

**IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
(APPELLATE SIDE)**

**Present:  
The Hon'ble Justice Rai Chattopadhyay**

**WPA 22450 of 2022**

**Nitai Chandra Das  
Vs.  
State of West Bengal & Ors.**

For the Petitioner	: Mr. Sankar Nath Mukherjee, : Sk. Samim Akhter, : Mr. Niraj Gupta, : Ms. Afroja Nusrat.
For the College Authority	: Mrs. Usha Maity, : Mr. D. Banerjee, : Ms. Anita Khatri, : Mr. Sakya Maity.
For the Vidyasagar University	: Ms. Debjani Sengupta, : Ms. Koyel Bag, : Mr. Abhijit Chatterjee, : Ms. Jonaki Khan.

**Judgment on : 09/12/2024**

**Rai Chattopadhyay, J.**

- 1) The subject matter of the present writ petition is a letter of suspension, dated September 15, 2022, issued to the petitioner, by the respondent No. 8/Principal of Raja Narendralal Khan Women's Collage (Autonomous), at Paschim Medinipore. The writ petitioner has challenged the same, that being allegedly issued in arbitrary exercise of power by the college authorities and beyond the scope of the applicable rules. The writ petitioner

has alleged about unfair practice being meted out to him, for which he seeks redress by filing the instant writ petition.

- 2) It is necessary that the factual background of the case be narrated in brief. The petitioner was appointed vide appointment letter dated March 18, 1996, as a cook, in the hostel. After satisfactory completion of the probation period the writ petitioner was made permanent in the said post. Issues cropped up in the year 2022, when, on August 29, 2022, after leaving the college without informing the authority, the writ petitioner went to the police station and was arrested. Thereafter, since from the date of his arrest, the writ petitioner was in judicial custody till the time he was released on bail. The writ petitioner was released on bail on September 9, 2022. Therefore, his incarceration lasted from August 30, 2022 to September 9, 2022.
- 3) After being released from custody on bail, the writ petitioner went to join his duties on September 12, 2022. He has stated that on the said date he signed the attendance register, though was not allowed to join. Therefore subsequently, the writ petitioner has expressed his grievance by dint of his letter dated September 15, 2022. However, on the same date that is September 15, 2022 the college authority has issued to him the said impugned letter of suspension, suspending him with effect from August 30, 2022, that is the date of his incarceration.
- 4) The writ petitioner is aggrieved that the impugned letter has been issued to him, without granting him any opportunity to be heard. The writ petitioner has stated that on August 31, 2022, some of his family member has informed the college authorities

regarding arrest and custody of the writ petitioner, by sending short message service (in short SMS), in mobile phone. He has stated further that in the impugned letter as above, the respondent authority has not mentioned about any specific misconduct against the writ petitioner. According to the writ petitioner therefore, his suspension by dint of the said letter is unfounded. Petitioner is also aggrieved that neither the governing body resolution deciding to suspend him, was served upon him nor the respondent authorities have ever considered his representation dated November 15, 2022.

- 5) The writ petitioner has further made out the ground that the offence as alleged against him in the police case is nowhere related to the duty as discharged by him in the college. In this connection he has stated further that in his quest to save his land from being grabbed by the miscreants, he has been victimised and subjected to false police case. On the contrary, he and his family members have been attacked and assaulted by the said miscreants. The writ petitioner has stated that for this emergent reason, he had to leave duty, in an unnatural haste on August 29, 2022, that is, upon receipt of information of physical assault by the miscreants upon his family members. To substantiate his statements as above, the writ petitioner has relied on the treatment papers of his wife and son, in this case. The writ petitioner would further allege that his grant in aid salary has been unduly curtailed by the respondent University authorities, subsequent to his suspension, which he terms to be an illegal action on part of the said authorities, liable to be reversed as before. He would further say that the said unreasoned suspension order is an afterthought one, as on the date of his joining, that is, September 12, 2022, no such

reason, sufficient and worthy to suspend him, was shown to be in existence.

- 6) Be that as it may, on the grounds as mentioned above, the petitioner has prayed for necessary order allowing the writ petition and directing the respondent authorities appropriately.
  
