

01.08.2022  
Item No. 12.  
Court No.6.  
AB

**M.A.T. 996 of 2022  
With  
I A CAN 1 of 2022**

**Raseda Begum  
Vs  
The State of West Bengal & Others**

Mr. Robiul Islam,  
Mr. S. A. Munshi,  
Ms. Firoja Khatun     ...for the Appellant.

Mr. Jahar Lal De,  
Mr. Bipin Ghosh     ...for the State.

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

This appeal is directed against a judgment and order dated June 15, 2022, whereby WPA No.9687 of 2022 filed by the present appellant was disposed of. The operative portion of the impugned order reads as follows:

*“The Block Medical Officer of Health and the Block Development Officer, Domkal Development Block have expressed their inability to provide engagement to the petitioner, as the residential area of the petitioner is not within the jurisdiction of the Health Sub-centre where the ASHA worker is to be appointed.*

*It appears from the documents annexed to the writ petition that the petitioner stood second in the panel in respect of the village Khidirpara. Village Khidirpara has not been advertised in the notification that has been published for engagement of ASHA worker.*

*Accordingly, at this stage no relief can be granted to the petitioner in the instant writ petition. As and when vacancy is declared within the residential area of the petitioner, the respondent authorities shall take necessary*

*steps for accommodating the petitioner strictly in terms of the order passed by the Court on September 17, 2009 in WPA 15753 of 2009 and the order of the District Magistrate, Murshidabad dated May 24, 2010.”*

The appellant/writ petitioner had initially approached this Court by filing WPA No.15753 of 2009 challenging the legality and/or validity of a panel prepared by the Administration pertaining to engagement of candidates in the posts of ASHA workers. According to the writ petitioner, the private respondent in that writ petition did not have the requisite qualification and she was wrongly included in the panel. That writ petition was disposed of by an order dated September 17, 2009, the operative portion whereof reads as follows:

*“When the selection process was started, the private respondent did not have the qualification but the writ petitioner had the qualification as noted above. Now the private respondent has attained the age qualification.*

*In that view of the matter, the Court has some sympathy for the writ petitioner and disposes of this writ application by directing the respondent no.3 to consider the case of the writ petitioner for being employed as ASHA staff sympathetically, without dislodging the panel which is Annexure-P3 of the writ petition, as an additional appointment, if possible, or in the future.”*

Subsequently, an order was passed by the District Magistrate, Murshidabad, who referred the matter to the Block Level Selection Committee to find

out whether there was scope for engagement of the writ petitioner “at present or in the future”.

The writ petitioner’s name was empanelled in the second position in the Khidirpara village under Katakopara Sub-centre.

The present writ petition was filed by the appellant challenging a Notification for initiation of the process of engagement of ASHA workers at Health Sub-centre, Katakopara. The learned Judge recorded that village Khidirpara has not been advertised in the said Notification. It is not in dispute that the writ petitioner resides within the territorial limits of Khidirpara. Accordingly, the learned Judge passed the order impugned directing that as soon as vacancy arises in Khidirpara, the case of the writ petitioner shall be considered strictly in accordance with the order dated September 17, 2009, passed in the earlier writ petition.

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned Advocate appearing for the appellant says that the Administration will never create vacancy within the territorial limits of Khidirpara. The law requires that there should be at least one ASHA worker for every 1000 persons. According to learned Advocate, Khidirpara has about 6000 people. Hence, there should be at least 6 ASHA workers for

Khidirpara. Presently, there is only one ASHA worker, who was selected in 2009.

Mr. De, learned Senior Counsel representing the State-respondents disputes the factual submissions made on behalf of the appellant as regards the population number in Khidirpara village. He further disputes the proposition that there should be one ASHA worker per 1000 persons. He says that these are policy decisions of the Government. However, the State Administration shall definitely comply with all legal requirements as may be mandated by the relevant Statutes or Rules framed thereunder. If the law so mandates, post for ASHA worker will be created in Khidirpara and the case of the appellant will be duly considered in terms of the earlier order of this Court.

In view of such fair stand taken on behalf of the State and since we do not find any apparent infirmity in the order under appeal, we dispose of the appeal by observing that this being a welfare State, we trust and hope that the State Administration shall act fairly and consider the case of the appellant in accordance with law and with some sympathy.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT No.996 of 2022 stands disposed of along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

**(Rai Chattopadhyay, J.)**

**(Arijit Banerjee, J.)**