

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Arindam Sinha
And
The Hon'ble Justice Suvra Ghosh

M.A.T. 111 of 2020
With
I.A. No.CAN 1 of 2020 (Old CAN 1387 of 2020)

Monika Ghosh
Vs.
The State of West Bengal & Ors.

For appellant : Mr. Anil Kumar Chattopadhyay, Id Adv.

For State : Mr. Naba Kumar Das, Id. Adv.

Heard on : 15th January, 2021.

Judgment on : 15th January, 2021.

Arindam Sinha, J.: Mr. Chattopadhyay, learned advocate appears on behalf of appellant. We find the appeal was reported to be defective on two counts. Firstly, two writ files were mentioned in preamble of the memo and secondly date of impugned order was wrongly mentioned therein. The defects have since been removed.

Appellant is before Court urging this intra Court appeal against order dated 12th December, 2019 passed in W.P. 15648 (W) of 2013, being one of two writ petitions dealt with by said order. Mr. Das, learned advocate appears on behalf of

State. He waives service of notice of appeal. By consent of parties, the appeal is taken up for hearing on papers disclosed in CAN 1387 of 2020, being application for stay of operation of impugned order.

A little background is necessary. We commence narration of facts from order dated 7th September, 2009 made by District Magistrate, Howrah, whereby the office disposed of the case [Munmun Paral (Kanrar) vs. State of West Bengal], of private respondent in the writ petition, by observing that selection of appellant for undergoing training as Auxiliary Nurse and Midwife (ANM) is valid. Appellant then undertook training and was discharged, whereafter by communication dated 14th May, 2013, her appointment was terminated by Chief Medical Officer of Health and Secretary, District Health and Family Welfare Samiti, Howrah. Hence, the writ petition and impugned order. In this context, further enquiry on facts show appellant filed the writ petition challenging, in effect, inter alia, order dated 28th June, 2012 made by District Magistrate, Howrah in another case pursuant to said private respondent's writ petition [WP 20261(W) of 2009] [Munmun Paral (Kanrar) vs. State of West Bengal & Ors.]. Following from said order dated 28th June, 2012 is extracted on pointing out that reference therein to petitioner identifies Munmun Kanrar and respondent no.10 identifies appellant.

*“Perusing all the documents submitted by the Petitioner during hearing along with Writ Petition, affidavit in opposition made by the Block Development Officer, Amta – I being the Respondent No.7 and the order made by Hon’ble Justice Dr. Sambuddha Chakrabarti, Calcutta High Court on 10/05/12, **I have observed that the residence of the Respondent No.10 as noted in her application dated 22.08.2008 was situated within the service area of***

Bajepratap Sub-Centre. As per the order of the Department of Health & Family Welfare, Government of West Bengal, the Sub-Centre in question was notified as Bajepratap Sub-Centre being the Headquarter Sub-Centre under Ballychak Gram Panchayat. The said Sub-Centre can in no way be described as Ballychak Gram Panchayat Sub-Centre. In fact there are two other Sub-Centres viz. Bhojan Sub-Centre and Ballychak Sub-Centre within the territorial jurisdiction of Ballychak Gram Panchat.

I am of the opinion that the residential address of the Respondent No.10 as mentioned in her application form dated 22.08.2008 is not within the service area of the sub-centre she has opted to work for vide the same application dated 22.08.2008. Now, if a candidate is not eligible to be considered for the Sub-Centre she has applied for, then the authorities cannot correct her application and say that she is entitled to be considered for some other sub-centre within whose area she resides, even though she has not applied for that sub-centre herself. The applicant is fully aware of and responsible for all the entries made in the application form submitted by her. The authorities cannot correct the entries in the application form and place the candidate in the panel for a sub-centre which would have been appreciate for her according to her stated place of residence, although she herself never applied for that sub-centre.

I, being directed by the order of the Hon'ble Justice Dr. Sambuddha Chakrabarti dated 10/05/12 of Calcutta High Court, thus dispose of the case with the order that the application made by the Respondent No.10 dated

22.08.2008 for the post of 2nd ANM at Bajepurat Sub-Centre is invalid and the selection of the Respondent No.10 made by the Sub-Divisional Officer, Uluberia being the competent authority and Respondent No.6, will be treated as void.....” (emphasis supplied)

By impugned order challenge to, inter alia, said memo dated 16th April, 2013, issued pursuant to said order dated 28th June, 2012 made in context of appellant and said private respondent both seeking appointment to the post and lying vacant, was dealt with as follows:-

“The petitioner originally filed the writ petition being W.P.no.21812 (W) of 2012. The writ petitioner’s appointment was cancelled by the District Magistrate for being in violation of the Rules in question.

Subsequently, the said order of cancellation was confirmed by the Joint Secretary to the Government of West Bengal and Additional Mission Director, National Rural Health Mission, as also by letter dated 14th May, 2013 issued by the Secretary and Chief Medical Officer of Health and Family Welfare Samity of the area. The private respondent came to be appointed. The said appointment of the private respondent has been stayed at an interim stage by a Co-ordinate Bench of this Court on 23rd May, 2013.