- 7) Respondent No. 3/University is the principal answering respondent in this case. It has raised strong objection to the contentions and grounds pleaded by the writ petitioner and also to his prayers. The respondent University has emphatically contended that the writ petitioner is to be held committing misconduct of suppression of material information of his incarceration before the authorities. At the first instance, the respondent University would say that on the date of incident that is August 29, 2022, the petitioner had left the college, without informing the authorities, though he was on duty at that point of time. The respondent University would further say that the SMS received from the Mobile phone number of the writ petitioner on August 31, 2022, would not reveal about his incarceration in connection with any police case. Therefore, the respondent University is of the strong standing that the same is gross suppression of material fact by the petitioner and unbecoming of an employee/public servant. It would say further that only on September 6, 2022, upon receipt of the latter from the police authorities regarding arrest of the petitioner in connection with the Kotwali Police case No. 585 of 2022 dated 29.08.2022, it could gather the actual knowledge about the said fact. The said University authority would further allege against the writ petitioner that inspite of being directed not to put his signature in the attendance register on

September 12, 2022, the writ petitioner has wilfully and motivatedly violated such directions. The University authority has termed this action of the writ petitioner as an action of insubordination and thus a misconduct.

- 8) It would say further that an enquiry committee was formed, to enquire into the matter relating to the criminal offence as alleged to have been committed by the petitioner. That the enquiry committee found involvement of the petitioner in the criminal case connected with moral turpitude. Hence, as per the decision of the governing body of the University, a show cause notice dated January 14, 2023 was issued to the writ petitioner by one of the enquiry committee members (the Chairman not being available at that point of time). It is also stated that along with the said show cause letter, the writ petitioner was supplied with all the documents connected with the matter. Though, in this respect to petitioner's version is that his reply to the said show cause notice has never been considered by the respondent authority. So far as alleged non-payment of salary is concerned, the said respondent has denied the same. It instead has stated that the petitioner has been paid his lawful dues, after deduction of the loan amount et cetera.
- 9) Mr. Mukherjee would appear for the writ petitioner and submit firstly, that after issuance of the suspension order against the petitioner on September 15, 2022, the respondent University authorities has neither revoked that order till date, nor has initiated any disciplinary proceeding on whatever charge of misconduct against him. Mr. Mukherjee would term such course adopted by the respondent University authorities with respect to the petitioner to be an unfair practice, motivated in

order to victimise the writ petitioner and unsustainable in the eyes of law. He would say that suspension of an employee for indefinite period without any justifiable reason and without initiating any disciplinary proceeding against him would not be viable and maintainable as per law. Mr. Mukherjee would suggest that suspension of the petitioner would have been justified, had any relation been proved with the alleged offence charged against him and his official position or duties or involving moral turpitude. According to Mr. Mukherjee in the case of the present petitioner, neither of the reasons to validate a prolonged suspension of him from service, would be available. Accordingly he would say that suspension of the petitioner is to be revoked by the authorities immediately. In this regard Mr Mukherjee would rely on a division bench decision of this Hon'ble court reported in **(2007) 2 CHN 339 (Suman Roy Chowdhury vs. State of West Bengal & Ors.)**.

- 10) Similarly, he has relied on another decision of the Hon'ble division bench of this court reported in **2007 (2) LLN 852 (Amit Biswas vs. State of West Bengal & Ors.)**, where the court has been pleased to hold that a government servant who is facing a criminal charge but released on bail, may not be suspended unless such criminal charges are related to his official duties or involves high moral turpitude on his part.
- 11) Mr Mukherjee would further rely on a decision of the Supreme Court, reported in **(2015) 7 SCC 291 (Ajay Kumar Choudhary vs. Union of India through its Secretary & Anr.)**, in which the Court has dealt with the suspension of a government servant and has imposed limits on suspension order by holding that the suspension order should not extend beyond 3 months period, if

within this period the memorandum of charges/chargesheet is not served upon the delinquent employee. The Court in the said case has strongly deprecated the practice of protracted period of suspension and repeated renewal thereof. The Court, with reference to Article 21 of the Constitution, has discussed and held that the indignity suffered by the person due to protracted suspension without being charged, is hostile to the rights guaranteed thereunder.

