

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 11308 of 2015

Golenur Khatun (Bibi)

Versus

State of West Bengal & Ors.

Mr. Md. Yunus Ali

.....For the Petitioner

Mr. Ziaul Islam

Md. Abdus Salam

.....For the Respondents

Heard on : 28.01.2022

Judgment on : 02.02.2022

Krishna Rao, J.: The writ petitioner has filed the instant writ application praying for modification of the order passed by the District Magistrate, Malda dt. 16.01.2014 wherein the District Magistrate, Malda has passed the following order:-

“Perused the report of the District Controller of Food and Supplies, Malda, DCFS Malda in his memo no. 2681/DCF(M)/13 dtd. 26/12/13 has stated that date of transfer of ration card should be treated as the effective date of permanent residence.
Considering all the above facts the following points can be stated-

1. As per report of SDO (S) vide memo no 3291/SDO(S) dtd. 16/12/2013 the name of respondent no 6 could not be found in part no 74 of Manichak AC in the draft Electoral Roll-2007 published on 14.11.2007

2. As per report of DCFS, Malda date of transfer of ration card should be treated as effective date of permanent residence. Since the ration card of private respondent no 6 was not tagged before 23/12/13 i.e, the date of interview, hence private respondent no 6 cannot be considered as a permanent resident of village Eiahitaia, Manikchak under Gopalpur health sub-centre during the period in question.

I, Shri Sharad K. Dwivedi dispose of the matter by directing C.M.O.H Malda that private respondent no 6 Antahura Bibi should be discontinued as ASHA worker of Gopalpur Health Sub-Centre of Manikchak Dev. Block. C.M.O.H Malda is hereby directed to thereby fill up the vacancy as per government guidelines.”

Mr. Mohammed Yunus Ali representing the petitioner contended that in the year 2007, a notice was published for engagement of Accredited Social Health Activities (hereinafter called “ASHA”) against every thousand population. The petitioner being eligible had applied for the same. After the selection process, the petitioner came to know that the private respondent who was selected as ASHA worker is not having any document to establish that she is the permanent resident of the concern village.

Being aggrieved with the engagement of the private respondent, the petitioner had filed a writ application before the coordinate bench of this Court being WP No. 13901(W) of 2009 (Golenur Khatun (Bibi) -Versus- State of West Bengal & Ors.). The said writ petition was disposed of vide order dt. 05.02.2010 by passing the following order:-

“The learned counsel, appearing for the respondent No. 6, was unable to disclose any evidence in rebuttal of the allegations contained in the representation dated 2nd July, 2009, a copy whereof is Annexure “P7” to this writ petition.

It is, therefore, directed that the respondent No. 4 shall hear the parties and shall pass a reasoned order, in accordance with law, within four weeks from the date of communication of this order. In the event, the contention of the writ petitioner is upheld, appropriate relief shall be granted to her.

This writ petition is, therefore, disposed of.”

In compliance of the order passed by Cordinate Bench of this Court dt. 05.02.2010, the Block Development Officer had passed the following order on 22.03.2010:-

“On examination of the relevant papers and record produced by Antahara Khatoon (Bibi) it is evident that her marriage was held on 03.06.2001 with Md. Tojihar Rahaman of village Elahitola P.O. Sahabattola P.S. Manikchak Dist. Malda according to contents of her Marriage Registration Certificate no. 78 dated 03.06.2001 and since then she has been living there with her husband and children on the permanent basis. On the other hand the prodhan Gopalpur Gram Panchayet has issued a certificate on 13.12.2007 stating that the Antahara Khatun (Bibi) has been residing as a permanent resident at Village Elahitala within Gopalpur G.P. The above noted two (2) Nos. Documents instead of Ration Card and Epic are enough to prove the permanent resident in respect of Antahara Khatun (Bibi) opposite party, for having an appointment to the pos of ‘ASHA’. Considering all these matters and in conformity to the Govt. notification vide D.O. No. HSL (Misc) 156(54)06, dated 13.09.2006 regarding appointment to the post of ‘ASHA’ I dispose of the matter rejecting the prayer of the petitioner.”

Being aggrieved with the order of the Block Development Officer, the petitioner had again filed a writ application being WP No. 23293 (W) of 2010 and the said writ petition was disposed of by cordinate bench of this Court on 06.07.2011 by passing the following order:-

“As proof of residential status the candidates for the post of ASHA are to produce EPIC Card or Ration Card. In the instant case, while considering the petitioner’s representation both the said documents have not been considered by the adjudicating authority and reliance has been placed on the Marriage Certificate which is not a document required to ascertain the residential status. Reliance has also been placed on the certificate issued by the Pradhan although this may be a document sufficient to prove residential status but Ration Card or Epic Card are/is essential documents to be considered. The same ought not to have been ignored by the adjudicating authority. In ignoring the said documents the adjudicating authority has misguided himself and committed an error of law.

