

**(2005) 08 CAL CK 0053**

**Calcutta High Court**

**Case No:** Writ Petition 13946 (W) of 2005

Tarun Kumar Chakraborty

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Aug. 12, 2005

**Acts Referred:**

- Management of Recognized Non Government Institutions (Aided and Unaided) Rules, 1969 - Rule 28(8)

**Citation:** (2005) 2 ILR (Cal) 373

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

**Bench:** Single Bench

**Advocate:** Shyamal Kumar Das, Somnath Banerjee, Bineeta and Bhattacharya, for the Appellant; Subir Bhattacharya, for the Respondent

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**Judgement**

Arun Kumar Mitra, J.

Despite service of notice none appears on behalf of the School Authority when the matter is called on.

2. This writ petition relates to the challenge of an order of suspension issued against the Petitioner. The claim of the Petitioner concerning the criminal case that he has been suspended from his service with effect from March 10, 2004. It has been categorically stated in the writ petition that no departmental proceeding has been initiated against him.

3. Learned Counsel for the Petitioner submits that his client cannot be kept suspended for an unlimited period.

4. Heard the Learned Counsel for the Petitioner as well as the Learned Counsel for the State-Respondents.

5. Rule 28(8)(Viia) of the Management Rules, 1969 provides in the manner as follows:

(Viia) "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 ninety days from the date of suspension and during the period of suspension, the person concerned shall be paid pay and allowances equal to fifty percent of the pay and allowances drawn by him immediately before such suspension. Such steps shall be referred to the Board within seven days of such action for approval. The person affected by the decision of the Committee may, however, make his/her representation to the Board. The order of suspension shall automatically stand withdrawn in case proceedings are not drawn within a period of ninety days, provided that in exceptional circumstances, this time limit may be waived by the Board after due consideration of the facts of the case but under no circumstances the time limit shall be waived beyond the limit of one year.

Provided that where the period of suspension exceeds 90 days, the amount of subsistence allowance shall be increased after the expiry of ninety days to seventy-five per cent of the pay and allowances drawn immediately before such suspension:

Provided further that the person concerned shall not be entitled to any subsistence allowance if he/she accepts employment during the period of suspension elsewhere.

6. In view of the said provisions if there is no departmental proceedings initiated against the Petitioner the order of suspension cannot remain and it stands withdrawn after one year automatically. In a decision reported in *Asit Kumar Sarkar v. Union of India and Ors.* the Hon'ble Division Bench of this Court has also observed that a person cannot be kept suspended for an unlimited period without initiating any departmental proceeding.

7. In view of the aforesaid facts and position of law, I set aside the order of suspension and direct the School Authority to allow the Petitioner to join the school within a week from date. The Petitioner will be allowed to get his entire salary during the period of suspension after adjustment of subsistence allowance paid, if any, within a period of eight weeks from date. The Petitioner will be allowed to continue with his service and will be paid his salary from the month of August, 2005 payable on September 01, 2005.

8. Accordingly, the writ petition is disposed of.

There will be no order as to costs.

9. Urgent Xerox-certified copy of this order, if applied for, to be supplied to the parties on priority basis.