

34-36
26.09.2023
Ct. No. 15
adeb

W.P.A. 137 of 2016
IA NO. CAN 1 of 2017 (Old No. CAN 10345/2017)

Nitai Sunder Ghosh & Ors.
Vs.
The State of West Bengal & Ors.

With
W.P.A. 22012 of 2018
IA NO. CAN 1 of 2019 (Old No. CAN 3979/2019) (Not here)
IA NO. CAN 2 of 2020 (Old NO. CAN 820/2020)

Nitai Sunder Ghosh & Ors.
Vs.
The State of West Bengal & Ors.
With

W.P.A. 25692 of 2017
Nitai Sunder Ghosh & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya
Mr. Moniruzzaman
Mr. Jhangir Badhsha
...for the petitioners

Mr. Amal Kr. Sen
Mr. Lal Mohan Basu
...for the State (WPA 25692 of 2017)
Ms. Ashim Kr. Ganguly
Ms. Jyotsna Roy Mukherjee
... for the State (WPA 137 of 2016)

Mr. Shahjahan Hossain
Ms. S. Sultana
...for the respondent no. 12

Mr. Tapan Kumar Mukherjee
Mr. Somnath Naskar
...for the State (WPA 22012 of 2018)

Three writ petitions are taken up for consideration
in presence of the learned advocates representing the
parties.

Mr. Partha Sarathi Bhattacharyya, learned senior
Counsel representing the petitioners submits that there

are 24 writ petitioners in 3 writ petitions who are claiming to be engaged as Block Programme Coordinator, ASHA in terms of the memo dated 23rd June, 2022 issued by Mission Director, NHM & Secretary, H and FW Department, Government of West Bengal. Supplementary affidavit has been filed today on behalf of the petitioners affirmed on 15th September, 2023 enclosing the aforesaid memo dated 23rd June, 2022. Said supplementary affidavit is taken on record.

It has been submitted on behalf of the petitioners that they were engaged as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) vide selection process conducted by the concerned respondent authorities long back. The panel which was prepared for engagement of District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) is annexed to the writ petition being WPA 137 of 2016 at pages 79 to 84. It appears while selecting the petitioners for being engaged as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) their educational qualifications were taken into consideration and petitioners were also required to participate in the written examination comprising 10 marks and interview comprising 15 marks. In educational qualification 5 marks was allotted. From the document which is annexed from pages 79 to 84 it further appears that based on preparation of merit list on

the basis of aggregate marks awarded to the respective candidates petitioners were selected in different Blocks in the District of Murshidabad to work as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators). The merit list which was prepared was signed by the Zonal Coordinator, concerned Block Medical Officer of Health, Deputy Chief Medical Officer of Health, MNGO Coordinator and the representative of Murshidabad Zilla Parishad in the month of January, 2012. It has been submitted that based on preparation of select list on the basis of merit the petitioners were subsequently engaged as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) and they have been functioning for a long period of time.

The grievance of the petitioners centers around memo dated 23rd June, 2022 issued by the Mission Director, NHM and Secretary H & FW Department, Government of West Bengal whereby guidelines have been circulated for recruitment of Block Programme Coordinator, ASHA. It has also been notified vide said memo dated 23rd June, 2022 to the concerned authorities including District Magistrate and Chief Medical Officer of Health being Member Secretary that Selection Committee for ASHA has been newly constituted and notified vide order dated 28th April, 2022. Consequently the Selection Committee for recruitment of ASHA and for recruitment of Block

Programme Coordinator, ASHA being the same, Selection Committee for recruitment of Block Programme Coordinator, ASHA will be same as newly constituted ASHA Selection Committee.

In view of issuance of such memo dated 23rd June, 2022 petitioners apprehend that in their place new set of candidates would be engaged by attributing different nomenclature, Block Programme Coordinator, ASHA. It has been submitted on behalf of the petitioners since they have been functioning for a considerable period of time as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) in different Blocks in the District of Murshidabad by attributing different nomenclature a new set of candidates cannot be inducted to work as Block Programme Coordinator, ASHA. It has been submitted on behalf of the petitioners that the concerned respondent authorities may change the nomenclature of the post but the responsibilities and the nature of function since would remain same, therefore right of the petitioners to continue either as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) or as Block Programme Coordinator, ASHA ought not to be denied. Accordingly, on behalf of the petitioners appropriate direction is prayed for in order to direct the District Authorities of Murshidabad to allow the petitioners to continue to be engaged as District Level Trainers (Coordinators) and

Block Level Trainers (Co-facilitators) may be on attributing different nomenclature i.e. Block Programme Coordinator, ASHA.

State-respondents and Mother Non Governmental Organization (MNGO) are represented by learned advocates who have jointly opposed the prayer of the petitioners on the ground that petitioners were engaged as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) through Mother Non Governmental Organisation. Therefore, no right accrues in favour of the petitioners to be considered for engagement as Block Programme Coordinator, ASHA in terms of memo dated 23rd June, 2022. It has further been submitted that the concerned State-respondents ought to be permitted to initiate an independent selection process in terms of such memo dated 23rd June, 2022 for engagement of Block Programme Coordinator, ASHA since petitioners do not have any right to be considered for such engagement.

Having considered the submissions made on behalf of the respective parties and in consideration of the materials available on record and taking note of the memo dated 23rd June, 2022 issued by the Mission Director, NHM & Secretary it appears that by initiating selection process a panel list was prepared for engagement of District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) where the

responsible officers of the district including the Deputy Chief Medical Officer of Health participated and signed the merit list prepared by the authority on the basis of educational qualification, written examination and interview. Petitioners participated in the said selection process and subsequently they were engaged as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators). On being engaged petitioners have been functioning as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) continuously. Meanwhile, the concerned respondent authorities have issued memo dated 23rd June, 2022 circulating guidelines for recruitment of Block Programme Coordinator, ASHA.

It is within the domain of concerned respondent authorities including Mission Director, NHM & Secretary, H and FW Department, Government of West Bengal to formulate a new guideline for engagement of Block Programme Coordinator, ASHA but by issuing new guidelines and attributing new nomenclature to the post concerned the right of the petitioners either to function as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) or to function as Block Programme Coordinator, ASHA ought not to be ignored in appreciation of their past service as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators). At the same time the respondent authorities

can also formulate guidelines for engaging Block Programme Coordinator, ASHA if it is found by the authorities that such arrangement would be beneficial for the better administration of the entire project/scheme. However, in order to strike a balance in between the right of the respondent authorities to formulate a new guidelines for engagement of Block Programme Coordinator, ASHA and the right of the petitioners to continue as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) or as Block Programme Coordinator, ASHA the concerned respondent authorities are directed to allow the petitioners in these three writ petitions to participate in the selection process which is to be conducted under new guidelines as circulated vide memo dated 23rd June, 2022, if necessary on condonation of age bar of the petitioners. The concerned selection authority needs to formulate a procedure by which past service of the petitioners as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) shall be taken into consideration in order to give preference to the petitioners while preparing the select list for the post of Block Programme Coordinator, ASHA.

Accordingly, these three writ petitions are disposed of thereby permitting concerned respondent authorities to take steps for engagement of Block Programme Coordinator, ASHA under the new guidelines in terms of

memo dated 23rd June, 2022 upon granting opportunity to the petitioners to participate in the selection process on condonation of age bar, if necessary and while preparing the select list in consideration of past service of the petitioners as District Level Trainers (Coordinators) and Block Level Trainers (Co-facilitators) they shall be given preference.

Applications, if pending, also stand disposed of.

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.)