

W.P.A. 976 of 2018

Shefali Sarkar (Biswas)
Vs.
State of West Bengal & Ors.

Mr. Arup Kundu
...for the petitioner

Mr. Gaurab Kr. Basu
Mr. Ashis kr. Dutta
...for the respondent no. 6

Mr. Rudranil De
...for the State

Petitioner questions candidature of respondent no. 6 for being engaged as Accredited Social Health Activist (for short 'ASHA') in Baraibari Sub-Centre under Mathabhanga-II Block, District-Coochbehar on the score that the respondent no. 6 submitted caste certificate in support of her caste status as Scheduled Caste after the last date fixed by the concerned authority on 18th December, 2013; therefore according to the petitioner while appraising the candidatures of the petitioner along with other candidates including the respondent no. 6, the respondent no. 6 ought not to be treated as reserved category candidate (Scheduled Caste).

An advertisement was published by the concerned respondent authorities seeking application from desirous candidates to be engaged as ASHA in Mathabhanga-II Block, District-Coochbehar on 3rd December, 2013. In the said advertisement requisite educational qualification

was stipulated and it was also indicated therein that testimonials including caste certificate need to be submitted on or before 18th December, 2013. According to the petitioner caste certificate was issued by the authority in favour of respondent no. 6 on 30th July, 2014 therefore the respondent no. 6 by no stretch of imagination was able to submit such caste certificate within the aforementioned last date as stipulated in advertisement. Interview was conducted on 9th December, 2014 when petitioner participated in the said interview and panel was prepared on 13th November, 2017. In the panel as it has been admitted by the State-respondents in the affidavit affirmed on 19th April, 2023 that respondent no. 6 stood first and the petitioner stood second and has been described as waitlisted candidate. Therefore, it has been contended that if candidature of the respondent no. 6 stands cancelled petitioner being the second empanelled candidate would come within the zone of consideration for being engaged as ASHA in Baraibari Sub-Centre under Mathabhanga-II Block.

In support of contention of the petitioner reliance has been placed on the judgment reported in **(1997) 4 SCC 18 (Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another)** in order to justify the case presented on behalf of the petitioner that testimonials submitted in support of qualification of the

candidate after the cut off date should not be given credence.

The state-respondents and respondent no. 6 being the selected candidate are represented by learned advocates who have jointly opposed the prayer made in the writ petition.

It has been submitted on behalf of the respondents that as per advertisement dated 3rd December, 2013 last date of submission of testimonials was 18th December, 2013 which needs to be considered as requirement so far educational qualification of the candidate is concerned. It has also been submitted that in spite of stipulation in the advertisement dated 3rd December, 2013 that all testimonials in connection with education qualification as well as caste status are required to be submitted on or before 18th December, 2013 but the last date fixed for submission of caste certificate needs to be relaxed in view of the judgment delivered by the Apex Court reported in **(2016) 4 SCC 754 (Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and Another)**.

Learned advocate representing the respondent no. 6 has also drawn attention of this Court to page 10 of the affidavit-in-opposition used on behalf of said respondent no. 6 wherefrom it appears that the letter dated 4th December, 2017 was issued by the Secretary, Block Health and Family Welfare Samity, Mathabhanga Block-

II, District-Coochbehar whereby respondent no. 6 was permitted to join as ASHA in between 5th December, 2017 and 12th December, 2017. It has been submitted that pursuant to this letter dated 4th December, 2017 the respondent no. 6 joined as ASHA in Baraibari Sub Centre on 5th December, 2017. According to the respondent no. 6 in view of discharging duty as ASHA on and from 5th December, 2017 at this stage she should not be dislodged on the ground that she could not submit caste certificate on or before last date fixed by the authority as indicated in the advertisement.

Having heard the learned advocates representing the parties and on perusal of the relevant documents available on record it appears that selection process was initiated for engagement of ASHA pursuant an advertisement dated 3rd December, 2013 under Mathabhanga Block-II, District-Coochbehar where petitioner as well as respondent no. 6 offered their candidature and both were considered by the selection authority by holding an interview on 9th December, 2014. Panel was prepared for engagement of ASHA as it has been disclosed in paragraph 4 (h) of the affidavit-in-opposition used on behalf of the State-respondents. From the said panel as incorporated in the affidavit-in-opposition it appears that respondent no. 6 stood first whereas the petitioner was placed at the second position being waitlisted candidate.

This Court is tasked to examine whether non submission of caste certificate by the respondent no. 6 on or before the last date i.e. 18th December, 2013 is so fatal which would dislodge the respondent no. 6 after rendering service from 5th December, 2017; by this time respondent no. 6 has rendered nearly 6 years of service as ASHA. In order to find answer this Court has considered the judgments relied upon by the petitioner as well as respondents. In **Ashok Kumar Sharma** (supra) it has been held by the Apex Court that the candidate needs to be considered for being selected in consideration of the eligibility of the candidate which was existing on the last date of submission of application if the same is fixed by the authority. While going through the decision of **Ashok Kumar Sharma** (supra) it appears that the Apex Court held that eligibility needs to be considered based on last date if fixed by the authority in the context of educational qualification of the candidates.

In the present case at my hand it is not an issue of consideration of eligibility in the context of acquisition of educational qualification by the candidate on or before last date fixed by the authority rather it is a case where petitioner was unable to submit caste certificate on or before the last date fixed by the authority. Therefore, it appears that the situation so far the present case is concerned is different from the facts of the case as it was

considered by the Apex Court in **Ashok Kumar Sharma** (supra).

In **Ram Kumar Gijroya** (supra) the Apex Court was considering eligibility of OBC candidates who submitted caste certificate after the last date mentioned in the advertisement and took note of the judgment delivered by a learned Single Judge of Delhi High Court in **Pushpa Vs. Govt. (NCT of Delhi)** reported in **2009 SCC OnLine Del 281** and held that candidates were entitled to submit OBC certificate before the provisional selection list was published to claim the benefit of reservation of OBC category.

In the present case petitioner has not questioned the genuineness of the caste certificate submitted by the respondent no. 6 but the candidature of the respondent no. 6 was questioned since respondent no. 6 was not able to submit caste certificate on or before last date. Caste certificate of the respondent no. 6 was issued on 30th July, 2014 thereby declaring the petitioner as a candidate who belongs to Scheduled Caste community which has been annexed to the affidavit in opposition affirmed by the respondent no. 6.

Upon placing reliance on **Ram Kumar Gijroya** (supra) it can safely be concluded that a certificate issued by a competent authority declaring a candidate being a member of a particular community is only an affirmation of the fact which is already in existence. The purpose of

such certificate is to enable the authority to believe in the assertion of the candidate that the candidate belongs to a particular caste.

In above conspectus of facts upon applying the ratio of **Ram Kumar Gijroya** (supra) this Court concludes that the respondent no. 6 ought not to be dislodged from her engagement as ASHA since she could not submit caste certificate on or before last date as stipulated in the advertisement. Furthermore, it will be inequitable in consideration of the facts involved in the present case to direct the respondent authority to cancel the engagement of the respondent no. 6 after rendering service nearly for a period of six years.

Accordingly, the writ petition stands dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)