

06. 26.04.2022
Ct. No.06
Tanmoy

M.A.T. 549 of 2022

**Sri Chandan Banik
-Versus-
State of West Bengal & Ors.**

**With
IA No: C.A.N. 1 of 2022**

Mr. Ranajit Chatterjee, Adv.,
Mr. Aniruddha Mitra, Adv.

...for the appellant.

Mr. Malay Krishna De, Adv.,
Mr. Sajal Kumar Pandit, Adv.

...for the State respondents.

Mr. Mrityunjoy Goswami, Adv.,
Mr. Parikshit Goswami, Adv.

...for the respondent nos. 3 to 5.

Affidavit of service filed in Court today be kept with
the record.

In spite of service, the private respondents are not
represented.

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

The prayers of the petitioner before the learned
Single Judge were as follows:

*“a) Writ of and/or in the nature of Mandamus
directing the Respondents to release the arrears
honorarium of the petitioner for the post of
Laboratory Technician for the period of September
2018 to till date with interest @ 18% p.a.;*

b) Writ of and/or in the nature of Mandamus directing the Respondents to permit the petitioner to discharge his normal duty as Laboratory Technician under the Municipality without any obstruction and pay him his salary and honorarium attached to the post;

c) Writ of and/or in the nature of Mandamus directing the Respondents to treat the service of the petitioner as continuous and without any breach and pay him his salary, honorarium and other emoluments w.e.f. 19.12.2021, as if the petitioner was discharging his regular duty;

d) Rule NISI in terms of prayers (a), (b) and (c) above;

e) Interim order directing the Respondents to forthwith release the arrear honorarium of the petitioner attached to the post of Laboratory Technician w.e.f. September 2018 without prejudice to the rights of the parties;

f) Interim order directing the Respondents to forthwith permit the petitioner to discharge his regular duty as Laboratory Technician without any obstruction and pay and continue paying him his salary and honorarium (current and future) till disposal of the writ petition;”

This appeal has been preferred against the order dated March 31, 2022, whereby the learned Single Judge passed direction, *inter alia*, for filing affidavits without any interim order.

Mr. Ranajit Chatterjee, learned Advocate appearing for the appellant submits that before the learned Single Judge the Municipality was not right in submitting that the petitioner stopped working without any leave and as

such, another person had been appointed in place of the petitioner. Mr. Chatterjee further submits that at that relevant point of time, due to medical exigency, the petitioner was on leave and he came back. The learned Single Judge ought to have passed an order in favour of the writ petitioner allowing him to continue in service.

Learned Advocate appearing for the Municipality, on the other hand, denies this factual aspect and reiterates the stand that the writ petitioner/appellant is no more in service and in due course, another person has been appointed in his place. He submits that the learned Single Judge, therefore, rightly refused the prayer for interim order.

We do not see there is any scope to pass any interim order since the same requires factual adjudication, which is not possible without affidavits being exchanged by the parties.

It has been submitted by the learned Advocate for the Municipality that the affidavit-in-opposition, as directed by the learned Single Judge, has already been prepared and the same will be affirmed and served to the writ petitioner/appellant in due course of time.

No interference with the order impugned is called for. The parties will be at liberty to approach the learned Single Judge for an early hearing of this matter.

The appeal being M.A.T. 549 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are accordingly 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.)