

03. 19.09.2023
bd. Ct.15

WPA 19351 of 2015

Naba Kumar Das

-vs-

The State of West Bengal & Ors.

Mr. Kushal Chatterjee

Mr. Subhasish Mitra

Mr. Shibjit Mitra ... For the petitioner.

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

Mr. Suman Basu

Ms. Debanwita Pramanick ... for Hooghly Zilla Parishad

Petitioner claiming to be working as compounder-cum-dresser based on appointment letter dated 1st April, 1986 issued by the Pradhan, Singur-I Gram Panchayat, District- Hooghly wherefrom it appears that the petitioner was functioning as compounder-cum-dresser with effect from 8th January, 1985. Such engagement was approved by the Hooghly Zilla Parishad vide memo dated 21st March, 1986 purely on a temporary basis.

It is submitted by the learned advocate representing the petitioner that petitioner functioned as compounder-cum-dresser from 8th January, 1985 till 15th March, 2003 without any hindrance and was paid honorarium but subsequently due to certain reasons the homeopathic doctor of the dispensary could not continue and he was engaged subsequently in another dispensary and in place of erstwhile

homeopathic doctor another homeopathic doctor namely Sri Basudev Ghosh was engaged as homeopathic doctor of the dispensary in Singur I Gram Panchayat. It has been submitted that after change of doctor though the newly engaged doctor was paid honorarium but the petitioner was denied honorarium which was payable in view of his rendering service continuously.

In the writ petition order dated 21st November, 2014 issued by the Principal Secretary, Department of Panchayats and Rural Development, Government of West Bengal is under challenge whereby claim of the petitioner for payment of honorarium upon regularizing his engagement as compounder-cum-dresser in Singur I Gram Panchayat has been negated upon placing reliance on two notifications one dated 29th March, 2007 and another dated 31st May, 2007. It has been submitted on behalf of the petitioner since petitioner was engaged as compounder-cum-dresser with effect from 8th January, 1985 aforesaid two notifications both were issued in 2007 have no manner of application in deciding the claim of the petitioner and accordingly the decision as contained in memo dated 21st November, 2014 needs to be set aside.

Hooghly Zilla Parishad and State respondents are represented by learned advocates. Affidavit-in-opposition has been filed on behalf of State respondents.

Submission has been made on behalf of State

respondents to defend the impugned decision dated 21st November, 2014 by drawing attention to the aforesaid two notifications dated 29th March, 2007 and the subsequent notification dated 31st May, 2007 and it has also been submitted that since the homeopathic dispensary where the petitioner has been working as compounder-cum-dresser is not an approved dispensary by the concerned respondent authorities therefore the petitioner is not entitled to claim benefit of his service and his service cannot be regularised due to want of approval to the said dispensary.

Learned advocate representing the Hooghly Zilla Parishad submits in reference to the document which is annexed at pages 15 and 16 of the affidavit-in-opposition used on behalf of State respondents dated 14th November, 2008 issued by the Panchayat Development Officer, Singur, Hooghly, since after dispensation of service of Swapan Kumar Chakraborty with effect from 16th March, 2003 another homeopathic doctor namely Sri Basudev Ghosh was appointed on 17th June, 2008 therefore it is presumed that the said homeopathic dispensary was having necessary approval of the concerned authority to be run by the said Gram Panchayat.

Having considered the submissions made on behalf of the parties to this writ petition and on perusal of the materials available on record and the pleadings used on behalf of petitioner and the State respondents it appears that the impugned memo dated 21st November, 2014 was issued by the

Principal Secretary, Panchayats and Rural Development Department, Government of West Bengal chiefly on placing reliance on the two notifications dated 29th March, 2007 and 31st May, 2007. Both the notifications have been placed before this Court by the learned advocate representing the State respondents wherefrom it appears that these two notifications do not have any retrospective effect in consideration of the fact that petitioner was engaged as compounder-cum-dresser with effect from 8th January, 1985. The relevant government circulars and notifications which were prevalent at the material point of time need to be gone into by the concerned respondents authorities while deciding the claim of the petitioner in regularising his engagement as compounder-cum-dresser in Singur-I Gram Panchayat. On perusal of the materials it appears that there was a circular issued by the Joint Secretary Department of Health and Family Welfare, Government of West Bengal dated 17th September, 1983 whereby manner of engagement of compounder-cum-dresser in homeopathic dispensary run by the respective Gram Panchayat has been provided. Taking note of the date of engagement of the petitioner on 8th January, 1985 the concerned respondents authorities are required to examine whether the engagement of the petitioner as compounder-cum-dresser was in consonance with the relevant circulars which were in vogue in 1985 or not.

Another issue which needs to be considered while adjudicating the point involved in this writ petition is long service rendered by the petitioner as

compounder-cum-dresser. Petitioner was appointed on 8th January, 1985 as it emanates from the appointment letter dated 1st April, 1986 which is at page 37 of the writ petition and continued till 15th March, 2003 with remuneration and subsequently it has been submitted that though petitioner functioned as compounder-cum-dresser in the aforesaid Gram Panchayat but remuneration was not paid. If the homeopathic dispensary was not approved dispensary then why respondent authorities inducted another doctor namely Sri Basudev Ghosh on 17th June, 2008 onwards; that issue needs to be delved into while considering the claim of the petitioner. In other words if there was no approval in favour of the said homeopathic dispensary in that event after the incident took place in 2003 the said dispensary could have been closed but the document at pages 15 and 16 being annexed to the affidavit-in-opposition used on behalf of the State respondents speaks otherwise and it further goes to show that the said dispensary was allowed to run upon engagement of another homeopathic doctor. In view of such situation why the petitioner being the compounder-cum-dresser was not paid remuneration in spite of functioning in the said homeopathic dispensary has to be considered by the concerned respondent authorities.

In view of aforesaid scenario the impugned memo dated 21st November, 2014 issued by the Principal Secretary, Department of Panchayats and Rural Development being the respondent no. 1 stands set aside thereby remitting the issue to the

Principal Secretary being the respondent no. 1 for taking decision afresh after granting opportunity of hearing to the petitioner or his representative and the representatives of Singur-I Gram Panchayat, as well as Hooghly Zilla Parishad. Such decision to be taken by the respondent no. 1 in consideration of the observations made by this Court as alluded above within a period of twelve weeks from the date of communication of this order. The reasoned decision to be taken by respondent no. 1 shall be communicated to the parties within one week thereafter.

With the aforesaid direction the writ petition stands disposed of.

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.)