



resolution was adopted by the Managing Committee of the School to place the petitioner and the other Assistant Teacher under suspension with immediate effect under the 1st proviso of the Section-9 (4) of the Meghalaya School Education Act, 1981. Thereafter pursuant to the Resolution, the petitioner was placed under suspension.

2) The petitioner then challenged her suspension before the Gauhati High Court vide WP(C) No. 8673 of 2001, on the ground that prior approval of the Inspector of Schools was not obtained before issuance of the suspension order which was mandatory as per the Meghalaya School Education Act, 1981. The Gauhati High Court then vide Judgment and Order dated 20th December, 2001 disposed of the said writ petition with a direction that the Inspector of Schools pass necessary orders in the matter of suspension of the writ petitioner as had been referred to him. In compliance thereto, the Inspector of Schools vide letter dated 8th January, 2002, approved the said Resolution dated 9th December, 2001 and directed that the petitioner be kept under suspension, till the petitioner was discharged or acquitted by a Court from all liabilities of the criminal case.

3) Thereafter, after a long protracted trial, the Court of Chief Judicial Magistrate, Shillong vide Judgment and Order dated 27th April, 2017 passed in G.R. Case No. 138 (S) 2001, acquitted the petitioner from the charges under Section 406 I.P.C.

4) It is the pleaded case of the petitioner that after the said acquittal, the Secretary of the School Managing Committee had been duly informed by the petitioner vide letter dated 6th July, 2017, about the acquittal along with a prayer for reinstatement. According to the petitioner, neither the School Managing Committee nor the State respondents initiated any action to revoke the suspension or considered the reinstatement of the petitioner to her post. As such, having no recourse she has approached this Court by way of the instant writ petition.

5) Mr. M.F. Qureshi, learned counsel for the petitioner submits that the petitioner was placed under suspension pursuant to



the Resolution No. 1 dated 9th December, 2001 on her alleged involvement in a criminal offence. He submits that since the suspension of the petitioner was approved by the Inspector of Schools, till she was discharged or acquitted from all liabilities, the petitioner decided to await the outcome of the criminal trial and as such, did not approach the Court again to challenge the approval of her suspension. He submits that the trial became prolonged and protracted, as the Secretary of the Managing Committee, who had filed the F.I.R. intentionally delayed the proceedings by not appearing before the Court to depose or prove the allegations, in spite of the fact that the Court of the Chief Judicial Magistrate had afforded him ample opportunity. He submits that then after 17 long years the verdict was finally rendered on 27th April, 2017, whereby the petitioner was acquitted. As such, he submits that the petitioner was made to suffer only due to the fault of the respondent No. 4 successors' in office who had intentionally caused the long delay in the completion of the trial.

6) The learned counsel further submits that though the petitioner was acquitted honorably, the respondents instead of revoking the suspension, still kept the petitioner out of service, even though the suspension as approved by the Inspector of School was to be enforced till acquittal of the petitioner from the criminal case. The learned counsel submits that to defeat the Judgment and Order dated 27th April, 2017, she was served with a show cause notice dated 26th July, 2017, asking her to show cause as to why an enquiry report dated 11th July, 2005 be not accepted. The learned counsel submits that the action of the respondent No. 4 in reverting to the Departmental Proceedings is absolutely illegal, inasmuch as, the enquiry report was submitted to the respondent No. 4 as far back in the year 2005, and that it is not plausible that after 12 years the petitioner be asked to show cause to the same. The learned counsel submits that the petitioner nevertheless, filed a show cause reply against the said inquiry report and challenged the authenticity and veracity of the said report which he submits was brought to life after more than 12 years.



He vehemently contended that the inquiry report was fabricated and made as afterthought to defeat the Judgment and Order of acquittal passed by the Chief Judicial Magistrate, Shillong.

7) The learned counsel further submits that the petitioner also filed a representation dated 11th September, 2017 assailing the findings/opinion of the Inquiry Officer but however the respondent No. 4 neither replied nor took any decision on the enquiry report which prompted the petitioner to submit a representation dated 20th September, 2017 before the respondent No. 3. The petitioner receiving no response on the representations, then filed an application under the Right to Information Act and the respondent No. 3 vide letter dated 21st November 2017, informed the petitioner that the Managing Committee had not submitted any Resolution for continuation of the suspension, but that, had preferred an appeal against the Judgment and Order of the Chief Judicial Magistrate dated 27th April, 2017. He submits the petitioner was further informed by the Respondent No.3, that the payment of full salary would be considered only after revocation of the suspension order by the Managing Committee.

