

**(2005) 08 CAL CK 0088**

**In the Calcutta High Court**

**Case No : Writ Petition No. 13171 (W) of 2005**

Mr. Bibhas Chandra Paria

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

**Date of Decision : 11-08-2005**

**Acts Referred:**

Arms Act, 1959 — Section 25, 27  
Bengal (Rural) Primary Education Act, 1930 — Section 66, 66(1), 66(2)  
Bengal (Rural) Primary Education Rules, 1930 — Rule 11, 12, 13, 35  
Constitution of India, 1950 — Article 309  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 325, 354  
West Bengal Primary Education Act, 1973 — Section 105, 106, 107, 93

**Citation : (2006) 3 CALLT 490**

**Hon'ble Judges : Arun Kumar Mitra, J**

**Bench : Single Bench**

**Advocate : Kallol Bose, Binoy Bose and Saswati Chatterjee, for the Appellant; Asok Maity, Kumaresh Dalal, for the Respondent**

## **Judgement**

Arun Kumar Mitra, J.—This writ petition has been moved challenging an office order dated July 07, 1999 issued by the Chairman, Ad hoc Committee, Midnapore District Primary School Council. The said office order has been annexed as P-1 to the writ petition which is quoted hereinbelow:

As Sri Bibhas Chandra Paria, Head teacher, Eamunia Jangal Primary School, P.O. Dhanghara, Dist. Midnapur, under Contai-III Circle, drawing Rs. 1620/- as Basic Pay per month has involved himself in Contai P.S. Case No. 148/97 dated 19.5.97, under Sections 147, 148, 149, 325, 354, 380, 427/506 IPC and 25/27 of Arms Act, so, he is hereby placed under suspension with immediate effect from his post as Head teacher, Bamunia Jangal Primary School.

Sri Paria shall be paid 50% of his pay as on the date proceeding the date of suspension plus dearness allowance in full as on the date of suspension as subsistence allowance during the period of suspension subject to the condition that no payment shall be made unless the suspended teacher furnishes a

certificate to the effect that he is not engaged in any other employment, business, profession or vacation during the period of suspension.

The order of suspension shall remain in force until Sri Paria is reinstated in his post by a subsequent order from the council to that effect on acquittal of the charges levelled against him or dismissed from the service under this council by issue of relevant order to that effect.

2. Office order appears to be deemed suspension order in terms of Government Notification being No. 1493-Edn. dated the 25th July, 1940 (as amended), the contents of the Notification is quoted hereinbelow:

14(i) The appointing authority may place a teacher of a primary school under the Board under suspension, (a) on charges of grave misconduct, serious dereliction of duty or gross insubordination pending receipt of the report under Rule 12 and final disposal of appeal under Rule 13, if any, and, (b) when a case against him in respect of any criminal offence is under investigation or trial.

(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 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 Rule 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. 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.

5. Section 106 of the said Act gives power to the State Government to make rules and Section 107 gives the power to the State Government to issue notification or order in place of making rules.

6. By this Act of 1973 Urban Primary Education Act also i.e. Rural and Urban both Acts were repealed and 1973 Act came into force with full force. In pursuance of the power given u/s 106 of the said Act, rules were framed and these rules are termed "Recruitment & Leave Rules of Primary Teachers". Rule 35 of the said Rules is the repealing provisions which is quoted herein below:

Repeal - All rules and orders made under the Bengal (Rural) Primary Education Act, 1930 and the West Bengal Urban Primary Education Act, 1963 and the West Bengal (Rural) Primary Education (Temporary Provision) Act, 1969; regarding appointment of teachers and service conditions of primary teachers, contrary to the provisions of these rules, are hereby repealed in the districts where the West Bengal Primary Education Act, 1973 (43 of 1973) has come into force:

Provided that appointment of all teachers made with the approval of the Director prior to the framing of these rules, shall be deemed to have been approved under these rules.

7. Now Rule 35 speaks of the modification of the rules framed earlier concerning the recruitment as also service conditions of primary teachers.

