

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 3074 of 2022

Smt. Mamata Sing Mura
Vs.
The State of West Bengal & Ors.

Mr. Falguni Bandyopadhyay
Ms. Riya Ballav
... For the petitioner

Mr. Rezaul Hossain
... For the State

The petitioner says that one Ushalata Majhi was engaged in the post of Accredited Social Health Activist (in short "ASHA") Karmee in Gorla Sub-Centre under Hensahatu Gram Panchayat in Jhalda-I Block, District – Purulia. The said Ushalada Majhi belonged to Scheduled Tribe category. She subsequently resigned and, as such, the post of ASHA Karmee in Gorla Sub-Centre fell vacant. A notice for engagement of ASHA was published by the Government of West Bengal through the office of the Sub-Divisional Officer, Jhalda Sub-Division, on 16th July, 2018 for filling up vacancies in different sub-centres in the Jhalda-I, Jhalda-II, Joypur and Baghmundi Development Block of Jhalda Sub-Division. Gorla Sub-Centre, according to the State, was one of such vacancies to be filled up through successful candidate applying against the notice of engagement dated 16th July, 2018.

The petitioner, however, disputes this and says that there has been no notice of engagement published in respect of Goria Sub-Centre. The petitioner says that she belongs to Scheduled Tribe category. Most of the residents of Hensahatu Gram Panchayat to which Goria Sub-Centre caters belong to Scheduled Tribe category and, as such, the vacancy at Goria Sub-Centre has to be filled through a Scheduled Tribe candidate. Ushalata was engaged for this reason being a Scheduled Tribe candidate.

The decision as to whether a Sub-Centre should be reserved for any category like Scheduled Caste, Scheduled Tribe or Other Backward Classes or to keep the same open for general unreserved candidate is a policy decision. The Courts are loath in interfering with such policy matter. That apart and in any event, the petitioner's claim cannot be entertained inasmuch as the petitioner has acquired no vested right to seek for the reliefs claimed in the writ petition which includes a prayer for mandatory direction to fill up the post of ASHA Karmee for Goria Sub-Centre only from Scheduled Tribe candidates.

It further appears from the affidavit filed by the State that the petitioner's candidature was considered for Goria Sub-Centre. Two candidates were found eligible for the said Sub-Centre and the petitioner was placed as waitlisted candidate. The Selection Committee had duly signed the panel vide memo dated 7th December, 2021 which was forwarded to the Chief Medical Officer of Health,

Purulia. Thereafter the said panel was sent to the State authorities for approval. After the panel was approved by a memo dated 16th February, 2022, one of the selected candidates, namely, Sadhana Das has joined on 3rd March, 2022 as an ASHA Karmee in Gorla Sub-Centre.

The State respondents by relying upon the affidavit filed by them submit that there is also no scope of granting any relief to the petitioner since her candidature was duly considered and she was thereafter placed as a waitlisted candidate. The successful candidate has already joined and there is no further vacancy at Gorla Sub-Centre.

The other point which falls for consideration is the legal right of the petitioner. The petitioner on her candidature being considered has participated in the selection process and, as such, has a very limited arena to challenge the same. The ground of challenge made out by the petitioner does not fall within the limited scope of challenge available to her. Moreover, the petitioner is unable to demonstrate that any enforceable right under Part-III of the Constitution has been infringed or there has been an infringement to any legal right of the petitioner. In absence of the same, the petitioner is not entitled to maintain a writ petition for the reliefs as claimed.

The writ petition is, therefore, dismissed, however, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)