8) The learned counsel for the petitioner then contends that the entire action of the respondent No. 4 is with the sole aim to keep the petitioner out of service at any cost and to deprive her of her due benefits because the respondent No. 4 has in fact discarded the manipulated enquiry, but now seeks to justify continuation of the suspension merely on the ground that an appeal had been preferred against the Judgment and Order dated 27th April, 2017.

9) The learned counsel for the petitioner in conclusion submits that after the honorable acquittal, the suspension order which was contingent on the acquittal, is no longer in force and keeping the petitioner under suspension without further approval from the respondent No. 3 is illegal and in violation of Section-9 (4) of the Meghalaya School Education Act, 1981. Further, he submits that the suspension order was never reviewed nor extended and that filing of an appeal against the order of acquittal cannot be a ground to prolong



the suspension. As such he reiterates, the petitioner is entitled to be reinstated to the post of Headmistress with full back wages from the date of suspension in view of her honorable acquittal from the criminal case.

10) The learned counsel for the petitioner has placed reliance on the case of **Ajay Kumar Choudhury vs. Union of India** reported in **AIR (2015) SC 2389** and on the judgment of **O.P. Gupta vrs. Union of India** reported in **1987 4 SCC 328** which are leading authorities in the matters of suspension from service and the law in regard thereto, and submits that the long suspension is illegal and arbitrary and bad in law and prayed that the petition be allowed.

11) Dr. N. Mozika, learned senior counsel assisted by Ms. S.A. Shallam, learned counsel for the respondent No. 4 in reply submits that the parameters and standard of proof in a criminal trial and departmental proceeding are different and that acquittal in a criminal trial on the ground that prosecution could not establish a case beyond reasonable doubt, does not mean automatic exoneration in the departmental proceedings. He submits that in the instant case, the departmental proceedings were kept in abeyance at the request of the petitioner and after conclusion of the criminal trial, the respondent No. 4, vide letter dated 26th July, 2017 immediately forwarded a copy of the enquiry report to the petitioner for her representation against the same. He submits that the petitioner had submitted a representation on 4th August, 2017 and the disciplinary authority is yet to take a final decision. He further submits that the question of reinstatement will come only after completion of the departmental proceedings especially in view of the fact that the Enquiry Officer had returned a finding of guilt against the petitioner. He also submits that the ratio of **Ajay Kumar Choudhury vs. Union of India** (supra) is not applicable in the instant case as the case cited is one of pending criminal trial.

12) Learned senior counsel submits that only because the petitioner has been acquitted by a Criminal Court for failure of the prosecution to prove the case beyond reasonable doubt cannot nullify



the departmental proceedings, and that the petitioner cannot be reinstated or paid the arrear salary as claimed. The learned senior counsel has placed reliance in the recent case of ***Raj Narain vs. Union of India*** (Civil Appeal No. 3339 of 2019) decided on 01.04.2019 wherein it has been held that an employee would not be entitled to full back wages on acquittal by a criminal Court unless it is found that prosecution is malicious. He submits that in the instant case, there is nothing on record to establish that the prosecution was malicious and that the police after the investigation had filed charge sheet against the petitioner. He further submits that the acquittal in the criminal trial was because of technicalities and the standard of proof required in criminal trials and that acquittal does not mean that the prosecution was malicious. He also submits that the inquiry had come to a finding of guilt against the petitioner and as such until the departmental proceedings are concluded there is no question for reinstatement.

13) In closing his submissions, the learned senior counsel submits that the ratio laid down in the case of ***Teiborlang Sunn vs State of Meghalaya*** (judgment dated 28.05.2019) passed in **WP(C) No. 12 of 2018** is also not applicable in the instant case as in the cited case no departmental proceedings were initiated by the department against the petitioner, and the suspension was only on account of arrest in a criminal case. He submits that in the instant case, departmental proceedings were initiated against the petitioner, and the same were kept in abeyance during pendency of the criminal trial at the request of the petitioner, and that after conclusion of the criminal trial, the departmental proceedings have been resumed. He lastly reiterated his submissions that the question of reinstatement will arise only after the disciplinary authority takes a final decision in the matter and if the disciplinary authority accepts the findings of the Enquiry Officer that would result in imposition of suitable penalty under the rules. As such, he submits that no interference is called for and the writ petition be dismissed.



14) I have considered the submissions of learned counsel for the parties and examined the materials on record. The basic questions before this Court is to whether the petitioner is to be reinstated back into service will be on the following considerations:-

- (i) her acquittal in the criminal proceedings,
- (ii) whether the suspension was only contingent upon the criminal trial,
- (iii) whether the stated departmental proceedings which have conducted 12 years ago would have any bearing or operate as a bar to the reinstatement of the petitioner into service,
- (iv) Pendency of an appeal against the order of acquittal.

