

27.09.2023
Item No.47.
Court No.6.
AB

**F.M.A. 782 of 2020
With
I A CAN 1 of 2017
(Old CAN 11183 of 2017)
I A CAN 3 of 2018
(Old CAN 9179 of 2018)**

**Smt. Tanusri Rani Paul
Vs
Smt. Susama Pramanik (Patra) & Others**

Mr. Syed Chandan Hossain,
Md. Apzal Ansari ...for the Appellant.

Mr. Rajarshi Basu,
Mr. Ananda Dulal Sarkar...for the State.

Ms. Rama Halder,
Mr. Susanta Kr. Santra
.....for the Writ Petitioner /
Respondent No.1.

In re : CAN 9179 of 2018

This is an application for condonation of delay of 8 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

CAN 9179 of 2018 is, accordingly, disposed of.

In re : FMA 782 of 2020, CAN 11183 of 2017

Read order dated September 20, 2023, wherein we had recorded the material facts of the case. However, for the sake of completeness of this order, we reproduce herein, what we had recorded in the earlier order, as follows:

“The matter pertains to appointment in the post of ASHA in Dasagram – Patna, Dist. – Paschim Medinipur. It appears that the present appellant was appointed in the concerned post. The appellant is a General Category candidate.

The respondent no.1 herein approached a learned Judge of this Court by filing W.P.20223(W) of 2016 challenging the appointment of the present appellant in the concerned post of ASHA. The contention of the petitioner in that writ application was that the present appellant did not satisfy the residential qualification and that she did not belong to Scheduled Caste for which the post was reserved. The learned Judge disposed of that writ petition by a judgment and order dated January 11, 2017 with the following direction:-

“ I, therefore, direct the Sub-Divisional Officer, Kharagpur Sub-Division, i.e. the respondent no.4 herein to enquire into the matter and to decide whether the post the petitioner and the respondent no.8 had applied for had been reserved for the Scheduled Caste and whether the respondent no.8 satisfied the residential qualification as provided in the advertisement. The respondent no.4 shall give both the petitioner and the respondent no.8 as well as the Pradhan of the Dasagram Gram Panchayat an opportunity of being heard.

I direct the respondent no.4 to place the original certificate produced by the respondent no.8 before the Pradhan of the concerned gram panchayat and if the Pradhan says that the same is a tampered one he shall say that on oath. The respondent no.4 shall also have the liberty to give hearing to any other person as he may think it necessary to ascertain the real state of affairs.

Such exercise shall be completed within a period of twelve weeks from the date of communication of the order. It shall also be the endeavour of the respondent no.4 to collect independent information about the residential status of the respondent no.8 and that of the petitioner. If he finds that there has been any mistake in the preparation of the select list, he shall pass necessary order in accordance with law within the timeframe as mentioned above. If he is of the view that the select list does not call for any interference, he shall dispose of the matter by passing a reasoned order and shall communicate the same to the petitioner within two weeks from the date of such order is passed. ”

Pursuant to such direction, the concerned Sub-Divisional Officer held a hearing on May 31, 2017 and passed an order, the relevant portion whereof reads as follows:-

“ The village wise census report (as obtained from BDO, Sabang) reveals that Dasagram (Patna) village, for which the selection was made, is fully SC dominated and hence it can be concluded

that weightage should have been accorded to the petitioner's candidature during selection as per the provisions laid down in the notification issued vide Memo No:5099(10) KGP, dated:10.10.13.

The present writ petition was filed by the respondent no.1 herein relying on the aforesaid order of the Sub-Divisional Officer. The writ petitioner prayed for setting aside of the appointment of the present appellant and to appoint her in the concerned post.

By the impugned order, the learned Judge set aside the appointment of the private respondent in the writ petition (appellant herein) and disposed of the writ petition with the following directions:-

“ Therefore, I direct the Sub-Divisional Officer, Kharagpur Sub-Division, Paschim Medinipur, the respondent no.4 to take step for fresh interview of the said post of ASHA thereby following the notification being no.5099(10) KGP dated 10th October, 2013.

The entire exercise, as directed above, shall be completed within ten weeks from the date of communication of this order. ”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

Learned advocates for the appellant and the respondent/writ petitioner have drawn our attention to the advertisement issued for appointment to the concerned post of ASHA as well as to page 127 of the stay petition. Learned advocate for the respondent/writ petition contends that the concerned post was reserved for Scheduled Caste candidates.

Mr. Basu, learned advocate for the appellant, in his usual fairness, says that he would take instructions on this point. If it is found that the respondent/writ petitioner is correct in saying that the concerned post is reserved for Scheduled Caste candidates, then the present appellant has no case at all, since she is admittedly a General Category candidate.”

The matter was directed to be listed on September 27, 2023, i.e., today, and it has been so listed.

Learned Advocate for the appellant, on instructions, says that his client i.e. the appellant is a general category candidate and does not belong to either Scheduled Caste or Scheduled Tribe. However, he says that the concerned Memo/Notification does not say that the post in question is reserved for Scheduled Caste/Scheduled Tribe candidate. The Memo only says that preference would be given to Scheduled Caste or Scheduled Tribe candidates for appointment in an area, which is dominated by people belonging to Scheduled Castes or Scheduled Tribes. Hence, there was no bar in appointing the appellant in the concerned post of ASHA.

Learned Advocate for the respondent/writ petitioner as also learned Advocate for the State say that the concerned Memo in no uncertain terms stipulates that preference has to be given to Scheduled Caste or Scheduled Tribes candidates for the concerned post, which is admittedly for an area dominated by people belonging to Scheduled Castes or Scheduled Tribes.

Further, the concerned Sub Divisional Officer, pursuant to the order of this Court passed in the earlier round of litigation, has come to a factual finding that the area in question is dominated by

Scheduled Caste/Scheduled Tribes members and, therefore, “weightage should have been accorded to the petitioner’s (the present writ petitioner) candidature during selection as per the provisions laid down in the Notification issued vide memo no.5099(10) KGP, dated: 10.10.13”.

Learned Advocates for the writ petitioner and the State submit that the present appellant did not challenge the said order of the Sub Divisional Officer before any forum. It was the present writ petitioner, who approached the Court for implementation of the order. Accordingly, the present appeal should not be entertained.

We find substance in the submission made on behalf of the writ petitioner and the State. Had the appellant herein been aggrieved by the order of the Sub Divisional Officer, she ought to have assailed the same before a competent forum. She did not do so. When the writ petitioner, in the present round of litigation, approached the learned Single Judge for giving effect to the order of the Sub Divisional Officer, the learned Judge directed that Officer to take steps for fresh interview for appointment in the concerned post of ASHA following the Notification dated October 10, 2013, which was referred to and relied upon by the Sub Divisional Officer in his order.

We find no apparent infirmity in the order of the learned Single Judge. Admittedly, the appellant herein

is a general category candidate. Further, the concerned Sub Divisional Officer has come to a finding of fact that due weightage was not given to the fact that the present writ petitioner belongs to Scheduled Caste/Scheduled Tribes category. Hence, it would be in order to hold afresh the process for appointment in the concerned post of ASHA, as has been directed by the learned Single Judge.

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

FMA 782 of 2020 is dismissed along with CAN 11183 of 2017.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)