

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Subrata Talukdar
&
The Hon'ble Justice Lapita Banerji**

MAT 1380 of 2021

With

IA No. CAN 1 of 2021

Pabitramayee Majhi

Vs.

The State of West Bengal and others

For the Appellant : Mr. Kashiswar Ghosal

For the State-Respondents : Mr. Susanta Pal
Ms. Ananya Neogi

Heard on : 25/07/2022

Judgment on : 25/08/2022

Lapita Banerji, J:- This appeal and application arises out of an Order passed by an Hon'ble Single Judge of this High Court on December 17, 2021 (Impugned Order). By the Impugned Order the Hon'ble Single Judge

dismissed the Writ Petition, thereby, rejecting the writ petitioner's prayer for setting aside/recalling of a Memo dated February 26, 2020 passed by the respondent No.4 rejecting the writ petitioner's application for being selected as an Accredited Social Health Activist (in short "ASHA") Karmee.

2. Pursuant to a Notice for Engagement/Advertisement dated July 18, 2018 vide Memo No.721/SDO/S/PRL, the list of vacancies that arose in five blocks of Purulia Sadar was advertised. The list showing vacancy status of ASHA Karmee was attached to the said advertisement. The writ petitioner/appellant applied pursuant to the same for being appointed as an ASHA for sub centre Polpol, village-Tilaitar. The appellant /writ petitioner was a resident of village Chakadabad.
3. The second clause of the eligibility criteria in the advertisement stipulated that an ASHA Karmee *"should be a permanent resident of the **same area** under the health sub-centre for which she is applying"*.
4. The writ petitioner's grievance was that she did not get any response to the said application. Hence, she made an application under Right to Information Act on February 19, 2020.
5. The State Public Information Officer, Arsha Development Block intimated to the writ petitioner vide Memo No.416/AB dated March 5, 2020 that the

call letter for interview was not sent to the writ petitioner since the vacancy was only for the residents of Tilaitar and she was not a resident of the said village. The said response was based on the information given by the Sub-Divisional Officer, Purulia/respondent No.4 vide Memo No.171/SDO/S/PRL dated February 26, 2020, whereby, the respondent No.4 being the officer concerned, rejected the application of the writ petitioner as she did not “apply from the same village of the Sub-Centre where she resides”. The said Memo dated February 26, 2020 was impugned by the writ petitioner in W.P.A. No.6190 of 2021.

6. Mr. Ghosal appearing for the writ petitioner/appellant argued that in the advertisement the eligibility criteria was stipulated as that the “ASHA Karmee had to be a permanent resident of the **same area**” under the Health Sub-Centre. There was no requirement for her to be a permanent resident of the **same village**”. The said requirement of the candidate belonging to the “**same village**” was in the nature of an afterthought and contrary to the advertisement dated July 18, 2018.
7. He further submits, Under Clause No.5 of the General Conditions of the advertisement at the Sub-Divisional level the ASHA Selection Committee had the right to cancel part or whole of any process of engagement including the provisions/clauses of the Notice or advertisement. Therefore, at a sub-divisional level it was thought and decided that the

eligibility of the ASHA Karmee would require the candidate to reside in the **“same area”** under the Health Sub-Centre and not the **“same village”**.

8. Mr. Ghosal relied on a document dated February 15, 2021 issued by the Pradhan, Arsha Gram Panchayat to show that both the villages of Chakadabad and Tilaitar were under the Sub-Centre Polpol and the writ petitioner was entitled to be considered for the post of ASHA even though she resided at Chakadabad village and the vacancy arose for the village of Tilaitar.
9. Mr. Pal appearing for the State argued that the revised guidelines for selection of ASHAs vide Memo No. HFW/NRHM-20/2006/Part-II/1631 dated June 27, 2012 issued by the Government of West Bengal, Health and Family Welfare Department, National Rural Health Mission, clearly stipulated that a candidate *“should be a resident of the **same village** for which she will be selected” as per clause 2 of the eligibility criteria.*
10. Therefore, any advertisement/notice of engagement was to be read keeping in mind the aforesaid guidelines and not in derogation of the same.
11. The Hon’ble Single Bench came to the finding that upon scrutiny of the petitioner’s application, the B.D.O./respondent No.5 came to the finding

that the writ petitioner was not entitled to be considered for the post of ASHA against Polpol Sub-Centre, Village Tilaitar. The B.D.O. was the competent authority to decide the same and the certificate of Panchayat Pradhan could not be given precedence over the B.D.O.'s decision. Therefore, the Writ Petition was dismissed.

