) Rules.

12. The Hon'ble Apex Court in the judgment of Rajib Kumar (supra) examined the provisions of Rule 10 with its sub-rules and got satisfied that the same is not unconstitutional. Here, the rule is not under challenge and I have not been called upon to decide as to whether the said Rule 7(2) has its Constitutional validity or not. The expression "life" doesn't merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Suspension of such type without any limitation and without departmental proceedings prima facie tantamounts to imposition of penalty which cannot be done without following the principles of fair play and natural justice.

13. In another judgment reported in , Ashit Kumar Sarkar v. Union of India and Ors. the Hon'ble Division Bench of this Court observed that the employee cannot be kept under suspension for an indefinite period and the employer also cannot adopt a dilatory tactics to victimise the employee. The relevant paragraph being paragraph No. 5 of this judgment is quoted hereinbelow for convenience of discussions :

Para-5: The disciplinary proceedings were not unnecessarily continuing or prolonging because of laches and/or negligence on the part of the petitioner, but because of inherent defects therein and further after the issue of the charge sheets on October 10, 1994, no chargesheet was given to the petitioner within three months from the date of the order of the Tribunal dated June 22, 1995 and that the order of suspension was allowed to continue even after it was found that the disciplinary proceedings was illegal. This is not the way under suspension and the matter should be prolonged. Whenever an order of suspension is passed in contemplation of a disciplinary proceeding, the authority concerned should issue chargesheet within a reasonable time if the rule is silent and the authority should conclude the same within a reasonable time and the employee cannot be kept under suspension for an indefinite period and the employer also cannot adopt a dilatory tactics to victimize: the employee.

14. One is to bear in mind that order of suspension also touches the right to livelihood and the provisions of Article 21 of the Constitution of India are attracted. Years together a person cannot be kept under suspension without any departmental proceeding.

15. Normally, an employee is suspended to keep him away from the place of his work so that he cannot influence the proceeding which is contemplated or which is continuing. A criminal case is initiated on a charge which is in no way connected with the working sphere of the employee. The employee got involved in the criminal case, detained in custody for more than 48 hours and he is suspended with retrospective effect for unlimited period and he is given

subsistence allowance that is minimum food to exist in this world. Natural justice comes forward and shocks the conscience. An employee if involved in a criminal case for any reason whatsoever will be suspended and that too with retrospective effect and the effectiveness of the suspension or period of suspension or the date of withdrawal of suspension, nobody knows. If that is not the violation of natural justice what more it can be?

16. Considering the facts and circumstances of the case, I am of the view that such type of deemed suspension and order on it as provided in Rule 7(2) of the Primary Education Rules is illegal.

17. I, therefore, set aside the impugned order of suspension and direct the authorities to allow the teacher concerned/petitioner to resume his duties within a period of fortnight from the date of communication of this order. The petitioner will be paid the entire arrear salaries after adjustment of the subsistence allowance within a period of eight weeks from the date of communication of this order. The petitioner will also be paid her salaries month by month effective from the first day of the next month.

18. With the above; observations and/or directions, the writ petition is allowed. There will be no order as to costs.

19. Urgent xerox certified copy of this order if applied for, be supplied on priority basis.