
(2011) 03 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition No. 21821 (W) of 2010

Sk. Sultan Ali

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(2), 389, 389(3)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 498A
West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools)
Rules, 2001 — Rule 7, 7(2)

Citation : (2011) 2 CALLT 100 : (2011) 3 CHN 345

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Sk. Md. Galib, for the Appellant; Tulsidas Maity, for the Respondent

Final Decision : Allowed

Judgement

Biswanath Somadder, J.—The writ Petitioner has approached this Court challenging an office memo dated 10th September, 2010, issued by the Chairman, District Primary School, Council, Howrah. The said office memo is set out in its entirety hereinbelow:

OFFICE MEMORANDUM

In reference to the judgment dated 09.08.2010 passed by the Court of Judicial Magistrate 7th Court, Howrah in G.R. Case 2269 of 2005 Sk. Sultan Ali, A.T. of Sahapur Uttar Para Pry. School under Panchla Circle, Howrah is found guilty of the offence u/s 498A of the Indian Penal Code and is accordingly convicted u/s 248(2) of the Code of Criminal Procedure and he is sentenced to suffer simple imprisonment of one year.

Hence, in accordance with Rule 7 of the Notification No. 906-SE(Pry), dated 09.07.01, Sk. Sultan Ali, A.T. of Sahapur Uttar Para Pry. School under Panchla Circle, Howrah is hereby placed under suspension w.e.f. 09.08.2010, the date on

and from the said teacher was found guilty and convicted as stated above.

During the suspension period, the said teacher is entitled to get the subsistence allowances as per rules.

All the concerned be informed accordingly.

Chairman

District Pri School Council,

Howrah Dt. 10.9.10.

2. The issue that comes up for consideration before this Court is whether the writ Petitioner can be placed under suspension in accordance with Rule 7 of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001 (hereinafter referred to as the said Rules), in view of the fact situation as presented in the said memo.

3. Before addressing this issue, it is perhaps necessary to set out, in brief, the facts of the instant case:

The Petitioner was appointed as an assistant primary teacher of Balarampur Sardarpara Primary School by a memo of appointment dated 21st August, 2003, issued by the Chairman, District Primary School, Council, Howrah, being the Respondent No. 5 herein. Subsequently, the writ Petitioner was transferred to Sahapur Uttarpara Primary School in terms of office an memo dated 18th May, 2005, issued by the Chairman of the said Council. On the basis of a written complaint made by the wife of the writ Petitioner on 2nd October, 2005, before the Sankrail Police Station, Howrah, a case was registered against the writ Petitioner and others, being case No. 269/2005 dated 2nd October, 2005, under Sections 498A/34 of the Indian Penal Code, 1860 and under Sections 3 & 4 of the Dowry Prohibition Act, 1961. Consequently, a chargesheet was submitted against the writ Petitioner and others on 30th November, 2005, u/s 498A of the Indian Penal Code 1860 and under Sections 3 & 4 of the Dowry Prohibition Act, 1961. The Court, thereafter, framed a charge u/s 498A of the Indian Penal Code, 1860, against all accused persons including the writ Petitioner. Consequently, trial began before the Court of learned Judicial Magistrate, 7th Court, Howrah, and ultimately by a judgment and order dated 9th August, 2010, the writ Petitioner and another person were adjudged guilty of offence u/s 498A of the Indian Penal Code 1860 and were accordingly convicted u/s 248(2) of the Code of Criminal Procedure, 1973, and sentenced to suffer simple imprisonment for one year each and also pay a fine of Rs. 1,000/- each, in default whereof to suffer imprisonment of one month each. On that day itself, the learned Judicial Magistrate entertained a petition filed u/s 389 of the Code of Criminal Procedure, 1973 by the writ Petitioner and the other convicted person and allowed the prayer for releasing them on interim bail of Rs. 2,400/- each with two registered sureties of Rs. 1,200/- each and also directed them to find fine bond of double the amount of fine. The interim bail was to be in force till 25th November, 2010,

taking into consideration the prayer of the convicted persons that they would be preferring an appeal in the meanwhile.

