

D/L
Item No. 34
07.06.2022
KOLE

**FMA 1304 of 2016
With
IA No. CAN 1 of 2012 (Old No. 7729 of 2012)
Shyamali Patradhar (Bauri)
-Vs.-
The State of West Bengal & Ors.**

*Mrs. Chandrayei Alam,
Mrs. R. Mukherjee,*

...for the appellant.

*Mr. Chandi Charan De,
Mr. S. Bandyopadhyay,
Mr. A. Sen,*

...for the State.

By consent of the parties the appeal and the application are taken up for hearing together.

A judgment and order dated July 10, 2022, whereby WP No. 1231 (W) of 2012 was dismissed with costs assessed at 200 gms, is the subject matter of challenge in this appeal.

The appellant/writ petitioner was appointed in the post of Anganwari Sahayika under the Child Development Project Officer, Labhpur, Birbhum by issuance of an appointment letter dated November 29, 2007. She joined the post on November 30, 2007. Her grievance before the learned Single Judge was that the Project Officer subsequently took away her original appointment letter and did not permit her to resume her duties. According to her, she was a scheduled caste candidate and was appointed to the post in question on such basis.

On behalf of the State, it was argued that neither on the date of appointment nor on the date of issuance of her appointment letter the writ petitioner possessed any scheduled caste certificate. The applicable rules and guidelines required production of scheduled caste certificate from specified authorities along with the application. Since she did not produce any such certificate either on the date of interview or even prior to issuance of appointment letter in her favour, the Project Officer was justified in taking away the appointment letter and not allowing her to work any further.

The learned Judge accepted the contention of the State. The learned Judge observed that on her own admission, the writ petitioner obtained the scheduled caste certificate on June 23, 2008. Hence, she could not have produced such certificate in November, 2007, when she applied for the job, or on the date of her interview on November 26, 2007. The Learned Judge accordingly dismissed the writ petition.

Learned Advocate for the appellant/writ petitioner argued before us that the writ petitioner belongs to a scheduled caste by birth. It was not that a certificate from a specified authority would make her a member of a scheduled caste. She did produce documents with her application which showed that she was awarded scholarship on the basis that she belongs to a scheduled caste. Further, albeit subsequently, she did produce the scheduled caste certificate when she obtained it. It was extremely unfair on the part of

the Project Officer to throw her out unceremoniously without granting her an opportunity of hearing.

Learned Advocate for the State has argued the same points as were urged before the learned Single Judge. Our attention has been drawn to the advertisement which is at page 18 of the paper book. The relevant clause required production of a scheduled caste certificate from either the relevant District Magistrate or the relevant Sub-divisional Officer along with the application. Relying on this clause, learned Advocate for the State submitted that since such certificate was not produced along with the application, the appointment of the writ petitioner was irregular and accordingly the Project Officer was justified in doing what he did.

We have considered the rival contentions of the parties. It is true that the relevant clause in the advertisement required a candidate to submit along with the application, a scheduled caste certificate issued by the District Magistrate or the Sub-divisional Officer. It is also true that as on the date of the application such certificate was not available with the writ petitioner. However, the fact remains that the writ petitioner was called for interview on the basis of the documents she submitted and was subsequently appointed as an Anganwari worker. It is not the case that the writ petitioner concealed anything or produced any fake document. If the authorities appointed her with open eyes and with full knowledge that she had not been able to produce a scheduled caste certificate from the

District Magistrate or the Sub-divisional Officer, in all fairness, the authorities should have at least granted her an opportunity of hearing before throwing her out from the job.

We are of the considered view that the authorities acted in breach of the principles of natural justice. We remand the matter to The Child Development Project Officer, Labpur, being the respondent no. 4, for reconsideration of the writ petitioner's case. It is common knowledge that service of Anganwari workers are required extensively for the ICDS projects. If there is vacancy in the relevant project, we would expect the respondent no. 4 to consider the case of the writ petitioner sympathetically, particularly in view of the fact that there is no dispute now that she belongs to a scheduled caste. The respondent no. 4 shall take a reasoned decision in the matter in accordance with law within a period of four weeks from the date of receipt of a copy of this order after giving an opportunity of hearing to the appellant/writ petitioner or her authorized representatives. The decision to be taken by the respondent no. 4 shall be communicated to the writ petitioner within a week from the date of the decision.

We have not gone into the merits of the claim of the appellant. The respondent no. 4 shall take an informed decision in the matter in accordance with law and in the light of the observations made in this appeal.

The order under appeal is set aside.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Subhendu Samanta, J.)