

16. 21.03.2022
Ct. No.06
Tanmoy

F.M.A. 786 of 2019

**Dr. Dilip Mukherjee
-Versus-
The State of West Bengal & Ors.**

**With
IA No: C.A.N. 2 of 2022**

Mr. Joy Chakraborty, Adv.,
Mr. Sandip Dinda, Adv.

...for the appellant.

Mr. Tapan Kr. Mukherjee, Ld. A.G.P.,
Mr. Rabindra Narayan Dutta, Adv.,
Mr. Hare Krishna Halder, Adv.

...for the State.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

The appellant impugns an order dated August 30, 2018, passed in W.P. 21687(W) of 2015, dismissing his writ petition. The appellant appears to be a qualified Homeopathic doctor, who was appointed under Ankro-Barakadam *Gram Panchayat* by a letter dated December 13, 2003, to the post of Medical Officer of the said *Gram Panchayat*.

The appellant, on an earlier occasion, approached this Court alleging that in spite of rendering service under the said *Panchayat*, he had not been paid his honorarium. His writ petition was dismissed by a learned Single Judge of this Court. He challenged the order and

the appeal Court, by an order dated February 25, 2015, passed in F.M.A. 339 of 2012, directed the respondent authorities to release the admissible honorarium of the appellant as a part-time Homeopathic doctor and also directed that the claim of the appellant for continuing in service in terms of the Government order should also be taken into consideration by the competent authority and necessary order should be passed.

In compliance with the order of the Hon'ble Division Bench, the case of the petitioner was considered by the Panchayat *Pradhan*, and by an order dated April 24, 2015, the said *Pradhan* observed that no fresh contract with regard to the service of the appellant can be made.

The challenge of the appellant with regard to the said order dated April 24, 2015, did not succeed before the learned Single Judge, and the petitioner by this appeal, has challenged the said order of the learned Single Judge dated August 30, 2018, before us.

There is no dispute that the petitioner was engaged in a contractual appointment and the said contract was for a period of one year. From time to time, the contract was renewed and for the period for which petitioner had rendered service, the honorarium had also been paid.

It appears that the petitioner was appointed in terms of a Government order dated May 23, 1988, as appearing at page 93 (Annexure "P-4") of the application being IA No: C.A.N. 2 of 2022.

Learned advocate for the appellant submits that the relevant *Pradhan*, in rejecting the claim of the petitioner, proceeded on the basis that the said Government order was set aside by an order of a learned Single Judge of this Court passed in W.P. No. 4860(W) of 2015 (*Achintya Kumar Mukherjee –Vs.– The State of West Bengal & Ors.*). It is the argument of the learned advocate for the appellant that the Government order dated May 23, 1988, has not been set aside by the said order, and therefore the appellant has a right to continue in the post in question in terms of the said Government order.

We are of the opinion that the said Government order dated May 23, 1988, even if is assumed to be in force, confers no right of continuation beyond the contractual period. The said Government circular provides for appointment of a part-time Homeopathic doctor for a *Gram Panchayat*.

No writ of *mandamus* can be issued in favour of the appellant/petitioner directing the respondent authorities to allow him to continue in his service beyond the period of contract. This does not necessarily mean that the relevant *Panchayat* will not renew the contract of the appellant/petitioner when the *Panchayat* feels it necessary to do for the interest of the local people. It must be observed that the *Panchayat* was not mandated to terminate the service of the appellant. We feel that in the facts of the case if the relevant *Panchayat* feels that there

is a necessity of a qualified Homeopathic doctor in the relevant *Gram Panchayat*, it will be at liberty to consider the case of renewal of the petitioner's contract in accordance with the extant government circulars.

The appellant may make a further representation to the relevant Panchayat for his engagement as a Homeopathic doctor in the Panchayat. Such representation may be considered by the Panchayat in the light of the observation made in this appeal within one month from the date of communication of this order.

With these observations, the appeal being F.M.A 786 of 2019 and the connected application being IA No: C.A.N. 2 of 2022 are disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties, upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)