

29.06.2022
Item no.8
Court No.6.
AB

**M.A.T. 1382 of 2019
With
I A CAN 1 of 2020
(Old CAN 1772 of 2020)**

**Annapurna Choudhury
Vs
The State of West Bengal & Others**

Mr. Dibyendu Chatterjee,
Ms. Piyali Paulfor the Appellant.

Mr. S. Bandyopadhyay,
Mr. Arka Kumar Nagfor the State.

Mr. Golam Mastafa,
Mr. Subir Sabud,
Mr. Samirul Sardar
.....for the Private Respondent.

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

A judgment and order dated July 2, 2019, whereby the appellant's writ petition was dismissed by the learned Single Judge, is under challenge in the present appeal.

The writ petitioner/appellant participated in a process of selection of Samprasarak for a vacant post of Geography Teacher in Khanjapur MSK. There were three applicants for the said post including the present appellant and the private respondent. The Managing Committee of the concerned MSK selected the appellant in its meeting held on April 8, 2008. The

criteria for eligible candidates included that the age of the candidate must be at least 40 years. Age could be relaxed if no suitable candidate was found in the concerned Gram Panchayet or neighbouring Gram Panchayets, who satisfied this criterion. Preference was to be given to higher qualification. Admittedly, the appellant is a graduate whereas the private respondent holds a Master Degree in Geography.

The private respondent challenged the selection of the appellant by way of a writ petition being W. P. No.7635 (W) of 2010, which was disposed of by a learned Single Judge by an order dated May 7, 2010 by directing the respondent no.3 in that writ petition, who was the District Nodal Officer, District SSK and MSK Cell, Dakshin Dinajpur, Balurghat, to consider the legality of the appellant's appointment upon notice to all concerned parties and after hearing them and considering all evidence adduced, to pass a reasoned order.

Pursuant to such order of this Court, the Nodal Officer passed an order dated July 26, 2010, whereby he held that the Managing Committee of the concerned MSK had not followed the procedure for engagement of under-aged Samprasarak as laid down in the applicable Government Order. He cancelled the panel that had been prepared and directed initiation of fresh process of selection for engagement of Samprasarak

for the vacant post in the concerned MSK following existing Government Rules. It was this order of the Nodal Officer that was challenged by the appellant herein before the learned Single Judge in the present proceedings.

The learned Single Judge after considering the relevant Government Orders/Notifications came to the conclusion that the private respondent possesses higher qualification. Further, although both the writ petitioner and the private respondent were under-age inasmuch as both were less than 40 years old, the private respondent was closer to 40 years being 33 years old whereas the writ petitioner was 28 years of age. The learned Judge did not find any illegality in the order of the Nodal Officer and dismissed the writ petition. Being aggrieved, the writ petitioner is before us by way of this appeal.

Mr. Chatterjee, learned Counsel appearing on behalf of the appellant has drawn our attention to a Government Order dated May 2, 2008, which reads as follows:

“Whereas Madhyamik Shiksha Kendras are running in the State on Co-Education basis to ensure enrolment of the girls students in Madhyamik Shiksha Kendras specially in the backward areas;

Whereas it has come to the notice of the Government that in good number of kendras there is considerable enrolment of girls and out of them some are over aged;

It is hereby ordered, in partial modification of para 21 of the Revised Guidelines of Madhyamik Shiksha Karmasuchi, that it is compulsory to engage at least one lady Samprasarak in MSK whenever a new Samprasarak will be engaged if there is no lady Samprasarak existing in the MSK.”

Mr. Chatterjee submitted that the Nodal Officer lost sight of the aforesaid Government Order. Since the appellant is a lady, she was rightly selected by the Managing Committee of the concerned MSK.

We are not impressed with his submission because the said Government Order came into existence after the appellant was selected by the Managing Committee of the MSK. As on the date of her selection i.e. April 8, 2008, the said Government Order was not there and hence, there was no reason to select the appellant on the ground of she being a lady when there was a candidate with higher qualification and who was closer to 40 years of age.

We do not find any infirmity in the order of the Nodal Officer or the order of the learned Single Judge assailed in this appeal.

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

MAT No.1382 of 2019 stands dismissed along with CAN 1772 of 2020, without any order as to costs.

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.)