

9.2.2021

ASR

1.

FMA 916 of 2012

**Safiunnessa Begum @ Khatun
Versus
Farhana Begum & Ors.**

**Mr. Subir Sanyal
Mr. Shamin Ul Bari
Mr. K. M. Hossain**

.....for the appellant

**Mr. Partha Sarathi Bhattacharyya, Sr. Advocate
Mr. Subir Hazra
Mr. Arunava Maiti
Mr. Raju Bhattacharyya**

.....for the respondent no. 1

In the recruitment process for engagement of para teachers in Sayed Kulut Adarsha Primary School under Bharatpur I circle, Kandi block, Murshidabad, the appellant was the first empanelled candidate. The panel was prepared on 4th October, 2004, after the advertisement for the post was published on 14th September, 2004 and an interview process held on 4th October, 2004.

After publication of the panel a dispute arose as to whether this candidate had submitted the residence certificate as required by the rules governing the recruitment.

This court at this point of time is not minded to go into the details of the events but the result was that the private respondent Mr. Bhattacharya's client who

was also empanelled, was appointed as para teacher and started working from 2004.

She is still working.

Further to an order in a writ application passed by this Court on 24th June, 2009 the District Project Officer, SSM, Murshidabad, to whom this Court had entrusted the duty to decide whether the appellant had furnished a residence certificate, opined that the appellant was a 'genuine candidate'. He directed that the panel be recast.

Further to this order from 14th October, 2009 the appellant also started discharging duties as a Para Teacher in the school, without any remuneration.

Another writ application, filed in this court by the private respondent (W.P 18455 (W) of 2009) Ferhana Begum Vs. State of West Bengal & Ors. was substantially allowed by a learned single judge of this Court on 29th November, 2011, directing the District Project Officer to reconsider and re-determine the case, taking into account whether the appellant had submitted the residence certificate.

Aggrieved the appellant is in appeal before us.

After hearing learned counsel for the parties we have formed the following opinion.

This recruitment process is hanging fire from 2004. The State is unrepresented. The rules governing recruitment provide that a residence certificate has to

be furnished by the candidates. It does not mention the nature of the certificate, the issuing authority or the declaration that is to be contained in that certificate.

Not even a sample of such a certificate to be furnished by a candidate is on record.

Mr. Sanyal, learned counsel appearing for the appellant submits that the voter card, ration card together with voter list were relied upon by the authority to ascertain the fulfillment of this condition. This submission stands uncontradicted. He also submitted that such proof had been furnished by his client which is of course denied by Mr. Bhattacharyya, learned senior advocate.

Mr. Sanyal submits that it has been held by the District Project Officer that the appellant was a bona fide resident of the area. This should suffice.

From the decision of the District Project Officer it is clear that the appellant is a local resident. Whether she furnished a certificate to that effect to the authority is uncertain. The matter is very old. We do not think that the records are available. The fact remains that both the appellant and the private respondent have rendered long service as Para Teachers in the subject school.

At this point of time, it would be fruitless to enter into an enquiry as to whether the certificate was

furnished by the appellant. It would also not subserve the ends of justice.

It would also not be proper to rule in the appellant's favour on the basis of the District Project Officer's decision dated 23rd September 2009 and make an order for discharge of the private respondent.

Since both the appellant and the private respondent have worked as para Teachers and are still working, we think, the ends of justice would be achieved if both are allowed to continue in the same manner as they have been doing from 2004 and 2009 respectively. We direct the District Project Officer or if he does not have any authority, the appropriate authority to whom he shall refer the matter to regularize the appellant immediately as a para Teacher of the said school within one month from the date of communication of this order.

In the facts and circumstances of the case, we do not think the appellant should have a claim to any arrear remuneration.

The appellant will be entitled to remuneration on and from the date of this order. The regularization has to be made with such effect. The service of the private respondent shall remain unhindered.

The impugned order of the learned single judge dated 29th November, 2011 is modified to the above extent.

This appeal is disposed of.

No order as to costs.

(I. P. Mukerji,J.)

(Subhasis Dasgupta,J)