

IN THE HIGH COURT AT CALCUTTA

**Civil Appellate Jurisdiction
(Appellate Side)**

MAT 1075 OF 2021

**With
CAN 1 of 2021**

Anjira Bibi

Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Asim Banerjee, Adv.
Ms. M. Roy Chowdhury, Adv.

For the State : Mrs. Chaitali Bhattacharya, Adv.
Mr. D. Sen (Bose), Adv.

CAV On : 08.09.2022

Judgment On : 15.09.2022

Apurba Sinha Ray, J. :-

1. This appeal is directed against the Judgment and Order dated 15.03.2021 passed by the Hon'ble Single Judge in Writ Petition No. 15200(W) of 2010.

2. The case of the petitioner/appellant, in the writ petition, may be encapsulated as hereunder:

The petitioner's/ appellant's name was forwarded to Siksha Karmadhyaka, Beldanga – I Panchayet Samiti, Post Office – Beldanga, District – Murshidabad being the Respondent No. 5 namely, Makrampur Sishu Siksha Kendra by taking a resolution in the concerned Makrampur Purbapara Gram Panchayet, Beldanga – I, Panchayet Samiti for selection and appointment to the post of 4th Sahayika prior to 2009. It was alleged that without holding any selection test and/or examination as per due process of law and without following guidelines given by the State Government through the Chief Secretary, appointment was given to another person to the said post of 4th Sahayika at Makrampur Sishu Siksha Kendra. The petitioner being aggrieved filed the Writ Petition being No. 15200(W) of 2010 and the Learned Single Judge by His Order dated 15.03.2021 dismissed the said writ petition observing that

“.....the claims made in the writ petition appear to have been substantially addressed on 28th June, 2016 when a coordinate Bench had passed an order recording that the selection process for appointment to the post of 4th Sahayika at Makrampur Sishu Siksha Kendra has already been filled up on 1st November, 2009.

Mr. Asim Banerjee, learned counsel appearing for the petitioner, vehemently submits that the process required to be followed for such appointment has not been carried out by the respondents.

This Court notices that the selection process is being questioned after 11 years of filling up of the said post.

The writ petition has become infructuous by efflux of time.

No order can be passed in the instant writ application at this stage.

Hence, the writ petition fails and is hereby dismissed.

There shall be no order as to costs.”

3. Mr. Asim Banerjee, learned counsel appearing for the petitioner/appellant in this Appeal has submitted that due process for the selection was not followed at the time of selection for the relevant post of 4th Sahayika at Makrampur Sishu Siksha Kendra at the relevant point of time. The learned counsel has also urged that the prayer/representation of the appellant could have been considered by the concerned authority but that was not done. The learned counsel has further urged that the prayer of the present appellant for appointment as a teacher should be considered by the authority for any future selection process.

4. Ms. Chaitali Bhattacharya, the learned counsel appearing for the State, has categorically submitted that the selection process in respect of 4th Sahayika at Makrampur Sishu Siksha Kendra has already been completed long ago and there is no reason to reopen the said issue after expiry of

11/12 years from the completion of the said selection process. The learned counsel appearing for the State has also submitted that the proposal of the learned counsel of the petitioner regarding consideration of the petitioner's prayer with regard to the future selection process cannot be acceded to since the Government follows a strict guidelines and Paschim Banga Sishu Siksha Mission shall not accept such type of proposal.

5. We have considered the relevant argument put forward by the respective counsels of parties and we have also considered the judgment of the Hon'ble Single Judge. It transpires from the materials on record that 11/12 years have gone by since the conclusion of appointment process in the relevant post. We are also alive to the fact that a Coordinate Bench of this Court has already passed an order to the effect that the selection process for appointment to the relevant post of 4th Sahayika at Makrampur Sishu Siksha Kendra has already been filled up on 01.11.2009. Therefore, in our view, as the petitioner has not taken up the issue at the right time and pursued the matter diligently it would be difficult to raise the issue once again, particularly, when the matter has already become settled.

6. It is also pertinent to mention that no challenge was made against the appointment of the concerned person in the relevant post of 4th Sahayika at

Makrampur Sishu Siksha Kendra from the side of the present appellant on the ground that no due process had been followed in appointing the said person, soon after the process of appointment was completed in respect of the said post. Furthermore, the person who was appointed in the post of 4th Sahayika at Makrampur Sishu Siksha Kendra was not arrayed as a party to the writ petition for the reasons best known to the appellant/ writ petitioner.

7. The proposal for the consideration of the petitioner's candidature in any future selection process cannot be accepted since it would go against the settled guidelines issued by the Authorities concerned. As such, we are not inclined to interfere with the Judgment and Order passed by the Hon'ble Single Judge for the reasons as discussed above.

Arijit Banerjee, J.:

1. While concurring with the conclusion reached by my learned Brother, I take this opportunity to add a few words.

2. There are a number of reasons why the appeal deserves to be dismissed.

3. Firstly, in spite of having filed the writ petition in 2010, the writ petitioner/appellant did not show minimum diligence in pursuing the matter, as if, her task ended upon filing of the writ petition. Such indolent litigants cannot expect relief from a Court of equity. The appellant has not demonstrated that she took steps for early disposal of the writ petition, but in spite of her best efforts, the matter could not be heard out expeditiously. Hence, the learned Judge rightly refused to grant any relief to the writ petitioner.

4. Secondly, any post in the field of public employment must be filled up following due recruitment procedure. Otherwise, Article 14 of the Constitution will be violated. In this case, the vacant post was filled up in 2009. Learned Advocate for the appellant submitted before us that if there is any vacancy, the appellant should be absorbed in such vacant post, or if in future any vacancy arises, the appellant should be accommodated in such vacant post. Learned Advocate for the State has apprised us that there is presently no vacancy in the post of 4th Sahayika at Makarampur Sishu Siksha Kendra. In case vacancy arises in future, the post has to be filled up following the applicable recruitment rules and the appellant cannot be given any priority or preferential treatment. We agree with the submission of the

learned State Advocate. Needless to say, in case of any future vacancy in the post in question, if State or the appropriate authority initiates selection process, the appellant will be at liberty to participate in such process if she is otherwise entitled to do so in law and as per the applicable recruitment rules.

5. Learned Advocate for the appellant finally submitted that the appellant will be happy if her representation is considered by the competent authority. In my view, orders directing consideration of representation should not be passed mechanically and for the mere asking. Unless the petitioner shows that he/she has a prima facie case, in my opinion it would not be proper to burden the appropriate authority with an order directing it to consider the petitioner's representation. In the present case, it would be absolutely futile to direct the concerned authority to consider the appellant's representation since, as noted above, there is no vacancy in the concerned post. Hence, it is not possible to accede to the request of the appellant.

6. For the aforesaid reasons, in my view, the order under appeal does not warrant inference. The appeal and the connected application are accordingly dismissed without any order as to costs.

7. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)