- 12) Mr Mukherjee would also say that the respondent University may be directed to revoke the order of suspension of the writ petitioner and allow him to join in service with immediate effect.
- 13) Ms. Sengupta has represented the respondent University. She would strongly deny the contentions and submissions of the petitioner and rely on the relevant provision of the *Service, Conduct, Discipline Regulations* (hereinafter referred to as the “said regulations”) of the University and the *First Statutes, 1983* (hereinafter referred to as the “statutes of 1983”), to address the steps taken against the petitioner as justified and in terms of the prevalent rules and regulations.
- 14) She would submit that the provision under regulation 11 of the said regulations for suspension of the employee is deeming provision and would be automatically applicable, in case of such eventuality having arisen, as mentioned in the said regulations. She would specifically rely on regulation 11 (ii), (iii) and (iv) of the said regulations, to submit that in the petitioner’s case, the preconditions as mentioned therein for automatic imposition of the deeming provision of suspension against the petitioner, would satisfy. It is necessary at this stage to

reproduce the said provisions as relied on by the respondent University, which are as follows:

**“11. Suspension :**

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***An employee or a member of the teaching faculty of the University shall be deemed to have been placed under suspension by an order of the disciplinary authority :***

***(i) \*\****

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***(ii) Where a case against him/her in respect of any criminal offence is under investigation,***

***(iii) Where preliminary domestic inquiry indicates commissioning of misconduct that warrants initiation of disciplinary proceedings;***

***(iv) An employee who is determined in police custody, whether in a criminal charge or otherwise, for a period exceeding 48 (forty eight) hours, shall deemed to be under suspension with effect from the date of his/her detention by an order of the disciplinary authority and shall remain under suspension until further orders.***

***An order of suspension under these Regulations shall not deemed to be or construed as punishment for any purpose whatsoever unless the employee’s guilt is proved by a duly appointed Inquiring Authority and imposition of penalties by the disciplinary authority”***

- 15) Ms. Sengupta would say that admittedly a case against the petitioner in respect of criminal offences is pending. She would mention about the enquiry conducted by the committee constituted for the purpose and say that the result of a preliminary enquiry indicates commission of misconduct by the

petitioner which warrants initiation of the disciplinary proceedings. She would further say that admittedly for about 10 days the writ petitioner was in custody on the basis of the criminal charges levelled against him. Therefore, according to the deeming provision as contained in regulation 11 (iv) of the said regulations, the petitioner would be deemed to have been suspended after expiry of 48 hours of his custody period. So far as issuance of a suspension order against the petitioner is concerned, on the grounds as stated above the University has pleaded about committing no error in this regard, by issuing an order of suspension to the writ petitioner.

- 16) Ms. Sengupta would say that the power to revoke the suspension of the delinquent employee is the sole discretion of the authorities, in terms of the said regulations. She would say that the authorities have to exercise that discretion carefully and reasonably, taking into consideration the nature and gravity of the individual occurrence and the extent of the involvement of the delinquent employee. According to her, in an appropriate case, the authorities may continue suspending the delinquent employee, in view of the nature of his misconduct, the conduct of the delinquent and any other relevant attending facts and circumstances. According to her there would not be any statutory compulsion upon the respondent authorities, to lift petitioner's suspension after any specific time period from the date of such suspension. She would suggest that the statute has provided an eventuality to be the triggering point to deem a particular employee as suspended, that is, as per regulation 11 (iv) of the said regulations, in case 48 hours elapse since the time of imprisonment of the person. That, according to the law, the effect of such a deeming provision has to be revoked by the

authority by way of issuance of a specific order, for which the authority has to apply mind and exercise its discretion to assess the justifiability of revocation of the deeming provision as above. It is stated that, however, in case of the petitioner, after due assessment of the report of the enquiry committee and the misconduct committed by the writ petitioner as grave as suppression of material facts before the authorities, the same has not been prompted to revoke petitioner's suspension. She would suggest that in view of the facts of the case, the respondent authorities may not revoke the suspension order till the criminal court reaches to its final verdict, which are otherwise permissible in accordance with the provisions of the applicable rules and regulations.

- 17)** Ms. Sengupta would not fail to indicate to the statute 168 of the statutes of 1983, to submit that by leaving the place of work during the duty hours and without informing the office, the petitioner has violated the provision thereof, as envisaged under statute 168(g) thereof.
  