15) In the present case as illustrated by the facts placed by the counsels, the petitioner was placed under suspension on being arrested in connection with a criminal case. On being suspended by the Managing of the School, the petitioner had assailed the same before this court by way of WP(C) No. 8673 of 2001, on the ground of absence of approval from the competent authority. Thereafter, pursuant to the Court's order dated 20th Dec 2001, the Inspector of School, East Khasi Hills, granted approval to the resolution suspending the petitioner by letter dated 8th January, 2002. The letter of approval is quoted herein below:-

***“OFFICE OF THE INSPECTOR OF SCHOOL
EAST KHASI HILLS DISTRICT
SHILLONG***

No. IS/M-4/2002/48

Dated Shillong the 8th January, 2002

***From :- Shri. A. Rymbai,
Inspector of Schools,
East Khasi Hills District,
Shillong.***

***To :- The Secretary,
Islamia Secondary School,
Shillong.***



Subject:- Approval of Resolution No. 1 dt. 9.12.2001.

Reference:- His letter No. ISS/F-23/2001/96 dt. 10.12.2001.

Sir,

Perused the Hon'ble High Court Order dt. 20.12.2001 passed in WP(C) No. 8673 of 2001, directing the Inspector of Schools, East Khasi Hills District, Shillong, to refuse or to grant approval to the resolution No. 1 dt. 9.12.2001 passed by the Managing Committee to put Smti. Parveen Nongrum, Headmistress, Islamia Secondary School, Shillong under suspension if there is sufficient ground to that effect. Also perused the Charge Sheet No. 86/2001 dt. 10.12.2001 in connection with Sardar Police Station Case No. 191 (11) 2000 which clearly indicated that there is strong prima facie case established against (1) Shri. Kallinullah Khan (2) Smti. Parveen Nongrum (3) Shri. KZ.K. Tareen U/S 406 IPC, as such until and unless Smti. Parveen Nongrum, Headmistress, Islamia Secondary School, Shillong is discharged or acquitted by the trial court from all liabilities of the criminal case, Smti. Parveen Nongrum, Headmistress is required to be suspended from her present post.

I do hereby approved the resolution No. 1 dt. 9.12.2001 passed by the Managing Committee for necessary action till disposal of the said Criminal Case. Copy of the Charge Sheet is enclosed herewith as part of the record.

*Yours faithfully,
Sd/-*

*Inspector of Schools
East Khasi Hills District,
Shillong.*

Memo No. IS/M-4/2002/ Dated Shillong the January, 2002

Copy to :-

- 1. The Director of Higher & Technical Education, Meghalaya, Shillong, for favour of information.**
- 2. Shri. B.P. Marngar, Senior Govt. Advocate, Gauhati High Court, Shillong Bench and Smti. Binoya Dutta, Addl. Govt. Advocate at Principal seat Gauhati High Court for necessary appraisal to the Hon'ble High Court.**

Sd/-

*Inspector of Schools
East Khasi Hills District,
Shillong."*

16) On perusal of the letter quoted above, the same would reflect that the approval of suspension was that the petitioner be required to be suspended from her post till discharged or acquitted by the trial Court from the criminal case. During the period of her suspension, it



transpires that departmental proceedings were also drawn up against the petitioner and as per submissions and materials on record, it seems that it never came to a final conclusion, inasmuch as, the enquiry report, was not acted upon or taken into consideration by the respondent Managing Committee. Though the enquiry report dated 11th July, 2005, returned a finding of guilt, it was only after acquittal that the petitioner was served with a copy of the same for the first time, vide letter dated 26th July, 2017, and asked to show cause against the same. The petitioner accordingly had filed show cause and had taken several grounds assailing the same as to its authenticity and veracity and the fact that it was brought to the notice of the petitioner after more than 12 years.

17) The next sequence in these events is that the respondents have also since preferred an appeal against the order of acquittal, and it seems they have taken shelter of this fact to not consider reinstatement of the petitioner back into service. What is interesting to note, is that though the enquiry proceedings as alleged had arrived at a finding of guilt as far back as in 2005, the disciplinary authority did not take any further action on the basis of the same, nor contemplate any further action and instead the proceedings were left dormant for 12 long years. It appears it was only on the representation of the petitioner for re-instatement after acquittal, that the respondents are seeking to justify the continuance of suspension by taking shelter of the un-concluded disciplinary proceedings and the appeal that has been filed against the order of acquittal.

