

24.08.2022

Court No.32
rpan/09

F.M.A. 994 of 2021

With

IA No.: CAN 1 of 2019 [Old No.: CAN 9861 of 2019] [Stay]

Sri Tanmoy Banerjee

- Versus -

The State of West Bengal & Others

Mr. Mrityunjoy Goswami,

Mr. Parikshit Goswami

... for the Appellant.

Mr. Samrat Sen,

Mr. Subhendu Sengupta

... for the State.

Mr. Anuran Samanta

... for the Respondent nos.2-3.

The present appeal has been preferred challenging an order dated 11th April, 2019 passed in a writ petition, being W.P. No.7479 (W) of 2019.

Mr. Goswami, learned advocate appearing for the appellant/writ petitioner submits that the appellant was initially appointed as a Booth Level Officer (in short, BLO) for different works related to election department and was directed to attend training by an order dated 27th October, 2010 passed by the respondent no.4. The appellant duly attended such training. Similarly, he was appointed as BLO in the subsequent years till 2016, as would be explicit from the orders annexed at pages 31 and 32 of the stay application. Surprisingly, he was not considered for appointment as BLO after the year 2016 though persons similarly situated were granted such

appointment. Aggrieved thereby, the appellant submitted several representations. By a memo dated 12th December, 2018 issued by the respondent no.3, the appellant's representations were forwarded to the respondent no.2 for consideration but still no decision was taken. Aggrieved thereby, the appellant was constrained to approach this Court.

According to Mr. Goswami, the appellant's claim was rejected by the learned Single Judge placing reliance upon the provisions of Section 159 of the Representation of the People Act, 1951. The said provisions have no manner of application pertaining to appointment of BLO.

Per contra, Mr. Sen, learned Assistant Additional Advocate General appearing for the State respondents submits that no legal right of the appellant has been infringed. Placing reliance upon the provisions of Section 13B of the Representation of the People Act, 1950, he submits that an electoral registration officer may, subject to any prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the constituency. Such appointment can be made only from amongst the officers of the Government/Semi-Government/local bodies. The appellant does not belong to any of such category and as such, he has no right to be appointed as a BLO. The BLOs are Government officials and they

are deputed by their parent offices to serve as BLOs. In support of such contention, he has placed reliance upon the provisions of Chapter-I in the Handbook for BLOs.

By an order dated 12th August, 2022 we directed the parties to exchange their affidavits and pursuant thereto, the affidavits have been exchanged.

In paragraph 8 of the affidavit-in-opposition, affirmed on behalf of the respondent nos. 2 and 3 it has *inter alia* been stated as follows:

'Thereafter, along with primary school teachers, Anganwadi workers and health workers, 42 Civil defence were engaged due to shortage of man power. It is also a fact that during August, 2016, a direction was given by the then Sub-Divisional Officer, Basirhat citing the provision under section 13B(2) of the Representation of Peoples Act, 1950 regarding appointment of BLO and to de-assign all CDV from the duties as BLOs and to make then suitable replacement for the summary recursion of Electoral Rules 2017 and as per the direction all Civil Defence Volunteers were de-assigned and replacement were made.'

In the said affidavit a memo dated 3rd November, 2010 has also been annexed in which a suggested list of categories of Government/Semi-Government employees, who can be appointed as BLO, has been detailed.

From the averments made in the affidavit-in-opposition it is explicit that the authorities have not restricted appointment of BLO only amongst the officers of the Government and Semi-Government organizations. A perusal of the list in the memo dated 3rd November, 2010 also reveals that BLOs can be appointed from Electric Bill Readers, Mid-day meal workers, who are not employees of Government or Semi-Government organizations. The list of categories in the memo dated 3rd November, 2010 is thus not exhaustive. It further appears Civil Defence Volunteers were also appointed as BLOs to meet the exigencies. In view thereof, the authorities cannot apply a different yardstick in respect of the appellant. The respondent no.3 also forwarded the appellant's claim for consideration to the respondent no.2, as would be explicit from the memo dated 12th December, 2018. The provisions of section 159 of the Act of 1951 have no manner of application towards appointment of BLO.

In view thereof, the order impugned in the present appeal is not sustainable in law and the same is, accordingly, set aside.

The respondent no.2 is directed to consider the representations of the appellant dated 20th November, 2018 and 27th November, 2018, as referred to in the memo dated 12th December, 2018, issued by respondent no.3 and also the last representation of the

appellant dated 18th February, 2019, as annexed at page 40 to the stay application and to take a decision, in accordance with law and in the light of the observations made in this order, upon granting an opportunity of hearing to the appellant.

Such decision shall be communicated to the appellant within a period of six weeks from the date of communication of this order along with the memo dated 12th December, 2018 issued by respondent no.3 and the representations dated 20th November, 2018, 27th November, 2018 and 18th February, 2019.

Needless to observe, in the event the appellant's claim deserves acceptance, necessary follow up steps shall be taken by the respondent no.2 forthwith.

With the above observations and directions the appeal, being FMA 994 of 2021 and the connected application, being IA No.: CAN 1 of 2019 [Old No.: CAN 9861 of 2019] are disposed of.

There shall, however, be no order as to costs.

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

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)