- 18)** Mrs. Maity has appeared for the college authorities. She would place elaborately the factual background of the case to say that the writ petitioner has committed misconduct by violating the rules and regulations and also by suppressing the vital fact of his imprisonment, from the concerned respondent authorities. She would suggest that the same is unbecoming of an employee of the prestigious institution like the respondent college and is amenable to enquiry in a disciplinary proceeding conducted against him. Therefore, so far as the petitioner's prayer for revocation of the order of suspension is concerned, she has negated the same outrightly by saying that a disciplinary

enquiry against the petitioner is contemplated and to be initiated at any moment.

- 19) She would refer to a judgment of the Supreme Court in this regard, that is reported in **(2022) 12 SCC 815 (K. Jayaram & Ors. vs. Bangalore Development Authority & Ors.)**, The respondent has relied on the finding of the court therein, that concealment/suppression of material facts would amount to playing fraud. She has concluded by saying that since the petitioner has suppressed intentionally the information of his being taken into custody in connection with the police case, has committed fraud upon the authorities in that way. That, in view of the seriousness of the misconduct so committed by the petitioner, the respondent authorities have rightly exercised their discretion not to lift the order of suspension of the petitioner. Both Ms. Sengupta and Mrs. Maity have insisted that the writ petition may be dismissed.
- 20) In this case, the court should consider the relevant questions firstly, if the order of suspension of the writ petitioner was lawful and justified and secondly, whether the respondent authority is justified, fair and proper to continue suspending the writ petitioner indefinitely, without initiation of any disciplinary enquiry against him.
- 21) Suspension of the writ petitioner is pursuant to the deeming provision therefor, as embodied in regulation 11(iv) of the said regulations. The same states that an employee if detained in police custody in connection with criminal charges or otherwise, for a period exceeding 48 hours, shall be deemed to be under

suspension with effect from the date of detention. The writ petitioner was arrested on August 29, 2022. He was detained in custody till September 9, 2022. In the meantime on August 31, 2022, an SMS was sent to the authorities from the mobile phone number of the writ petitioner, to inform his inability to join in duty, but not mentioning about his imprisonment in connection with the criminal case. After being released from custody on bail, the petitioner went to his place of work on September 12, 2022 and signed the attendance register there. According to the authority however he signed the same in violation of the directions of the authorities. According to the writ petitioner, even after signing the attendance register, he was not allowed to join in duties on the said date. Later on, on September 15, 2022 the writ petitioner has sent a letter to his employer expressing his grievance as above whereas the respondent has also issued the impugned letter of suspension to him on the same date, suspending him with effect from August 30, 2022.

- 22)** Regulation 11(iv) of the said regulations being a deeming provision would be automatically applicable in case the stipulated conditions thereof is fulfilled. Therefore, in case of the present petitioner, after expiry of 48 hours of his detention in connection with a criminal case he would be deemed to be suspended from job, in terms of the said provision. Also, in terms of the said provision he would remain under suspension until further orders. Regulation 11 (vi) of the said regulations says that an order of suspension made or deemed to have been made under the said regulations, may at any time be revoked by the authority.

- 23)** Therefore, there is no impediment under the law, for the authority to revoke an order of suspension. The respondent authority has shown the reason of gravity of the misconduct committed by the petitioner, not to exercise its discretion, to revoke its suspension order. It is stated that the petitioner has been a person actually conducting himself contrary to what the rules of the institution demands of its employee. Also that he has wilfully suppressed the fact of his incarceration from the authorities as, the SMS received after the incident from the mobile phone number of the petitioner though has disclosed about his inability to join in duty, but has not mentioned the reason therefor, that is, his incarceration. Also that the petitioner's leaving the place of work, on the date of incident, without informing the authorities, has been understood as insubordination and indiscipline by him, which is prohibited in terms of the rules. Thus according to the respondent a disciplinary proceeding is contemplated against the petitioner.
- 24)** Nevertheless, the respondents have admittedly not yet taken any steps towards initiation of the disciplinary proceeding so contemplated against the writ petitioner. A time period of about 2 years has elapsed in the meantime. The respondent University has made an endeavour to take shelter under the provisions of the said regulations that suspension is to remain in operation until further order. However, that must not be without the authorities having taken prompt and appropriate action to follow up the suspension of an employee. What the respondents have put forth would mean an indefinite period of suspension of an employee, without any disciplinary proceeding being initiated against him. That must not be the intention of the lawmakers. That, if permitted, brings arbitrariness and

unfairness into the administrative function discharged by the respondent authorities.

