

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL APPELLATE JURISDICTION**

**APPELLATE SIDE**

**The Hon'ble Justice Subrata Talukdar**  
**&**  
**The Hon'ble Justice Lapita Banerji**

**FMA 1635 of 2018**  
**With**  
**CAN 10225 of 2014**

**Subhra Chattopadhyay (Chatterjee).**

**Vs.**  
**State of West Bengal & Ors.**

For the Appellant : Mr. Lal Ratan Mondal  
Mr. Probal Sarkar  
Md. Sk. Kiran

For the State : Mr. Sudipto Panda  
Ms. Munmun Tewary

Hearing concluded on: 22.08.2022

Judgment on : 02.09.2022

**Lapita Banerji, J:-**This appeal an application arises out of an order dated March 25, 2014 passed by an Hon'ble Judge of this High Court in W.P. No. 37292 (w) of 2013 (Impugned Order). By the Impugned Order the Hon'ble Single Judge refused the petitioner's prayer for engagement of the writ petitioner in the

post of Accredited Social Health Activists (ASHA) in Baidyapur Sub-Centre Bharatpur, Development Block, District-Murshidabad.

**2.** The Writ petitioner applied for the post of ASHA pursuant to an advertisement dated November, 16, 2009 for Baidyapur Sansad.

**3.** Vide Memo No. BH/171, the petitioner's name appeared in the panel of selected candidates which was issued by the member secretary of the Government of West Bengal, office of the Block Health and Family Welfare Samity, Bharatpur, Murshidabad.

**4.** By a memo dated January 19, 2011 the member secretary and BMOH of Block Health and Family Welfare Samity sent a further list of selected ASHA candidates vide memo No. BHFW/02 to the Chief Medical Officer of Health (CMOH) and member secretary. The name of writ petitioner appeared in the said compilation list of selected ASHA Karmees. Out of the said 18 selected candidates 14 candidates were approved by the joint secretary by its memo dated March 14/19 2013. The name of the writ petitioner was sent back requiring clarification vide memo No. BHFW/25 dated April 25, 2013 issued by the member secretary and Block Medical Officer Health (BMOH) to the Pradhan of Gundiria Gram Panchayat. The reason for not accepting of the writ petitioner as ASHA Karmee was shown as "*not residential*" by an office memo dated December 14, 2011 issued by the Block Development Officer (BDO), Block Medical Officer Health (BMOH) and the Sabhapati.

5. Being aggrieved with the rejection of her application as an ASHA Karmee due to her status as “*non residential*”, the writ petitioner filed the instant writ petition being WP No. 37292 (w) 2013.

6. During the hearing of the writ petition the Hon’ble Single Judge considered the report dated February 18,2014 of the BMOH/ respondent No. 5 stating that the writ petitioner does not reside permanently within Baidyapur block and Pradhan of Gunduria Gram Panchayat failed to clarify the residential status of the writ petitioner satisfactorily. Such clarification was sought by BMOH on April 25, 2013 but did not yield any satisfactory result.

7. Hence the writ petitioner was not engaged as ASHA Karmee in Baidyapur Sub-Centre . Such report of the BMOH was dated February 18,2014.

8. Relying on the said report which was filed pursuant to the directions of Court, the Hon’ble Single Bench came to the finding that the writ petitioner was not entitled to any relief.

9. During the hearing of the instant appeal being **FMA No. 1635 of 2018** this court by its order dated June 20, 2022 directed the District Magistrate, Murshidabad to file a report disclosing the actual residential status of the appellant at the time when the selection process took place in 2011, along with any other relevant detail.

10. Pursuant to the directions of this Bench the District Magistrate and collector, Murshidabad filed his report dated July, 13, 2022. The said report *inter alia* was based on a report of the Block Development Officer, (BDO)

Bharatpur-I, Murshidabad and also the Block Medical Officer of Health, (BMOH) Bharatpur-I, Murshidabad dated July 12, 2022. From the aforesaid reports it becomes unequivocally clear that the writ petitioner /appellant is a resident of village Matiara within the jurisdiction of Gunduria Gram Panchyat which is within the Bharatpur-I block, Murshidabad. The petitioner was unnecessarily harassed due to the wrong findings recorded in the report dated February 18, 2014 submitted before the Hon'ble Single Judge. More caution should have been exercised by the BMOH before filing of the report, pursuant to the directions passed by the Hon'ble Court. Let this observation by this Court be communicated by the **Registry** to the District Magistrate for recording the **Censure** of this Court in the Service record of the particular officer who gave the **report** dated February 18, 2014.

**11.** It is evident from the said **report** dated July 13, 2022 that there was no legally tenable reason for disallowing the writ petitioner's application on the ground of her being 'non-residential'.

**12.** In the light of the discussion above this court directs that the appellant /writ petitioner's application should be processed with immediate effect and her candidature as an ASHA Karmee should be approved within the period of 4 weeks of date.

**13.** In the event there are no vacancies in the said block at present then her application should be considered as against the next available vacancies in the said block.

**14.** The appeal being **FMA 1635 of 2018** along with old **CAN No. 10225 of 2014** allowed.

**15.** However there will be no order as to costs.

**16.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**I agree.**

**(SUBRATA TALUKDAR, J.)**

**(LAPITA BANERJI, J.)**