

04. 11.02.2022
Ct. No.06
Tanmoy

**M.A.T. 316 of 2021
With
IA No: C.A.N. 1 of 2021**

**Prabhamoyee Mandal
-Versus-
The State of West Bengal & Ors.**

(Through Video Conference)

Mr. Surojit Samanta, Adv.

...for the appellant.

Mr. Swapan Kr. Datta, Adv.,
Mr. Rajat Dutta, Adv.

...for the State.

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

Before the learned Single Judge, the writ petitioner/appellant challenged an order dated November 9, 2014, passed by the Additional District Magistrate, Malda, which was approved by the District Magistrate, Malda on November 14, 2014.

An advertisement was published on November 17, 2006, for filling up the posts of additional Auxiliary Nurse and Midwife in the different health sub-centres in the district of Malda. One of the conditions for the appointment was that the applicant should be a domicile of the locality where the concerned health sub-centre was situated. The appellant/writ petitioner was

selected for Sahabajpur health sub-centre as she claimed that she was a resident of Balufara village. She also completed the training of 18 months. Her selection was challenged before this Court and after a series of litigation, a Co-ordinate Bench of this Court on August 14, 2014 in F.M.A. 96 of 2011 (Prabhamoyee Mandal – Vs.- The State of West Bengal & Ors.) directed the concerned District Magistrate to consider the eligibility of the appellant by allowing her to produce the documents in support of her place of residence. The appellant produced a document being an application in “FORM-2” for change of her residential address of Ration card from Ramharitola to Balufara, which was received by the relevant ration dealer office on November 19, 2006.

In the order impugned in the present writ petition it was observed by the Additional District Magistrate, Malda, that the advertisement clearly stipulated that the applicant should be a resident of the sub-centre area and either photocopy of EPIC or Ration card duly attested by a Gazetted Officer was to be submitted to the relevant Block Development Officer as a proof of the applicant’s residential address. The Additional District Magistrate was of the view that the appellant, only to avail the opportunity to be employed under the relevant health sub-centre, applied for the change of residential address, but mere submission of application for the

change of residential address did not prove that the appellant was the resident of Balufara as claimed by her. From a report of the District Controller, Food & Supply (DCFS), Malda, it was found by the ADM that the change of residential address took effect from February 28, 2007, i.e., after the last date of submission of application for the post in question.

On the above reasoning, the claim of the appellant was rejected.

Before us, Mr. Samanta, learned advocate appearing for the appellant, has argued that the order as approved by the District Magistrate is perverse since it is immaterial when the change of address was given effect to by the DCFS. Mr. Samanta submitted that the appellant/writ petitioner only after the change of her residence, applied for change of address in Ration card on November 19, 2006, which was accepted by the DCFS, Malda, on February 28, 2007. Therefore, the relevant date would be when the petitioner actually changed her residence. Mr. Samanta submits that the order impugned in the writ petition is not sustainable in the eye of law since it was clear that as on November 19, 2006, petitioner was a resident of Balufara.

Pursuant to our directions on December 9, 2021, and December 24, 2021, the State has filed a report in the form of an affidavit by the Chief Medical Officer of Health, Malda, Government of West Bengal. The report

suggests that the vacancies for the post of 2nd ANM in relevant sub-centre, is still there, but by a Memo dated May 19, 2015, the Mission Director, National Health Commission, intimated that the Government of India discontinued further approval for the posts of contractual 2nd ANM and directed that no proposal for approval towards training and subsequent engagement of contractual 2nd ANM should be considered at the end of the Mission Director.

Relying upon the said affidavit, Mr. Datta, learned senior advocate for the State, suggests that in view of the said decision to discontinue the posts of 2nd ANM, there is no scope to appoint the appellant today, even if it is found that she is eligible to be appointed to the said post.

With regard to the discontinuation of the post of contractual 2nd ANM, Mr. Samanta submitted that other candidates, who were contemporaneously selected for the said post with the appellant, had been appointed and, therefore, the decision of discontinuation by the Mission Director, National Health Mission is not applicable to the writ petitioner/appellant.

The order of the Additional District Magistrate, Malda, as approved by the District Magistrate, Malda, dated November 14, 2014, in our view, does not call for any interference.

The fact remains that the relevant advertisement was published on November 17, 2006, and last date for submission of application was November 30, 2006. Only after the said advertisement was published, the writ petitioner/appellant made an application in FORM-2 for change of her address in Ration card from Ramharitola to Balufara.

The said Form-2 is not a proof of her change of residence. The advertisement categorically stipulated that only photocopy of EPIC or Ration card would be considered as a proof of address. Admittedly, on the last date of submission of the application for the post in question, the writ petitioner/appellant was not in possession of any of the said documents showing her address at Balufara. The District Controller of Foods and Supply issued Ration card at her changed address only with effect from February 28, 2007. The writ petitioner/appellant, therefore, did not fulfill the criteria as stipulated in the advertisement. In our view, no fault can be found with the authorities for not accepting the writ petitioner/appellant as a resident of Balufara at the material point of time. The finding of the District Magistrate cannot be said to be perverse and does not call for any interference of this Court. The learned Single Judge did not interfere with the order of the District Magistrate holding the said view to be a

plausible view, which need not be interfered with in exercise of the power of judicial review.

Since we have found that the petitioner is not eligible to be appointed to the relevant post, the question of applicability of the discontinuation order issued by the Mission Director, National Health Mission to the appellant's post is inconsequential.

M.A.T. 316 of 2021 and IA No: C.A.N. 1 of 2021 are accordingly dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible, after compliance with all the requisite formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)