- 25) In the judgment of *Sandipta Gangopadhyay vs. Allahabad Bank & Ors.* reported in **2015 SCC OnLine Cal 5553** the Hon'ble Bench of this Court has held by referring to the judgment of *Ajay Kumar Choudhary (supra)* as follows :

***“8. The learned Senior Counsel for the appellant, however, has rightly relied on a series of judgments of this Court, including O.P. Gupta v. Union of India [(1987) 4 SCC 328 : 1987 SCC (L&S) 400 : (1987) 5 ATC 14] , where this Court has enunciated that the suspension of an employee is injurious to his interests and must not be continued for an unreasonably long period; that, therefore, an order of suspension should not be lightly passed.***

***9. Our attention has also been drawn to K. Sukhendar Reddy v. State of A.P. [(1999) 6 SCC 257 : 1999 SCC (L&S) 1088] , which is topical in that it castigates selective suspension perpetuated indefinitely in circumstances where other involved persons had not been subjected to any scrutiny. Reliance on this decision is in the backdrop of the admitted facts that all the persons who have been privy to the making of the office notes have not been proceeded against departmentally.***

***10. So far as the question of prejudicial treatment accorded to an employee is concerned, this Court in State of A.P. v. N. Radhakishan [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044] has observed that it would be fair to make this assumption of prejudice if there is an unexplained delay in the conclusion of proceedings. However, the decision of this Court in Union of India v. Dipak Mali [(2010) 2 SCC 222 : (2010) 1 SCC (L&S) 593] does not come to the succour of the appellant since our inspection of the records produced in original have established that firstly, the decision to continue the suspension was carried out within the then prevailing period and secondly, that it was duly supported by elaborate reasoning.”***

- 26) In view of the ratio thereof, the submissions made on behalf of the respondent University, does not inspire confidence that the same is empowered under the prevalent rules to continue suspending the petitioner without initiating any disciplinary enquiry against him, for whatsoever period, even till the time the criminal court pronounces sentence after completion of the trial.
- 27) The law in this regard has been well formulated by the Supreme Court, in the case of **Ajay Kumar Choudhary (supra)**.
- 28) Exercise of fraud by the petitioner and his coming to the court with unclean hands, has been another limb of submission, on behalf of the respondent authorities. In this regard, the provision under regulation 11(iv), may again be looked into, which has provided that an order of suspension shall not deemed to be or construed as punishment, for any purpose whatsoever, unless the guilt of the employee is proved by a duly constituted disciplinary proceeding. Thus, before the advent of a disciplinary proceeding against the writ petitioner, the respondents cannot be allowed to take a plea of the petitioner having committed misconduct or fraud and to act upon the same. The ratio decided in the judgment of **K. Jayaram and Ors. (supra)**, would not come to the aid of the respondents, in this regard. The entire discussion as above would culminate into the sole and an inescapable conclusion that continuance of the operation of the suspension order dated September 15, 2022, against the writ petitioner any further, that too, without initiation of any disciplinary proceeding, would be in utter violation of rules, regulations and settled law in this regard.

- 29) Therefore, the said impugned order of suspension dated September 15, 2022, should not be sustained any further. The same is liable to be set aside and the writ petitioner would be eligible for the appropriate consequential relief.
- 30) In such view of the fact the present writ petition should succeed.
- 31) The writ petition No. 22450 of 2022 is allowed. The impugned order of suspension against the writ petitioner dated September 15, 2022, is set aside. The writ petitioner shall be allowed to join in duties, immediately after service of copy of this judgment to the said respondents. The writ petitioner shall be paid all consequential benefits after resumption of duty in the said post. Needless is to mention that the respondent authorities shall be at liberty to take appropriate steps, in consequence of the verdict of the criminal Court, in the case as mentioned above.
- 32) The writ petition No. 22450 of 2022 is allowed and disposed of.
- 33) Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

**RAI**  
**CHATTOP**  
**ADHYAY**

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**(Rai Chattopadhyay, J.)**