18) The respondents never reviewed the suspension of the petitioner after the acquittal but as noted earlier are continuing to keep the petitioner under suspension, by seeking to revive the departmental proceedings and also by preferring an appeal against the order of acquittal. It is true that the parameters and standard of proof applicable to a regular criminal trial and domestic inquiry stands on a different footing and that on the failure of the prosecution to prove the case



beyond reasonable doubts, the departmental proceedings cannot be set at naught. However, every case has to be examined in its own peculiar facts and circumstances. In the present case it is to be seen whether the departmental proceedings will be crucial to decide the fate of the petitioner or whether the same can be disregarded as it has been allowed to be dormant for 12 long years. Though, the respondents had urged that the suspended animation and non-conclusion of the disciplinary proceedings was at the request of the petitioner to await the outcome of the criminal proceedings, this at this stage, cannot be taken to be a valid ground to revive the proceedings and act upon the enquiry report that was submitted 12 years ago. What is discernable from the actions of the respondents is that, though they had solely based the continued suspension of the petitioner to be contingent upon the outcome of the criminal case, when the outcome was not favourable to them, they have now resorted to attempt to revive the departmental proceedings.

19) Another very important aspect that is to be considered is that the approval granted for the suspension of the petitioner was also contingent upon the outcome of the criminal proceedings. In this view of the matter, the respondent Managing Committee on the acquittal of the petitioner should have reviewed the suspension, inasmuch as, the approval so granted by the competent authority for the suspension was till acquittal/discharge or otherwise.

20) Prolonged suspension as in the instant case is to be examined against the backdrop of the order and approval of the suspension, culmination of the criminal trial and the departmental proceedings which were not concluded. Various authorities have been cited by the learned counsel in support of their respective contentions all of which are not quoted herein as the others have only persuasive value.



21) In the case of *Ajay Kumar Choudhary vs. Union of India* reported in (2015) 7 SCC 291 at Para-21 the Hon'ble Supreme Court has laid down as follows:-

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

It is important to note that the above noted judgment, though the facts may vary slightly, the ratio as laid down, is that there must be a reasoned order passed for extension of suspension.

22) The other principle that the standard of proof, nature and scope of a criminal case is very different from those of departmental proceedings, and that an order of acquittal would not render departmental proceedings redundant is also a settled proposition and this has been reiterated in a catena of judgments, that the mere fact that a person has been acquitted, will not divest the jurisdiction of the authority concerned either to initiate or to continue with a departmental inquiry.



23) In the present case however, the petitioner was acquitted after a prolonged and long drawn criminal trial and she had been kept out of service for over 17 long years. The disciplinary proceedings had also been left unconcluded since 11th July 2005, when the enquiry report had been submitted, and the petitioner was asked to show cause against the enquiry report only 26th July 2017, that is after over 12 years had elapsed. It is also important to note that after her acquittal, there was no review as to whether suspension should continue, or any approval sought to continue with the suspension, inasmuch as, as discussed earlier, the approval and continuance of her suspension was contingent upon the outcome of the criminal trial. This was in spite of letter dated 21st July 2017 (Annexure IX of the writ petition) whereby the respondent No.3 had directed the respondent No. 4 to take necessary action as per the order of acquittal. In this context, the letter the petitioner received from the Respondent No. 3 (District School Education Officer) dated 21st November, 2017, therefore assumes great significance as it reflects the stand of the Respondent No. 4 Managing Committee in the matter of continuance of suspension of the petitioner. The said letter is quoted herein below:-

***“OFFICE OF THE DISTRICT SCHOOL EDUCATION OFFICER
EAST KHASI HILLS DISTRICT,
SHILLONG.***

No. DSEO/RTI/Misc/2017/15 Dated Shillong, the 21st Nov, 2017.

***From : Smt. R.M. Pariat,
District School Education Officer.
East Khasi Hills District.
Shillong.***

To,
***Parveen Nongrum,
Headmaster U/S,
Islamia Sec. School.***

Subject: Information under RTI Act.

Sir/Madam,

***With reference to your R.T.I application Dt. 26.10.2017, the
following information are hereby furnished:-***



1. *The Managing Committee has not submitted any resolution for continuation of your suspension but perusal of letter No. ISS/F-MC/2017/A Dt. 24.6.2017 received from the Secretary Managing Committee of Islamia Secondary School revealed that the Managing Committee has preferred an appeal against the Judgment passed in GR Case No. 138 (S) of 2001 dated 27.7.2017. . (copy enclosed)*
2. *Your request conveyed under your letter dt. 27th, September, 2017 inter alia for payment full salary can be considered after revocation of the suspension order by the managing committee.*
3. *Seeking information under RTI act is the right of the citizen and hence there is no question of forcing or harassing to apply for the information under the said statute. Information is furnished only on written request.*