Accordingly, the order dated 22nd March, 2010 cannot be sustained and is accordingly set aside.”

In compliance of the order passed by this Court dt. 06.07.2011, the Block Development Officer had again passed the following order on 12.03.2012:-

“On examination of the relevant papers and records produced by Antahura Khatun (Bibi) who has been serving to the Post of “ASHA” at Gopalpur Health Sub-Centre under Gopalpur Gram Panchayat, within this Block Jurisdiction, it is evident that according to EPIC bearing no. FXV3287596 issued on 09-02-2008 and Ration Card No. 3005545 transferred on 08-01-2008 she is a permanent resident of village Elahitola, P.O:- Sahabattola, P.S:- Manikchak, Dist:- Malda, which is purely under jurisdiction of the said Gopalpur Health Sub Centre, Malda.

It is also evident that she was selected to the Post of ASHA vide memo no. 170/1(6) dated 01-07-2009 of the Secretary, BHFWSamity, Manikchak Block, Malda and she had been joined to the said post on 01-07-2009.

Considering all these matters and in conformity to the Govt. notification vide D.O No. HSL (Misc) 156(54)/06, Dated 13-09-06 regarding appointment to the post of “ASHA” and with the aforesaid order I, disposed of the matter rejecting the prayer of the petitioner.”

Being aggrieved and dissatisfied with the order 12.03.2012 passed by the Block Development Officer, the petitioner had again filed a writ petition before the coordinate bench of this Court being WP No. 14260 (W) of 2012. The said writ petition was disposed of by coordinate bench of this Court on 02.07.2013 by passing the following order:-

“Having heard the learned advocates for the parties, whether the private respondent no. 6 is a permanent resident of village Elahitola, Manikchak under the Gopalpur Health Sub-Centre or not, is purely a question of fact which can be ascertained after scrutinising the records. Considering such fact, the writ petition is disposed of by directing the District Magistrate, Malda the respondent no. 3, to dispose of the matter regarding appointment of the private respondent no. 6 by passing a reasoned order within eight weeks from the date of presentation of a copy of the certified copy of this order after giving an opportunity of hearing to the petitioner and to the private respondent no. 6 and after verifying the records relating to the proof of residence of the respondent no. 6 as on 27th December, 2007 in the light of the

voter identity card and the ration card produced by the parties and in accordance with the ASHA implementation guidelines issued by the State Mission Director & Ex-Officio Special Secretary, National Rural Health Mission, the respondent no. 2 and without being influenced by the order dated 12th March, 2012, appearing at page 77 of the writ petition.

It is, however, made clear that I have not gone into the merits of the matter and all points are left open to be dealt with by respondent no. 3.”

In terms of the order passed by this Court dt. 02.07.2013, the District Magistrate, Malda had initiated proceeding and disposed of the said proceeding on 16.01.2014 which is impugned in the instant writ application.

The Counsel for the petitioner submitted that the District Magistrate had passed an order holding that the private respondent cannot be considered as permanent resident of village Elahitatia, Manikchak under Gopalpur Health Sub Centre during the period in question but the District Magistrate failed to consider that the petitioner was having the requisite qualification and is permanent resident of the said village and is entitled to get an appointment as ASHA Worker in the said village.

The Counsel for the petitioner further submitted that the District Magistrate ought to have passed an order for engagement of the petitioner as ASHA Worker as it is held by the District Magistrate that the private respondent is not the permanent resident of said village.

The Counsel for the petitioner further submitted that the private respondent has challenged the order passed by the District Magistrate dt. 16.01.2014 by way of writ application being WP No. 9416 (W) of 2014 and coordinate bench of this Court had dismissed the said writ application. The private respondent being aggrieved with the order passed in WP No. 9416 of 2014 dt. 25.03.2014 had preferred an intra court appeal being MAT No. 681

of 2014 with CAN No. 4498 of 2014 but the same was also dismissed by the Hon'ble Division Bench on 02.03.2016.

The Counsel for the petitioner further submitted that as the private respondent is not a permanent resident of the said village and as such the appointment of the private respondent was recalled. Out of three post one post of ASHA worker in the said village is still lying vacant in which the petitioner has applied for and agitating her grievances before this Hon'ble Court since beginning.

