

S/L 3-5  
31.03.2022  
Court No.6  
SD

FMA 327 of 2020  
With  
CAN 3 of 2018  
(Old CAN 5281 of 2018)

Dr. Subir Kumar Ghosh  
Vs.  
Atin Mishra & Ors.

With  
FMA 3163 of 2015

State of West Bengal & Anr.  
Vs.  
Dr. Atin Mishra

With  
FMA 3539 of 2013  
With  
CAN 4 of 2017  
(Old CAN 9284 of 2017)

Bikash Kumar Das  
Vs.  
State of West Bengal & Ors.

*Mr. Bhagwat Chowdhury*  
*Mr. Sariful Islam Mallick*

*... for the Appellant.*  
*(in FMA 327 of 2020)*

*Mr. Atarup Banerjee*  
*Mr. Samit Bhanja*

*... for the Appellant.*  
*(in FMA 3539 of 2013)*

*Mr. Biswarup Biswas*  
*Mr. Md. Mojnu Sk.*

*... for the Respondents/Writ Petitioners.*

*Mr. Raja Saha*  
*Mr. Biswabrata Basu Mullick*  
*Mr. Sayan Ganguly*

*... for the State.*

*Mr. Uttiya Ray*

*... for the Zilla Parishad.*

These three appeals can be disposed of by this  
common judgment.

The disputes in all three appeals relate to appointment to a post of Ayush in Nandai Gram Panchayat, Kalna-I Block, East Burdwan.

One of the prospective candidates for the said post, namely Atin Mishra claimed to be the successful candidate in the selection process. He approached this Court alleging that the concerned authority had withheld his appointment illegally. His writ petition was allowed directing the relevant authorities to issue an appointment letter in his favour.

The order of the learned Single Judge passed in the said writ petition was carried in appeal by the State. The other two aspirants for the said post, namely Subir Kumar Ghosh and Bikash Kumar Das sought to intervene in the said appeal by filing applications. The said appeal preferred by the State was dismissed for default. As a consequence thereof, the applications filed by Subir Kumar Ghosh and Bikash Kumar Das were also dismissed.

Thereafter, Subir Kumar Ghosh preferred an appeal being F.M.A. No. 327 of 2020 with an application for leave to appeal against the same order whereby Atin Mishra was directed to be appointed. Subir Kumar Ghosh also filed a writ petition challenging the selection process.

It appears that Bikash Kumar Das approached the learned Single Judge with a prayer that he should be permitted to participate in the selection process condoning his age bar. The learned Single Judge permitted him to participate in the selection proceeding condoning the age

bar. Bikash Kumar Das accordingly participated in the selection process but was not successful. Subsequently, Bikash Kumar Das has preferred an appeal being FMA 3539 of 2013 quite interestingly, against the order whereby he was permitted to participate in the selection process.

Bikash Kumar Das, admittedly, has been working in the post in question on the strength of an order passed by a Coordinate Bench.

In order to resolve the dispute finally without going into any other aspect of the matter, we sought to ascertain who is the eligible candidate for the appointment to the post in question. It appears that controversy in these three appeals zeroed in on the domiciles of the respective candidates. According to Clause 5 of the relevant notification for recruitment dated March 29, 2010, a candidate for the post in question has to be domiciled in the relevant Gram Panchayat, and if no candidate is available from the said Gram Panchayat then the availability should be ascertained from the concerned Block.

We asked all three aspirants before us to produce documents to show their domiciles in terms of the advertisement published for the post in question. Accordingly, parties have produced documents in support of their domiciles. It appears that none of the candidates is a resident of the Nandai Gram Panchayat. Bikash Kumar Das and Subir Kumar Ghosh, however, appear to be residents of Kalna-I Block while Atin Mishra is a resident of the

concerned Municipality. Therefore, Atin Mishra does not qualify for the post on the ground of his domicile whereas the other two candidates, namely Subir Kumar Ghosh and Bikash Kumar Das come within the zone of consideration.

That being the position, the appointment in question should go to the candidate who has scored the highest marks in the selection process. The respective marks of Bikash Kumar Das and Subir Kumar Ghosh are 57.65 and 58.17. Therefore, we hold that Subir Kumar Ghosh should be appointed to the post in question.

In view of the aforesaid, appeals being F.M.A. No.327 of 2020 along with CAN 3 of 2018 (Old No. CAN 5281 of 2018), F.M.A. No.3163 of 2015 and F.M.A. No.3539 of 2013 along with CAN 4 of 2017 (Old No. CAN 9284 of 2017) are disposed of with a direction upon the Chief Medical Officer of Health, Burdwan, and the Pradhan of Nandai Gram Panchayat to take necessary steps for appointing Subir Kumar Ghosh to the post in question within a period of four weeks from the date of communication of this order.

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

**(Kausik Chanda,J.)**

**(Arijit Banerjee, J.)**