The two writ petitions are hereby disposed of granting liberty to the State to fill up the post of ANM by advertising the same in accordance with Rules prescribed therefor and the petitioner and private respondent may participate in the process if they are otherwise eligible in terms of such advertisements to be made.”

Interim order dated 23rd May, 2013 was passed by a Bench coordinate to the Bench having made impugned order. Operative part of the interim order is as below:-

“This Court finds that the petitioner has made out a prima facie case and is entitled to an interim protection.

There shall be a stay of the operation of the Memo dated 16th April, 2013, so far as it relates to the appointment of the private respondent to the post of 2nd A.N.M. in the Baje Pratap Health Sub-Centre is concerned. The other part of the order passed under the aforesaid Memo is not interfered with for the time being.”

Since we find affidavit evidence, on disclosures in said connected application for stay of operation of the order, is sufficient we are proceeding to deal with the case finally.

Appellant’s application dated 22nd August, 2008 is at page 94 of the stay application. She has given her address as village – Balichak, P.O.-Khasmahal Balichak, District Howrah, P.S. Amta having Pin Code 711 401. Page 96 of said application is communication by the Prodhan to Block Development Officer, Amta – 1, Development Block saying as follows: -

“For your kind information three sub-centre at Balichak Gram panchayat.

- 1. Bajeprotap sub-centre (Balichak G.P.) a. Balichak uttar & Dakshin b. Bajeprotap c. Saibona.*
- 2. Bajeprotap sub-centre (Sahachak) a)Sahachak b) Khayra c) Dhurkhali d) Dakshin Banuchak).*
- 3. Bhojan sub-centre a) Bagua b) Parborda, c) Bhojan d) Sarpai.”*

The next page is certificate, issued also by the Prodhan, certifying that appellant is permanent bona fide resident at her stated address. The certificate further states that sub-centre Bajeprotap is at Balichak Gram Panchayat office campus and it covers the village – Balichak Bajeprotap and Saibona. Appellant resides at Bajeprotap sub-centre, is also stated in the certificate. There is another certificate at page 115 issued by Block Medical Officer of Health, Amta Rural Hospital. Text of the certificate is reproduced below:-

“This is to certify that

- (i) Bajeprotap Sub-centre is known as Balichak GP Sub-centre.*
- (ii) Bajeprotap Sub-centre and Balichak GP Sub-centre is same.*
- (iii) Bajeprotap Sub-centre is located within Balichak GP.”*

Analysis of above facts show, there was earlier finding by the District Magistrate that appellant’s appointment was valid. There are certificates on record issued by the Prodhan, Block Development Officer as well as the Medical Officer regarding stated residence of appellant. There is appellant’s request to allow her to be engaged for duty at Bajeprotap sub-centre, made to Member Secretary, Amta – 1 Block, Health and Family Welfare Samiti bearing endorsement of Member Secretary directing necessary action, made on 3rd December, 2010. These facts when positioned against view subsequently taken by the District Magistrate (extracted above and being part of the challenge in the writ petition), cannot be sustained. Said order dated 16th April, 2013 is set aside and quashed. As a consequence, order dated 17th May,

2013, issued pursuant thereto is also set aside and quashed. Concerned respondents will act pursuant to aforesaid order dated 7th September, 2009 of the District Magistrate, pronouncing valid selection of appellant. She must be given appointment forthwith and prior to expiry of three weeks from date of communication of this order.

Mr. Das submits, appellant's contractual appointment having had been terminated in year 2013, she may now be disqualified on age. The consideration regarding age is for purpose of appointment, in terms of eligibility criteria. Here we have reiterated validation of her appointment already made.

We have ascertained that impugned order does not record appearance on behalf of said private respondent, being respondent no.9 in the appeal. Rule 53 of the writ rules provide for provisions of Code of Civil Procedure, 1908, in regard to suits, shall be followed as far as may be applicable in all proceedings under article 226 of the Constitution and nothing in the rules shall be deemed to limit or otherwise affect inherent power of the Court to make such orders as may be necessary for, inter alia, the ends of justice. Said interim order dated 23rd May, 2013 was made staying operation of memo dated 16th April, 2013. Said memo also directed forwarding the name of respondent no.9 for inclusion in next batch of 2nd ANM for Bajeprotap. Private respondent did not appear before the writ Court at the time of hearing and passing said interim order. Neither did she thereafter appear at the hearing and disposal of the writ petition. Mr. Chattopadhyay submits, private respondent did not file affidavit-in-opposition in the writ petition.

Rule 2A in Calcutta High Court Appellate Side Rules provide for cases where the Registrar may, in exercise of power under rule 2(26) of chapter 2, pass suo motu order dispensing with service of notice of appeal on respondent, who had not appeared in the Court below. This provision, however, is in case of first and second appeals from decrees. Said rules do not provide for dispensation in respect of intra Court appeal in similar circumstances. This appeal is from impugned order disposing of the writ petition, therefore, a final order determining merit of appellant's case. We find fit to exercise inherent power, for the ends of justice, to dispose of the case finally without requiring service of notice of appeal being served on said private respondent.

The appeal is allowed as above. The appeal and connected application are disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)