12. When the appeal and application came up for hearing, this Court called for the original records to be produced by the B.D.O. and thereafter also directed a report to be filed by both the respondent No.4/Sub-Divisional Officer as well as the respondent No.5/B.D.O. This court was informed that a panel of 20 candidates suitable for the post of ASHA was prepared on February 16, 2022. An interim Order directing maintenance of **“status quo”** as on March 8, 2022 was also passed.
13. Pursuant to and in compliance of the Orders passed by this Court, reports have been filed by both the respondent Nos.4 and 5 and exceptions thereto have been taken by the writ petitioner/appellant.
14. After considering the rival submissions of the parties and the materials placed on record, this Court finds:-
 - (i) The Notice of the Engagement dated July 18, 2018, pursuant to which the writ petitioner/appellant applied for being engaged as an ASHA

Karmee, contained a vacancy list. The vacancy list indicated Sub-Centre wise names of the villages in which the vacancies arose for the post of ASHA. Therefore, the writ petitioner was aware of the fact that the engagements would be made in respect of such villages in which the vacancies arose at the time of the application. The admitted fact in relation to the **vacancy status** appears from **page 34** of the stay petition being **CAN 1 of 2021**.

- (ii) The Chief Medical Officer of Health, Purulia unequivocally interpreted and relied on the guidelines issued on June 27, 2012 by the Government of West Bengal which stated that the candidate has to be a resident of the **“same village”** for which she would be selected. The names of the villages were clearly notified in the advertisement and there was no way that the writ petitioner/appellant was misled by the same.
- (iii) From the page 2 of the report filed by the respondent No.4, it would clearly appear that all the 20 candidates approved for selection as “ASHA” Karmee in the ARSHA Block, by the Joint Secretary, Health and Family Welfare Department, Government of West Bengal vide Memo No. HFW-27011/216/2018-NHM SEC-Dept of H&FW/552 dated February 16, 2022 were residents of the same village, Vis-à-vis- the villages advertised. The EPIC/RC of the candidates which were enclosed evidence the same.

- (iv) The argument that there was a foul play in the selection of the candidates and the documents being manufactured or produced by way of an afterthought is untenable, given the production of the aforesaid records.
- (v) On comparison of the panel selected vide Memo dated February 16, 2022 with the synoptic report on the status of the residence of the 20 selected candidates of ASHA for Arsha Block, it would unequivocally appear that the panel has been drawn up keeping in mind the vacancy status of the ASHA Karmees appearing at **page 34** of the **stay application** being an Annexure to the Notice/Advertisement dated July 18, 2018. All the candidates resided in the same villages where the vacancies arose. Hence, no illegality or material irregularity or procedural impropriety can be inferred on the facts of the case.
- (vi) Assuming though not admitting the argument of the appellant that the respondent No.4 had the right to cancel, part or whole of the process of engagement including provisions/clauses of the notice, the respondent No.4 did not exercise that power and relied on the guidelines of June 27, 2012 and followed the same. Therefore, the second clause of the eligibility criteria contained in the advertisement dated July 18, 2018 has to be read in conjunction with the Second Clause of the eligibility criteria contained in the circular/guidelines issued on June 27, 2012 by the Government of West Bengal, to give it a purposive meaning.

- (vii) The eligibility criteria in the advertisement dated July 18, 2018 cannot be read in derogation or supersession of the guidelines issued on June 27, 2012.

15. In the light of the discussions above, this Court **upholds** the Order passed by the Hon'ble Single Bench dated December 17, 2021 in W.P.A. No. 6190 of 2021. Accordingly, the appeal being **MAT No. 1380 of 2021** along with **CAN 1 of 2021** be **dismissed**, without any order as to costs.

16. Parties shall be entitled to act on the basis of a server copy of the order placed on the official website of the Court.

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

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)