4. The writ Petitioner duly complied with the directions given by the learned Magistrate and furnished necessary security and bond and secured interim bail in terms of the latter order dated 9th August, 2010, on that day itself. The writ Petitioner, thereafter, filed an appeal before the learned District and Sessions Judge, Howrah. The learned Sessions Judge was pleased to admit the criminal appeal of the writ Petitioner on 31st August, 2010, and directed the order of conviction to remain stayed till 30th September, 2010, while extending the interim bail till that date.

5. On 30th September, 2010, the learned Sessions Judge, Howrah, confirmed the interim bail and stayed the operative portion of the judgment and order dated 9th August, 2010, till the disposal of the appeal.

6. In the meanwhile, however, on 10th September, 2010, the Chairman, District Primary School, Council, Howrah, issued the impugned memorandum relying upon Rule 7 of the said Rules.

7. In the facts of the instant case which have been elaborated hereinabove, it is apparent that by a judgment and order dated 9th August, 2010, the learned Judicial Magistrate, 7th Court, Howrah, has found the writ Petitioner guilty of an offence u/s 498A of the Indian Penal Code and accordingly convicted him u/s 248(2) of the Code of Criminal Procedure, 1973 and sentenced him to suffer simple imprisonment of one year. On 9th August, 2010, itself, by a latter order, the learned Judicial Magistrate exercising power conferred u/s 389(3) of the Code of Criminal Procedure, 1973, was pleased to grant limited interim bail in favour of the writ Petitioner which subsequently stood confirmed by an order dated 30th September, 2010, passed by the learned Sessions Judge, Howrah, till disposal of the appeal preferred by the, writ Petitioner against the judgment and order of the learned Judicial Magistrate. It is the admitted position that the appeal is pending final disposal before the learned Sessions Judge, Howrah, and the writ Petitioner is enjoying the bail initially granted by the learned Judicial Magistrate on 9th August, 2010, which subsequently stood confirmed by the order dated 30th September, 2010, passed by the learned Sessions Judge, Howrah.

8. Now to answer the issue which comes up for consideration before this Court, it is necessary, at first, to visit Sub-rule (2) of Rule 7 of the said Rules, which is reproduced hereinbelow for convenience:

Where a teacher is detained in custody for a period of exceeding 48 hours on a criminal charge or otherwise, he 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 until further orders. A teacher who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision as to the disciplinary action to be taken against the teacher.

9. A mere reading of Sub-rule (2) of Rule 7 makes it more than clear that none of the conditions as contemplated therein are applicable in the facts of the instant case. The scheme of Sub-rule (2) of Rule 7 of the said Rules postulates two situations for issuance of an order of suspension. One situation is when a teacher is detained in custody for a period exceeding forty eight hours on a criminal charge or otherwise. The order of suspension that may follow in such a case, is referred as "deemed suspension" in common parlance. The other situation is where a teacher is actually "undergoing a sentence of imprisonment (emphasis supplied).

10. This is not a case where the concerned teacher was in custody for a period exceeding forty eight hours on a criminal charge or otherwise. Neither is this a case of a teacher who is "undergoing a sentence of imprisonment" (emphasis supplied).

11. Section 389 of the Code of Criminal Procedure, 1973, reveals the power of the Appellate Court as well as the trial Court (the latter, only in certain cases) to pass orders regarding suspension of sentence and release of a convict/Appellant on bail pending hearing of the appeal, which has been duly exercised by the learned Judicial Magistrate as well as the learned Sessions Judge in the instant case. The sentence handed out by the learned Judicial Magistrate, thus, remains suspended till disposal of the appeal pending before the learned Sessions Judge.

12. In such circumstances, the genesis of the order of suspension, which manifests itself in the impugned memorandum dated 10th September, 2010, purportedly issued in accordance with Rule 7 of the said Rules, is thoroughly misconceived and is without any legal validity. Such an order of suspension could only have been valid had the teacher been actually "undergoing a sentence of imprisonment" (emphasis supplied) and not otherwise. The impugned memo issued by the Chairman, District Primary School, Council, Howrah, dated 10th September, 2010, is, therefore, liable to be set aside and is hereby set aside.

13. The writ petition is allowed accordingly.

Photostat certified copy of this order, if applied for, be given to the learned advocate for the parties.