

Basudev Malik Vs. State of W.B. and ors.

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Court : Kolkata

Decided On : Sep-22-2003

Reported in : 2004(1)CHN32

Judge : Bhaskar Bhattacharya, J.

Acts : Service Law

Appeal No. : W.P. No. 14258(W) of 2003

Appellant : Basudev Malik

Respondent : State of W.B. and ors.

Advocate for Def. : Amales Roy and ;D. Mukherjee, Advs. for Respondent No. 6

Advocate for Pet/Ap. : Balai Lal Sahoo and ;Mohammad Ali Mallick, Advs.

Disposition : Application allowed

Judgement :

Bhaskar Bhattacharya, J.

1. By this writ application the writ petitioner, an approved assistant teacher of a school has challenged Annexure -P/14 to the instant writ application by which he was suspended in terms of the Management Rule 28(9)(viiia) with effect from July 27, 2003 till the disposal of a criminal case.

2. There is no dispute that the petitioner is involved in a criminal case under Immoral Traffic Prevention Act and was consequently arrested on July 27, 2003, he remained in custody till August 12, 2003 and on that date he was released on bail. Subsequently, by order, dated September 1, 2003 the Managing Committee of the school by passing the order impugned suspended the petitioner with effect from July 27, 2003 till the disposal of the case.

3. Being dissatisfied petitioner has come up before this Court under Article 226 of the Constitution of India.

4. It is contended by Mr. Sahoo, learned Advocate for the petitioner that there cannot be any suspension from an anterior date, and, as such, the order of suspension should be set aside.

5. The aforesaid contention of Mr. Sahoo has been opposed by Mr. Roy, learned Advocate appearing for the school authority. Mr. Roy has contended that the petitioner being involved in a criminal case for an offence concerning moral turpitude of the petitioner, the school authority in exercise of power under Management Rule 28(9)(viiia) rightly suspended the petitioner till the disposal of the criminal case. He thus prays for dismissal of this writ application.

6. After hearing the learned Advocates for the parties and after going through the provisions contained in Management Rule 28(9)(viiia), I find that the Managing Committee of a school has right to suspend a teacher or an employee where such suspension is in the interest of the institution pending drawal of proceedings against the person concerned within 90 days from the date of suspension. In this case, petitioner was arrested for an alleged offence committed beyond the scope of his duty as an assistant teacher and such offence is neither directed against the institution nor the property of the institution.

It is true that if in the long run petitioner is found guilty and is consequently convicted, the school authority is at liberty to take appropriate disciplinary action against the petitioner. But, so long the criminal proceeding is not concluded and the petitioner is not found guilty, there is no scope of initiating any disciplinary proceeding at the instance of the school. Thus, the school authority has no right to

even suspend the petitioner merely because a criminal case has been initiated against the petitioner.

7. However, after incorporation of Sub-rule (8b) of Rule 28 of the Management Rule the moment an approved teacher or an employee of the school is arrested in connection with a criminal case and consequently detained in custody beyond 48 hours, he should be deemed to be under suspension during the period of detention and according to the said newly incorporated Sub-rule (8b) in such a case the school authority is not even required to pass any formal order of suspension that being 'deemed suspension' and the school has no further role to play in the matter. The moment he will be released from detention by the competent criminal Court the 'deemed suspension' will come to an end and the petitioner should be permitted to join his duty subject to the final decision in the criminal case.

8. I, thus , find substance on the contention of Mr. Sahoo that there is no scope of keeping the petitioner under suspension till the disposal of the criminal case. However , petitioner should be deemed to be under suspension from July 27, 2003 till August 12 , 2003 . The school authority is directed to permit the petitioner to join his duty as an assistant teacher of the school and to pay his salary. However, petitioner will be entitled to get suspension allowance during the period of 'deemed suspension'.

9. The order impugned is thus set aside and the writ application is allowed to the extent indicated above.

10. In the facts and circumstances of the case, there will be no order as to costs.

11. If applied for, let xerox-certified copy of this order be given by Monday next to the parties.