The Counsel for the petitioner prayed for an order for engagement of the petitioner as ASHA Worker in the said village.

The Counsel for the respondent no. 2 to 7 has submitted a report in the form of affidavit on behalf of the respondent no. 4 enclosing the order passed by the Block Medical Officer of Health, Manikchak Rural Hospital, Malda dt. 15.12.2018 wherein it is mentioned that:-

“6. So this case of ASHA selection and filling up the vacancy arising after termination of Antahura Khatun (Bibi), ASHA, Elahitola, Manikchak under Gopalpur Sub Centre, Malda according to memo no. HFW/NRHM/227/06 dated. 11.12.2006 of H.K. Dwivedi, IAS, State Mission Director (NRHM) & e.o. special Secretary, Department of Health and Family Welfare, Government of West Bengal has directed selection of ASHA dated. 11.12.2006 the selection of ASHA will be done by the Gram Panchayat and committee for ASHA selection comprise of G.P Prodhan, Health Supervisor, Upasanchalak of GP Swasthya Samity, ANM of the concerned SC and one representative of Block Development Officer.”

The Counsel for the respondent submitted that as the service of the private respondent has been terminated as she is not the resident of the said village and as such there is a vacancy of ASHA Worker in the said village and the same will be filled up by initiating a Selection Process by the Gram Panchayat and the Committee for ASHA selection.

Heard the rival submissions of the parties and perused the documents available on record. The respondents have issued an employment notice for engagement of ASHA Worker against every thousand population and accordingly, the petitioner had participated in the said process. As per the advertisement the applicant should be resident of the village where she applied for the post and shall submit mark sheet of Madhyamik Pariksha (Minimum educational qualification Madhyamik passed/failed).

As per the Scheme of Engagement of ASHA Worker, the proof of residence is EPIC (Voter Identity Card)/Ration Card is must for all those who will apply for ASHA Worker. In the instant case, the private respondent has not submitted election identity card or ration card to prove that she is the resident of said village but the petitioner had submitted her document to prove that she is the resident of said village.

The respondents without considering the documents submitted that by the petitioner have engaged the private respondent though the private respondent has not submitted election Identity Card/ ration card. Time and again, the petitioner has challenged the order of appointment of the private respondent and lastly on 16.01.2014, the District Magistrate has held that the document submitted by the private respondent cannot be considered as permanent resident. Private respondent has challenged the order passed by District Magistrate dt. 16.01.2014 before coordinate bench of this Court and carried up to the Appellate Court but the appeal preferred by the private respondent was also dismissed.

Since the beginning of the recruitment process, the petitioner is challenging the candidature of the private respondent but the respondent

authorities failed to consider the request made by the petitioner and on each and every occasion the petitioner had approach before this Court by filing several writ petitions.

In the first writ application filed by the petitioner being WP No. 13901 (W) of 2009 dt. 05.02.2010, the Coordinate Bench had passed a specific order that:-

“In the event, the contention of the writ petitioner is upheld, appropriate relief shall be granted to her.”

Finally on 16.01.2014 the District Magistrate has upheld the contention of the petitioner holding that the private respondent is not the resident of the said village but the District Magistrate failed to pass any order for engaging the petitioner as ASHA worker in place of private respondent.

The petitioner is approaching before this Court time and again challenging the engagement of the private respondent but one or the other reason the authorities have favoured the private respondent. Subsequently on 16.01.2014, the District Magistrate has upheld the contention of the petitioner holding that the private respondent is not the permanent resident of the said village. District Magistrate ought to have passed an order for engagement of the petitioner as ASHA Worker as the petitioner is having the requisite qualification for the same but instead of engaging the petitioner had passed an order to filling up the vacancy as per Government guidelines. After the order of District Magistrate, the Block Medical Officer has passed an order that as per direction of Special Secretary, Department of Health &

Family Welfare, selection of ASHA will be done by the Gram Panchayat & Committee for ASHA Selection.

The petitioner is challenging the order of engagement of the private respondent since inception on the ground that the private respondent has not submitted the required document as residence proof and finally the District Magistrate upheld the contention of the petitioner and thus instead of initiating further process for filling up the said post, the District Magistrate ought to have passed an order for engagement of petitioner as ASHA worker.

Hence the order passed by the District Magistrate dt. 16.01.2014 is modified by directing the respondent authorities to engage the petitioner as ASHA worker within two weeks from the date of communication of the order.

W.P.A 11308 of 2015 is thus disposed of. There will be no order as to cost.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)