8. Now the office order which has been issued in terms of the earlier provision of Bengal Rural Primary Education Act regarding deemed suspension is also a service condition that means all the service conditions of the Bengal Rural Primary Education Act go by virtue of Rule 35 of the rules framed under West Bengal Primary Education Act and these rules came into force effective from November 22, 1991. After that by virtue of the repeal provision of this rule the earlier service condition also goes and the provision contained in notification being No. 1493-Edn. dated July 25, 1940 becomes non est and no deemed suspension in view of the subsequent repeal provision remains. This is one part of the story and the other part is that if there is rule, the employer has all the rights to suspend an employee in terms of the said rules and if there is no rule the employer also has got power to suspend employee but here the thing is different. Now the order of deemed suspension has been issued by an office order and this office order obviously comes under judicial review. The employee can be suspended if any departmental proceeding is contemplated or departmental proceeding is pending. The employee can also be suspended if a criminal case is pending against him, but the nexus in between the criminal case and the functioning of the petitioner must be there inasmuch as, since it is an administrative order, the authority is to look into the fact as to whether the administration is suffering for the purpose of pendency of the criminal case. In a decision reported in O.P. Gupta Vs. Union of India (UOI) and Others, ., the Hon''ble Apex Court observed that having regard to the serious repercussions on livelihood, an order of suspension is not to be passed lightly and where there was no question of inflicting any departmental proceeding, departmental punishment an order of suspension would prima facie tantamount to imposition of a penalty which manifestly repugnant to the principles of natural justice and fair play in action. The Hon''ble Apex Court in paragraph 15 of this Judgment observed in the manner as follows:

We have set out the facts in sufficient detail to show that there is no presumption that the Government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension as explained by this Court of Khem Chand Vs. The Union of India (UOI )and Others, is that he continues to be a

member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance?generally called subsistence allowance?which is normally less than the salary instead of the pay and allowance he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension unless the departmental inquiry is concluded within a reasonable time, affects a government injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary of the word "subsists" as given in Shorter Oxford English Dictionary, Vol.11 at P.2171 is "to remain alive as on food; to continue to exist". "Subsistence" means?means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, an order of suspension is not to be lightly passed against the Government servant. In the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, the Court held that the expression "life" does: not merely connote animal existence or a continued drudgery through life. The expression "life" has much wider meaning. Suspension in a case life the present where there was no question of inflicting any departmental punishment prima facie tantamount to imposition of penalty which is manifestly repugnant to the principles of natural justice and fairplay in action. The conditions of service are within the executive power of the State or its legislative power under the proviso to Article 309 of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceeding should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognized, it would imply that the Executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration.

9. In such view of the matter, either departmental proceeding is to be initiated or it must be contemplated or there must be criminal case which has got nexus with the functioning of the teacher concerned.

10. As observed by the Hon"ble Apex Court in the case of O.P. Gupta taking the same view, principle or idea. The Hon"ble Division Bench of this Court in a decision reported in 1998 (1) CLJ 138 Asit Kumar Sarkar v. Union of India and Ors. observed that an employee cannot be kept under suspension for an indefinite period, an employer also cannot conduct any dilatory tactics to victimise the employee. In paragraphs 5 and 6 of the said Judgment observations made are quoted hereinbelow:

Para-5: "The disciplinary proceedings were not unnecessarily continuing or prolonging because of latches 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 charge sheet 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 charge sheet 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 delatary tactics to victimise the employee.

Para-6: We are not satisfied with the conduct of the respondents in the manner in which the petitioner was kept under suspension. But, considering the facts and circumstances of the case, we only direct that the order of suspension shall continue subject to the condition that the petitioner shall be paid his full pay and allowances as if he is in service, but he will not join until the conclusion of the disciplinary proceedings. Such disciplinary proceedings should be concluded as expeditiously as possible, but not later than four months from the date of communication of this order. This is the only to keep the balance regarding the loss caused by the petitioner. Petitioner is directed to co-operate with the authority concerned, so that proceedings should be concluded within the time specified.

11. In this case as it appears that criminal case was started in the year 1997 under Sections 147, 148, 149, 325, 354, 380, 427/506 of Indian Penal Code and 25/27 of the Arms Act and this case cannot have any nexus with the functioning of a Head teacher i.e. the administration cannot suffer for pendency of this case. However, the order has been passed after one year, keeping an employee under deemed suspension for an indefinite period and it has not been stated whether any departmental proceeding in connection with the said criminal case has been initiated against the petitioner or not. In that view of the matter, I think that the suspension order is bad in law and such suspension must be declared bad in law in view of the provisions referred to above and that the enabling notification is not also there by virtue of subsequent amendment or by virtue of subsequent notification of the rules effective from 1991 framed under West Bengal Board of Primary Education Act, 1973.

12. In my view, such suspension cannot stand the test of legality and it should be quashed. The suspension order is set aside. The employee-petitioner will be allowed to join the school immediately within a period of fortnight from the date of communication of this order. The authority concerned is directed to pay his arrear salaries on adjustment of the amount given as subsistence allowance, if any. Such payment of arrear salary is to be made within a period of four weeks from the date of communication of this order.

The writ petition is thus disposed of.

There will be no order as to costs.