

24.08.2022
DL-7
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 15391 of 2022

Moumita Barman
Vs.
The State of West Bengal & Ors.

Mr. Anjan Bhattacharya,
Ms. Anita Shaw

....for the petitioner.

Ms. Chaitali Bhattacharya,
Mr. Kartik Chandra Kapas

.....for the State.

Affidavit of service filed in Court today is taken on record.

The report in the form of an affidavit filed on behalf of the State respondents is taken on record.

It appears from the particulars provided in paragraph 3 (a) of the said report that district – Coochbehar has 406 sanctioned sub-centres. The vacancy in Coochbehar as on January, 2022 was 17. Candidates selected from Coochbehar are 39. 10 out of the said 39 candidates have been posted in the district of Coochbehar and 29 have been posted at various sub-centres in district – Murshidabad. Seven vacancies were there in different sub-centres at Coochbehar in January, 2022. The particulars also indicate that there are 832 sanctioned sub-centres in Murshidabad. There were 193 vacancies in the

month of January, 2022. Only 32 candidates were selected from Murshidabad. After exhausting such 32 appointees, 161 vacancies in various sub-centres in district – Murshidabad were there. 94 candidates from various other districts have been posted at district sub-centres in district – Murshidabad. The breakup of 94 candidates posted at different sub-centres of district – Murshidabad from other districts have also been provided. They comprised of 20 from Jalpaiguri, 29 from Coochbehar, 10 from Alipurduar, 12 from Uttar Dinajpur and 23 from Dakshin Dinajpur. Page 7 of the said report is a memo dated 7th July, 2015 signed by the Director of Health Services & Ex Officio Secretary, West Bengal. The following appears from paragraph 1 of the said memo “At their first appointment, they will be posted at any Sub Centre in home District or nearby District subject to the availability of vacancy.”

The petitioner says that in her first posting though she hails from district Coochbehar has been posted at Murshidabad. Murshidabad is not a nearby district to that of district Coochbehar. In fact, Coochbehar is a district in Uttar Banga while Murchidabad is in Dakshin Banga. Giving a reasonable connotation to the word “nearby district”, the petitioner says it obviously means a district

adjoining the district of Coochbehar. In the case of the petitioner, Murshidabad is not an adjoining district of Coochbehar. On the other hand, the petitioner says that districts Malda, Birbhum and Nadia are the adjoining district of Murshidabad. No one from the said districts are posted at Murshidabad as the report clearly shows that there has been no posting of candidates selected from Malda, Birbhum and Nadia in the sub-centres at Murshidabad. The petitioner emphasises that in her first posting she could either have been posted at Coochbehar or any nearby district. Murshidabad cannot be said to be a nearby district. The petitioner also says that she could have been posted somewhere in Coochbehar itself as there existed at least 7 vacancies in the said district in January, 2022. The petitioner also relies upon a reply given to her query under the Right to Information Act, 2005. The petitioner says it will appear from the reply dated 29th June, 2022 (appearing at page 28 of the writ petition) that there were 21 vacancies in Coochbehar and 83 vacancies in district Murshidabad in and around June, 2022. The petitioner says that there being 21 vacancies in Coochbehar as on 29th June, 2022, the petitioner ought to have been posted in her home district at Coochbehar. The petitioner, therefor, prays for an

order of posting her at any sub-centre in the district of Coochbehar from her present posting at Sadal Sub-Centre, Murshidabad taking into account the existing guidelines relating to petitioner's first posting and the vacancy position.

On behalf of the State respondents, it is submitted that the petitioner knowing fully well that her job is a transferable one participated in the selection process and accepted the appointment. Although there is a guideline for posting a candidate in her home district in the first posting or any nearby district depending upon the available vacancy, the petitioner cannot mandatorily seek a direction for being posted at her home district. The posting of the candidates pertains to a policy matter which is implemented taking into account the public requirement and for the purpose of smooth administration. It is also submitted by the respondents that assuming without admitting there is guideline for posting of Health Assistant (Female) at her first posting in the home district or in a nearby district then also the petitioner cannot complain as this guideline does not confer any right and a consequential remedy on being violated.

It is correct that the Courts are loathe to interfere into the policy matter unless there is patent

Coochbehar illegality or clear arbitrariness and discrimination while implementing the policy as it may amount to transgressing into an administrative domain left to the executive.

In the instant case according to the respondents there were abnormal vacancies in Murshidabad and as such, the candidates selected from districts Jalpaiguri, Coochbehar, Alipurduar, Uttar Dinajpur and Dakshin Dinajpur had been posted at Murshidabad. No one else, according to the respondents, apart from the petitioner has come forward seeking an order to be posted in her home district. That apart, if the State respondents are to adhere to the request of the petitioner, then there will be a chaotic situation as all other 93 candidates may seek for being posted at their respective home districts.

After hearing the parties and considering the materials on record, I find that as per the memo dated 7th July, 2015, a Health Assistant (Female) has to be posted at her first appointment at a sub-centre in home district or nearby district subject to availability of vacancy. District Murshidabad under no stretch falls within the connotation of nearby district of district Coochbehar. The nearby districts to that of Coochbehar as per the geographical map can be

Alipurduar, Jalpaiguri and Darjeeling or at the highest Uttar Dinajpur and Dakshin Dinajpur. The petitioner has to travel from her home district at Coochbehar has to cross the districts of Jalpaiguri, Darjeeling, Uttar Dinajpur and Malda to reach Murshidabad. The distance and travel time for the petitioner in her first posting is huge. The State Government after themselves framing a guideline cannot be permitted to violate the same in the garb that violation of a guideline cannot be said to be illegality for which interference to a policy matter is called for when the State action is found to be arbitrary and discriminating. It is correct to note that no one from the adjacent district of Murshidabad, i.e., Birbhum, Nadia and Malda has been posted thereat. Candidates selected from far away district are brought to fill up the vacancies at Murshidabad leaving vacancies in the home district itself. There is also no rationale behind the submission that other candidates may approach with same relief if the petitioner's case is entertained. The petitioner, therefor, has been put into hardship in her first posting on being posted in district Murshidabad, which cannot be termed as a nearby district of Coochbehar, in an arbitrary and discriminating manner as no one from Birbhum, Malda and Nadia,

being the adjacent districts of Murshidabad have been posted thereat.

Keeping in mind that no mandatory order is normally called for with regard to policy matters, I am of view that the respondents should consider the posting of the petitioner either in any sub-centre at Coochbehar wherein 21 vacancies existed as on 29th June, 2022 or at Alipurduar or in the district - Jalpaiguri which can be termed as nearby district to the district of Coochbehar.

The respondent no.2 shall consider and dispose of the petitioner's case in the light of the discussion made in the instant order keeping in mind the vacancy in the districts Coochbehar, Alipurduar and Jalpaiguri by a reasoned order treating the writ petition as the petitioner's representation after affording the petitioner a reasonable opportunity of hearing. The entire exercise is required to be completed within a period of two months from date.

Since the respondent no.2 is represented he is not entitled to any further notice. However, by way of abundant caution, the petitioner shall serve a copy of the instant order along with the copy of the writ petition within 7 days from date upon the respondent no.2.

All parties shall act on the basis of a server copy of this order without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)