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2024

MONDAY

Court : 08
Item : DL-15
Matter : FMA
Status : DO
Bench ID : 266048
Transcriber : NANDY

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1020 of 2024
CAN 1 of 2024
CAN 2 of 2024

DEBDULAL MAITY
Vs.
THE STATE OF WEST BENGAL & ORS.

MR. SUMANTA CHAKRABORTY, ADVOCATE
.....for the Appellant
MR. ARINDAM CHATTOPADHYAY, ADVOCATE
MS. LIPIKA CHATTERJEE, ADVOCATE
.....for the State
MR. GOBINDA CHANDRA BAIDYA, ADVOCATE
.....for the Respondent Nos. 3, 4 & 5

1. The petitioner is admittedly appointed as a contractual teacher in Ghoradal High School (H.S.), District – South 24-Parganas and was taken into custody in relation to a criminal case registered against him not connected with discharge of his duties entrusted upon him. Since he was taken into custody for a considerable period of time, he could not join the duty.
2. After release on bail, the petitioner approached the School Authority seeking permission to resume the duty which was denied. He immediately approached the Writ Court for relief in the nature of mandamus commanding the School Authorities to permit him to resume his duties as well as to pay the arrear honorarium admissible to him.
3. The Single Bench dismissed the writ-petition on the ground that once a criminal case has been initiated against the petitioner, he is not entitled to the relief as prayed for.

4. It is no doubt true that the petitioner owe a greater responsibility as a teacher so far as his conduct and the demeanor are concerned. His conduct is viewed by the students who tried to inculcate and imitate the same in their life. The teacher is a role model for many students as the students are shaped by the conduct and the demeanor of a teacher and in order to continue the way of leading a life as a responsible citizen of the country. The teacher shapes the mind of the students and, therefore, he has to portray his conduct in such a manner which would not percolate any sense of denigration in the community of a teacher or unbecoming of a teacher.
5. Be that as it may, the offence is committed beyond the discharge of the duty and, therefore, it would be harsh on the part of a teacher if he is denied to discharge the duty for which he has been so appointed.
6. Our attention is drawn to a order no. 375-SE (Pry) dated 09.06.2010 issued by the School Education Department, Government of West Bengal through the Secretary wherein the Governor has been pleased to amend the Memorandum No. 274-SE(P)/PBRPSUS/ADMN /9/04-05 dated 23.04.2010 by which the Part-Time Teachers (on contract basis) attached to the Non-Government High Schools were permitted to remain engaged till they attain the age of 60 years and the State Government will bear the expenditure with the rider that no engagement of a Part Time Teachers shall be made henceforth in the Non-Government Higher Secondary Schools.

7. The School Authority, therefore, cannot deny the resumption of duty solely on the ground that a criminal case is initiated against the appellant.
8. We are conscious that the teacher who is engaged on a contractual basis having not discharged his duties entrusted upon him is not entitled to any remuneration for the period when he failed in solemn duty. Visualizing and sensing the same, the Counsel for the appellant submits, on instruction, received from the appellant, that the appellant is foregoing and/or abandoning the claim of an arrear honorarium for the period when he was detained in custody and also did not discharged the duties.
9. In view of the above, the Government Order dated 09.06.2010 permitting the contractual teachers to remain engaged till the age of 60 years, we direct the School Authorities to permit the appellant to resume his duty.
10. Since the appellant has foregone and abandoned his claim for the honorarium for the period of his detention in custody as well as the period of absence, the authority is not liable to pay the same.
11. However, his honorarium shall reckon from the date when he shall resume the duty.
12. The Counsel for the appellant submits that the appellant will resume the duty on and from Wednesday i.e. 13.11.2024.
13. The School Authority is directed to permit the appellant to resume his duties as and when he joins.
14. With the above observations, the appeal being **FMA 1020 of 2024** is thus **disposed of**.

15. Consequently, the applications being CAN 1 of 2024 and CAN 2 of 2024 are disposed of.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)