

14.09.2022
Sl. No.45(DL)
srm

W.P.A. No. 14843 of 2021

Noor Banu

Vs.

The State of West Bengal & Ors.

Mr. Wasef Mondal,
Mr. Musharrof Alam Sk.

....for the Petitioner.

Mr. Jahar Lal De,
Mr. Jahar Datta

...for the State-respondents.

Affidavit-of-service is taken on record.

The petitioner prays for a mandamus upon the respondents to issue the letter of engagement as an Accredited Social Health Assistant (in short ASHA) of Jausa Jahir Khan Primary School Polling Centre within Bhagabanpur Gram Panchayat under Chanchal-I Development Block, District-Malda. The petitioner relies on a panel that was allegedly prepared sometime in January, 2008. The name of the petitioner was listed at serial No.1. There was a dispute with regard to the qualification of the petitioner. The petitioner had passed the Maulvi Examination from Bihar State Madrasah Education Board and not the Madhyamik Examination as per the requirement for engagement as ASHA. A letter

dated July 21, 2009 written by the petitioner to the Block Medical Officer of Health, Chanchal Rural Hospital, Malda clarifies the position that there was a dispute with regard to equivalence of the qualification . In 2009, the petitioner had approached the authorities claiming engagement and equivalence of the qualification. Such engagement was not given to the petitioner.

The petitioner kept silent from 2009 to 2018. Thereafter, the Block Medical Officer of Health, Chanchal Rural Hospital, Malda informed the Sub-Divisional Officer, Chanchal Sub-Division, Malda that the petitioner had suddenly surfaced and had claimed her candidature to be genuine. The petitioner prays for settlement of the dispute. It also appears that one Mst. Nasima Khatun, who was placed at serial No.5 in the panel, had raised objection with regard to the documents and eligibility of the petitioner. The issue of engagement of the petitioner had been kept in abeyance as per the letter of the Block Medical Officer of Health, Chanchal Rural Hospital.

The prayer for a mandatory direction for engagement of the petitioner cannot be allowed on the following grounds:-

- (a) The panel, which was prepared in 2008, had long expired. The law does not permit a panel to be kept alive for an unending period.
- (b) The petitioner was not issued any engagement letter. She was not offered the job. As such, the right of engagement of the petitioner has not crystallized.
- (c) The writ petition is belated and there is no explanation for the delay.
- (d) The question of equivalence of Madhyamik Examination with the Maulvi Examination from Bihar State Madrasah Education Board cannot be decided by the Writ Court. It is entirely within the jurisdiction of the experts, who had conducted the selection process, to decide such issue. The expertise of a selection committee cannot be called in question.

Under such circumstances, the only order that can be passed in the writ petition is that the petitioner should be intimated the reason to why, she was not granted the engagement as an ASHA, although her name was in the panel. Such decision shall be communicated to the

petitioner by the Sub-Divisional Officer, Chanchal Sub-Division, within ten weeks from date.

This order shall not be constructed as an opinion of the Court either on the eligibility of the petitioner or on the right of the petitioner to be engaged on the basis of the panel, which was prepared in 2008, and has expired due to lapse of time. However, this order shall not be construed as an observation on the qualification of the petitioner.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)