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Ct. No.23
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26677 of 2017

Nargis Khatun (Bibi)
Vs.
The State of West Bengal & Ors.

Mr. Robiul Islam
Mr. Sk. Jayeel Hossain
Mr. S. A. Munshi
Ms. Feroja Khatun
... For the petitioner

Mr. Santanu Kumar Mitra
Mr. Md. Mansoor Alam
... For the State

Mr. Pankaj Halder
Mr. Sanatan Panja
Mr. Tapas Manna
... For the respondent no.9

Mr. Srijib Chakrobarty,
Mr. Aditya Mondal
... For the respondent no.10

With

WPA 27662 of 2017

Anita Sardar Naskar
Vs.
The State of West Bengal & Ors.

Mr. Pankaj Halder
Mr. Sanatan Panja
Mr. Tapas Manna
... For the petitioner

On 27th November, 2013, the District Magistrate, South
24-Parganas published a Notification inviting application
from eligible candidates to be engaged as Accredited Social
Health Activists (in short, “ASHA”) for various Sub-Centres

in the said district. In Mathurapur-I Block, vacancy position was declared for Bhagabanpur, Harindanga and Abad Bhagabanpur Gram Panchayat Head Quarter (in short, "GPHQ"). Vacancies in respect of Bhagabanpur and Harindanga were one each while there were three vacancies in respect of Abad Bhagabanpur GPHQ. The petitioner in WPA 26677 of 2017, namely, Nargis Khatun (Bibi) applied for Bhagabanpur Sub-Centre by virtue of being a resident of Abad Bhagabanpur GPHQ. In the merit list published by the authority in respect of Bhagabanpur sub-centre three persons were short-listed and their names were sent for approval. One Anita Sardar (Naskar) was holding the first position, while Sikha Gharami (Mondal) and the petitioner were respectively in the second and third position as wait-listed candidates. In respect of the three Sub-Centres at Abad Bhagabanpur GPHQ, the first position was held respectively by Pinku Mistry, Asima Naskar and Sk. Noorida Khatun.

Anita Sardar (Naskar) had applied for Abad Bhagabanpur Sub-Centre but she was selected for Bhagabanpur Sub-Centre though not eligible for the same due to her residence. This anomaly was detected at the time of joining and, as such, the said Anita Sardar (Naskar) was not issued the engagement letter for joining. Sikha Gharami (Mondal) the second position holder was, however, not interested to join at Bhagabanpur Sub-Centre for her personal reasons. The petitioner, therefor, became the next choice being the third rank-holder. The petitioner's

candidature was, however, not approved on the ground that the petitioner was a resident of Abad Bhagabanpur GPHQ and was not entitled to be engaged at Bhagabanpur Sub-Centre. The petitioner has challenged this decision by filing the writ petition, being WPA 26677 of 2017.

The petitioner in WPA 27662 of 2017 is Anita Sardar Naskar. The said Anita Sardar Naskar upon being found to be not eligible for being considered to be engaged as an ASHA at Bhagabanpur Sub-Centre, approached the CMOH, Diamond Harbour Health District, for transferring her from Bhagabanpur Sub-Centre to Abad Bhagabanpur Sub-Centre for which she was entitled to by dint of her residence. Since such prayer was not considered, Anita Sardar (Naskar) filed the writ petition, being WPA 27662 of 2017.

In another writ petition, being WP 6622 (W) of 2018 (Maya Das & Ors. v. State of West Bengal & Ors.), it was found that Pinku Mistry, being the respondent no.9 therein, though was a resident of Balarampur Village but had applied for being engaged at Abad Bhagabanpur GPHQ Sub-Centre no.30. Pinku Mistry, as aforesaid, had been selected against the vacancy in one of the Abad Bhagabanpur GPHQ Sub-Centre but her engagement stood cancelled on the ground that Sk. Noorida Khatun had already been engaged in respect of the said Sub-Centre. In view of the aforesaid, the vacancies at Bhagabanpur Sub-Centre and in one of the Abad Bhagabanpur GPHQ Sub-

