

05. 17.12.2021
Ct. No.06
Tanmoy

**M.A.T. 394 of 2021
With
IA No: C.A.N. 1 of 2021**

**Bubun Kumar Maity
-Versus-
Sk. Md. Nuruzzaman & Ors.**

(Through Video Conference)

Mr. Soumik Ganguly, Adv.,
Mr. Lalratan mandal, Adv.,
Mr. Dilip Kumar Sadhu, Adv.

...for the appellant.

Mr. P. Chaturvedi, Adv.,
Sk. Rejaul Alam, Adv.

...for the respondent no.1.

Mr. Arjun Roy Mukherjee, Adv.,
Mr. Nibedita Barui, Adv.

...for the State respondents.

The respondent no.1/writ petitioner, before the learned Single Judge, challenged the appointments of the appellant, the respondent no.6, and the respondent no.7 (Bubun Kumar Maity, Loknath Pramanik and Rajib Mondal, respectively) to the posts of *Nirman Sahayak* under the *Panchayat* department in Paschim Medinipur.

The learned Single Judge found that though the appellant, the respondent nos. 6 and 7 belong to OBC-B category, they had wrongly been included in the panel prepared for the OBC-A category. Learned Single

Judge, therefore, directed the District Magistrate, Paschim Medinipur to immediately disengage the appellant and the respondent no. 6. A further direction was given to engage the respondent no. 1 in place of the appellant.

The relevant part of the order of the learned Single Judge is quoted below:

“The State has finally appeared with instructions. Mr. Arjun Roy Mukherjee, learned advocate appearing for the State has produced the panel prepared in the year 2013. The candidates under Serial Nos. 2 & 3 namely, Babun Kr. Maity and Lokenath Pramanik have indeed secured marks equivalent to their position in the panel. Mr. Mukherjee in his usual fairness, which this Court appreciates, that his clients have not been able to explain as to how the said two persons were engaged despite having a OBC (B) certificate.

In these circumstances, the District Magistrate, Paschim Medinipur shall forthwith disengage Babun Kr. Maity and Lokenath Pramanik. The District Magistrate shall also cause an enquiry within his office as to under what circumstances the said two persons admittedly belonging to OBC (B) category were empanelled in OBC (A) posts.

It appears that the panel was prepared in the year 2013. The first three persons have been functioning after having been appointed since 2013. The second and third persons being the respondent nos. 6 & 7 herein have been illegally functioning since 2013. None of the persons other than the petitioner have challenged the eligibility of the respondent nos. 6 & 7.

In these circumstances, the District Magistrate, Paschim Medinipur shall engage the petitioner in place and stead of Babun Kr. Maity. The engagement of the writ petitioner may be effected within a period of seven days from the date of receipt of a copy of this order.

With the aforesaid observations, the writ petition is disposed of.

In view of disposal of the writ petition, the connected application being CAN 1 of 2021 is also disposed of.”

The respondent no. 7 has admittedly, resigned from the post. He is not contesting the case.

Mr. Arjun Roy Mukherjee, learned advocate appearing for the State, submits before this Court that the appellant and the respondent nos. 6 & 7 were wrongly included in the panel prepared for OBC-A category though they belong to OBC-B category.

It has further been pointed out by Mr. Mukherjee that the cut-off marks for the OBC-A candidates was 47 and the appellant and the respondent no. 6 failed to obtain the cut-off marks in the relevant examination and, therefore, they were not entitled to be appointed to the post in question.

It is, further, submitted by Mr. Mukherjee that though pursuant to the order of the learned Single Judge the service of the appellant has been terminated, the writ petitioner has not yet been appointed in his place.

Mr. Chaturvedi, learned advocate appearing for the respondent no.1/writ petitioner submits that because of the wrong inclusion of the appellant, the respondent nos. 6 and 7 in the OBC-A panel, his client has been deprived of his right to be appointed to the

post in question. If the names of the appellant/the respondent nos. 6 and 7 are deleted from the panel prepared for the OBC-A candidates, his client will be empanelled and could secure an appointment to the post in question.

The impugned order cannot be sustained.

First of all, it has to be noticed that the effect of the order is drastic. The service of the appellant, who had been working in the post for about eight years, has been terminated and the respondent no.1/writ petitioner was directed to be appointed in his place. Though it appears that a direction was given upon the State to produce the records of the case, copies of the same were not supplied to the respondents in the writ petition before the order impugned was passed. They were also not given any opportunity to file their affidavits to deal with the allegations. The minimum requirement was to provide the private respondents in the writ petition with the copies of the records produced by the State before the Court, so that they could deal with the same appropriately.

The learned Single Judge, upon finding as to the ineligibility of the appellant and the respondent no. 6, should have directed the relevant authority to take appropriate steps against them in accordance with the extant service rules. The learned Single Judge ought not to have arrogated to himself the role of the

statutory authority and pass a direction to “disengage” the appellant and the respondent no. 6. A writ court may pass a direction upon the authorities to perform their statutory obligations, but it should not itself assume the role of the statutory authority to decide the matter.

We also do not see any justification in giving the direction upon the State to appoint the writ petitioner without coming to any finding as to his eligibility to be appointed to the said post. The relevant factors like vacancy position, the life of the panel were not at all considered.

In that view of the matter, the order impugned is set aside. The matter is remanded back to the learned Single Judge who has the determination to take up the matter. The writ petition is to be heard upon exchange of affidavits.

The respondents in the writ petition will be at liberty to file their affidavits-in-opposition within a period of two weeks after the ensuing Christmas vacation; reply thereto may be filed within a week thereafter.

The appeal being M.A.T. 394 of 2021 and the connected application being IA No: C.A.N. 1 of 2021 are accordingly allowed.

All parties shall act in terms of the server copy of this order downloaded from the official website of this Court.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)