*Yours faithfully,
Sd/-*

*District School Education Officer,
East Khasi Hills District.
Shillong.”*



24) It is to be noted that the respondent Managing Committee instead of reviewing the suspension or seeking further approval, have preferred an appeal against the order of acquittal and are not reviewing or re-instating the petitioner, on the ground that an appeal has been preferred. Another aspect that deserves consideration and has caught the attention of this Court is the unconcluded disciplinary proceedings. The materials on record show that the disciplinary proceedings did not proceed after 2005, and admittedly, it was only after a period of 12 years, that the petitioner was given a copy of the enquiry report to represent against. Even after a lapse of two years after the issuance of show cause no further action has been forthcoming from the disciplinary authority, nor any decision taken on the same. The entire sequence of action and inaction of the respondent No. 4 especially the manner in which the petitioner's case has been handled after the acquittal, therefore smacks of discrimination and arbitrariness.



25) In this context it would be apposite to refer to the case of ***O.P.Gupta vs Union of India*** reported in (1987) 4 SCC 328 wherein Para 15 the Hon'ble Supreme Court has held as follows:-

*“15. 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 in *Khem Chand v. Union of India* is that he continues to be 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 allowances 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 servant injuriously. The very expression ‘subsistence allowance’ has an undeniable penal significance. The dictionary meaning of the word ‘Subsist’ as given in *Shorter Oxford English Dictionary, Vol. II 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 v. Dilipkumar Raghavendranath Nadkarni* the Court held that the expression ‘life’ does not merely connote animal existence or a continued drudgery through life. The expression ‘life’ has a much wider meaning. Suspension in a case like 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 fair play 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 proceedings 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.”

26) To put the case in perspective on the points and the discussions dwelt on hereinabove, the facts that have crystallized on the aspects as set out in para 14 of this judgment are that firstly, the initial suspension of the petitioner, as approved by the official respondents was contingent upon her being acquitted or discharged from the criminal case. The same however, had also been accepted by the petitioner who did not challenge the order of suspension and it is only after acquittal that she represented for reinstatement. Secondly, the respondent No. 4 never reviewed the suspension nor sought approval from the official respondents for continuance of the petitioner's suspension after her acquittal in 2017, and thirdly, the fact that is apparent on the face of the record, is that the respondents had abandoned the disciplinary proceedings from 2005 itself and have never acted upon the enquiry report and are solely placing reliance on the appeal filed against the acquittal, to justify the continuance of suspension of the petitioner.

27) In the backdrop of the circumstances and facts as discussed above no justifiable grounds are available to the respondent No. 4 to continue to keep the petitioner under suspension, as such she is entitled for reinstatement in service.



28) With regard to the back wages, the recent judgment of the Hon'ble Supreme Court dated 01.04.2019 in the case ***Raj Narain vs. Union of India (Civil Appeal No. 3339 of 2019)*** as placed by the learned counsel for the respondent deals with the entitlement of an employee to back wages. This aspect as discussed in the said judgment was observed in Para 6 is quoted herein below:-

“6. The decision of Ranchhodji Chaturji Thakore (supra) was followed by this Court in Union of India and Others v. Jaipal Singh (supra) to refuse back wages to an employee who was initially convicted for an offence under Section 302 read with Section 34 IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the Petitioner therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, this Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer. The observation made in the judgment in Union of India and Others v. Jaipal Singh (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-à-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.”

29) The ratio of the judgment above holds that an employer cannot be held liable to pay full back wages on the acquittal of the person by a criminal Court unless it is found that prosecution is malicious. The facts of the present case and the findings arrived by this court, especially in the light of the arbitrary action of the



respondent No. 4, warrant that the petitioner be paid back wages, for the period that she has been kept under suspension even though the petitioner never challenged the approval for continuance of her suspension which was conditional on the outcome of the criminal trial (letter dated 8th January 2002 Annexure V of affidavit of respondent No. 4).

30) For the foregoing reasons the writ petition is partly allowed and the respondents are directed to reinstate the petitioner forthwith to her post. The petitioner shall be entitled to 75% (seventy five percent) of her back wages that is from 9th December 2001 till date. This direction is issued, also in view of the fact that the claim of the petitioner that she has been honourably acquitted, stands un-rebutted by the respondents and is further substantiated by the proceedings of the criminal trial. However, full back wages and interest thereon, will be not payable as there is no element of malicious prosecution. The computation and payment of the back wages should be done as expeditiously as possible and not later than eight weeks from the date of receipt of certified copy of this order.

31) No order as to cost.

JUDGE

Meghalaya
12.07.2019
"V. Lyndem PS"