Centre were not filled up. Nargis Khatun (Bibi) the petitioner in WPA 26677 of 2017 as appears from the Voters List of 134 Raidighi Assembly Constituency with regard to the Bhagabanpur FP School Polling Centre is a voter of such Constituency and, as such, was entitled to be considered for Bhagabanpur Sub-Centre. It also appears from the letter issued by the State respondents calling the petitioner Nargis Khatun (Bibi) for interview that she had applied for the Bhagabanpur Sub-Centre under Mathurapur-I Block. Despite such clear admission that Nargis Khatun (Bibi) had applied for Bhagabanpur Sub-Centre, it is inconceivable as to how her candidature could be rejected on the ground that her residence was not at a place for being considered for Bhagabanpur Sub-Centre. It also appears that the approval of Anita Sardar Naskar with regard to Bhagabanpur Sub-Centre on having been cancelled and that Sikha Gharami (Mondal) having expressed her disinclination to join at Bhagabanpur Sub-Centre despite being asked to do so, the only choice left was to engage Nargis Khatun (Bibi) at Bhagabanpur Sub-Centre but she was not given the engagement. At the same time, it is also astonishing to find that without filling up the vacancies in terms of the advertisement made on 27th November, 2013 for Bhagabanpur and Abad Bhagabanpur Sub-Centre after having selected candidates through proper selection process, the State respondents went for a subsequent selection process for the unfilled vacancies of Bhagabanpur and Abad Bhagabanpur Sub-Centre by

publishing a fresh advertisement on 30th June, 2020. Anita Sardar Naskar and Suraiya Khatun (Bibi), the respondent no.10 in WPA 26677 of 2017, participated in the selection process conducted in terms of the fresh notification dated 30th June, 2020. Anita Sardar Naskar became successful in respect of the vacancy in one of the Sub-Centres under Abad Bhagabanpur GPHQ. Anita Sardar Naskar, as submitted, has not been given the appointment. The added respondent in WPA 26677 (W) of 2017, namely, Suraiya Khatun (Bibi) has been selected and given appointment in respect of Bhagabanpur Sub-Centre pursuant to the selection process held in terms of the notification dated 30th June, 2020.

In the aforesaid facts and circumstances, there is no vacancy in respect of Bhagabanpur Sub-Centre at the present. It will be harsh at this stage if the appointment of Suraiya Khatun is set aside holding that the entire selection process under 2020 notification was vitiated. At the same time, it will be unfair to Nargis Khatun (Bibi), being the petitioner in WPA 26677 of 2017, if due to arbitrary steps taken by the State a selected candidate who is otherwise eligible for appointment is deprived of the same. No relief, however, can be given to Nargis Khatun (Bibi) in view of the present situation.

After considering the report and the way in which the selection process has been conducted, I find that responsibility is required to be fixed for conducting the

selection process in a very casual manner by creating self-made problems, as a consequence whereof, the candidates not only suffer but the Court is burdened with unnecessary litigation and has to devote judicial hour for the same.

In the aforesaid facts and circumstances, I direct the Principal Secretary, Health and Family Welfare Department, Government of West Bengal, to conduct an inquiry within a period of six months from date and find out the persons responsible for the casual approach with regard to the selection process under the notification dated 27th November, 2013 and take appropriate steps against those who are responsible for the same.

This exercise is required to be done so that in future no one like Nargis Khatun (Bibi), the petitioner in WPA 26677 of 2017, suffers at the hands of the State officials and is unable to get the appropriate relief even after knocking the doors of the High Court due to legal rigours arising out of developments subsequent to the filing of the writ petition.

The writ petitions, being WPA 26677 of 2017 and WPA 27662 of 2017 are, accordingly, disposed of.

Since the State is represented, no further notice to the Principal Secretary, Health and Family Welfare Department, Government of West Bengal, for holding the inquiry in terms of this order is necessary. However, by way of abundant caution, the petitioner in WPA 26677 of 2017,

Nargis Khatun (Bibi), shall serve a copy of this order downloaded from the official website of this Court upon the Principal Secretary, Health and Family Welfare Department, Government of West Bengal, who shall act on the basis of such server copy without insisting upon production of certified copy thereof.

The petitioner in WPA 26677 of 2017, Nargis Khatun (Bibi), shall be entitled to ask for a copy of the report once the inquiry is concluded.

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

(Arindam Mukherjee, J.)