

06.07.2022
Item No.5
Court No.6.
AB

**F.M.A. 495 of 2021
With
I A CAN 1 of 2022**

**Dr. Samarendra Nath Nayak
Vs
The State of West Bengal & Others**

Mr. Prokash Ch. Mondal,
Mr. Dinesh Ch. Mondal ...for the Appellant.

Mr. Malay Singh,
Mr. Bibekananda Tripathy...for the State.

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

This appeal is directed against a judgment and order dated December 13, 2019, whereby W. P. No.6413 (W) of 2017 was dismissed.

The appellant approached the learned Single Judge with the case that he is an approved Assistant Teacher in a Government school. He teaches in the school from 11.30 a.m. to 4.30 p.m. However, there is a dispensary run by the Panchayet, next to the school where he renders service as Homeopathy Doctor between 7.30 a.m. and 10.30 a.m. He says that he should be paid honorarium for rendering service in the charitable dispensary.

The learned Judge called for reports from the concerned Block Development Officer as also the Sabhadhipati of the Howrah Zilla Parishad. Such

reports were filed. The learned Judge perused the reports and noticed that the dispensary opens at 10.30 a.m. Hence, it is unlikely that the writ petitioner renders service at the dispensary between 7.30 a.m. and 10.30 a.m.

Further, the learned Judge was of the view that the writ petitioner, who draws salary for his job of Assistant Teacher in the local Government school, cannot also claim honorarium for rendering service at the Panchayet dispensary, which payment will also have to be made from the Government Treasury. A Government servant cannot draw salary/honorarium from two sources. Accordingly, the writ petition was dismissed. Hence, this appeal.

We have heard learned Counsel for the appellant and learned Counsel for the State. We do not see any infirmity in the order under appeal. It is a perfectly reasoned order. There may be factual disputes as regards when the dispensary opens in the morning. In any event, such factual disputes cannot be decided in the writ jurisdiction. Even assuming that the writ petitioner is correct in saying that he renders service at the dispensary between 7.30 a.m. and 10.30 a.m., he should be doing that on an honorary basis without claiming any monetary reward therefor.

In view of the aforesaid, there is no reason to interfere with the order under appeal.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

FMA No.495 of 2021 stands dismissed along with IA CAN 1 of 2022 without however any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)