

05. 28.11.2023
bd. Ct.15

WPA 1387 of 2016

Dr. Swapan Kumar Chakraborty

-vs-

The State of West Bengal & Ors.

Mr. Kushal Chatterjee

Mr. Subhashis Mitra

Mr. Shibjit Mitra ... for the petitioner.

Ms. Debanwita Pramanik ... for the Hooghly Zilla
Parishad.

Mr. Sadhan Kumar Halder ... for the State.

Petitioner was a Homeopathic Doctor under Singur-I Gram Panchayat and appointment letter dated 1st April, 1986 was issued by the Panchayat authority.

Mr. Chatterjee, learned advocate representing the petitioner has questioned the order of the Joint Secretary to the Government of West Bengal, Panchayat and Rural Development Department, being the respondent no. 6 dated 15th January, 2016. It has been submitted that the petitioner worked as Homeopathic Doctor in Singur-I Gram Panchayat from April, 1986 to March 2003 but he could not discharge his duty as a Homeopathic Doctor pursuant to an alleged incident of misbehaving with a female patient which took place in the month of March 2003. There was a local disturbance based on such alleged incident and commotion took place. Attention of this Court is drawn to a letter dated 9th April, 2003 which is addressed to the Pradhan of

the concerned gram panchayat stating that due to indisposition with effect from 19th March, 2003 the petitioner could not join his duty and request was made to make an arrangement for continuance of his duty. Thereafter a writ petition was filed being WPA 3119 of 2008 which was disposed of vide order dated 2nd September, 2009 by a coordinate Bench and vide order dated 2nd September, 2009 Block Development Officer, Singur-I District-Hooghly, was directed to consider the grievance of the petitioner that he was prevented from joining his duty from March, 2003.

It is also submitted that in connection with an allegation of misbehaving with a female patient a criminal proceeding was initiated against the petitioner but the said proceeding was culminated into order of acquittal thereby exonerating the petitioner from the charges. The impugned order dated 15th January, 2016 passed by the respondent no. 6 was in terms of the order dated 26th November, 2015 passed by another coordinate Bench in the writ petition being WPA 16688 of 2015. By issuing the impugned order the respondent no. 6 has spurned the prayer of the petitioner to release arrear honorarium for the period from April, 2003 to February, 2013 on the score that petitioner was practicing homeopathy medicine privately during the said period and no service was rendered by the petitioner during this period.

It has been contended on behalf of the petitioner that petitioner did not render service in

his own volition rather in spite of endeavour made by the petitioner he was not allowed to serve as homeopathic doctor in the aforesaid gram panchayat therefore he should not be penalised by non-payment of arrear honorarium from April 2003 to February, 2013 in the backdrop of facts that petitioner was acquitted on culmination of criminal proceeding. In support of such contention reliance has been placed on the Judgment of the Apex Court reported in **2022 SCC Online SC 451 (Salim Ali Centre For Ornithology and Natural History, Coimbatore and Another -vs- Dr. Mathew K. Sebastian).**

Per contra, Mr. Halder, learned advocate, representing the State respondents made submission to defend the impugned decision of the respondent no. 6 dated 15th January, 2016 and it has been submitted that petitioner did not discharge duty during the period from April 2003 to February, 2013 therefore he is not entitled to receive arrear honorarium for the aforesaid period. It is also contended placing reliance on the appointment letter of the petitioner dated 1st April, 1986 as homeopathic doctor that petitioner was engaged as temporary doctor and he was not on regular payroll, therefore, if petitioner, for any reasons could not serve as homeopathic doctor in the concerned gram panchayat he is not entitled to receive honorarium for the said period.

According to the respondents, principle of “no work no pay” as enunciated by the Apex Court in catena of decisions is applicable in the present

case which makes the petitioner not entitled to receive arrear honorarium as claimed in this writ petition.

Having considered the submissions made on behalf of the parties this Court finds upon perusal of the appointment letter dated 1st April, 1986 which is at page 31 of the writ petition that the petitioner was not appointed on permanent basis and he was not on regular payroll. Petitioner was receiving honorarium month by month on his engagement as homeopathic doctor with effect from 1st April, 1986.

It is true that petitioner was implicated in a criminal proceeding on an allegation of misbehaviour with a female patient and the said proceeding was culminated into an order of acquittal. Question crops up whether during the period from April 2003 to February, 2013, when petitioner could not discharge duty, he is entitled to receive arrear honorarium or not?

Strenuously, it was argued on behalf of the petitioner that fault of not serving as homeopathic doctor is not attributable to the petitioner since he was not permitted to resume his duty which is after the alleged incident which took place in the month of March 2003. Matter could have been examined in different perspective had the petitioner been a regular employee under the respondent authorities and was placed on regular payroll. In the instant case petitioner was appointed on temporary basis and was receiving monthly honorarium therefore

failure on the part of the petitioner to serve for the aforesaid reasons the respondent authorities cannot be directed by issuance of mandamus to pay arrear honorarium for the period from April 2003 to February, 2013.

In **Salim Ali** (supra) the fact situation was completely different as it emanates from paragraph 12 of the said judgment that disciplinary authority was enjoying the order of stay granted by the Appellate court which stood vacated on disposal of the appeal. Moreover, the employee/officer was working on a permanent basis who was dismissed from service upon initiation of disciplinary proceeding. Therefore the ratio in **Salim Ali** (supra) is of no help.

It appears on perusal of the impugned order dated 15th January, 2016 that after acquittal of the petitioner he was allowed to function as homeopathic doctor in Kamarkundu Gopalnagar Doluigachha Gram Panchayat with effect from 18th February, 2013 and on resumption on duty he was paid monthly honorarium regularly till the month of June 2019. It is also required to take into consideration while examining the validity of the impugned order dated 15th January, 2016 passed by the respondent no. 6 that one of the reasons to refuse payment of arrear honorarium was based on fact that petitioner earned from private practice being a homeopathic doctor during the period he could not serve as homeopathic doctor under the Panchayat authorities.

In the above conspectus this Court does not find merit in interfering with the order passed by the Joint Secretary to the Government of West Bengal, Panchayat and Rural Development Department being the respondent no. 6 which was communicated vide memo dated 15th January, 2016.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)