

01.03.2023
Court No. 19
Item no.08
CP

W.P.A. No. 2903 of 2023

Anita Roy

Vs.

The State of West Bengal & Ors.

Mr. Santimay Bhattacharya

Mr. Ziaul Haque

Mr. H. K. Mahata

....for the petitioner.

Mr. Jahar Lal De

Mr. Shamim ul Bari

...for the State.

Mr. Saibal Acharyya

Mr. Pradip Paul

Mr. Sudip Kushary

....for the respondent no. 6.

The petitioner has challenged the order passed by the Sub-Divisional Officer dated January 10, 2023. The Sub-Divisional Officer passed the aforementioned order upon a direction of this court passed in WPA No. 25344 of 2022.

The respondent no. 6 was appointed as an Asha in respect of a sub-centre situated within Radhaballavpur village under Kuapur Gram Panchayat. The coverage area of the said sub-centre as per the advertisement dated July 9, 2018, was Karak Para and Kumar Para (booth – 159 Radhaballavpur).

The ground of challenge to the appointment of the respondent no. 6 is that the said respondent did not reside within booth no. – 159 Radhaballavpur.

Learned advocate for the petitioner submits that the Sub-Divisional Officer erred in holding that both the petitioner and the respondent no. 6 hailed from the same village, i.e. Radhaballavpur, and thus eligible to be considered for the post. The respondent no. 6 obtained higher marks than the petitioner and, as such, the said respondent was selected.

Learned advocate for the petitioner submits that the advertisement pursuant to which the selection process was initiated, provided that the applicant must be a permanent resident of the village or the 'Elaka' within which the sub-centre was situated. He further submits that the only logical interpretation of the said clause would be that the applicant should mandatorily be a resident of the area to which the sub-centre would cater, namely, the area covered by the polling station/ booth – 159 Radhaballavpur, as per Annexure to the advertisement.

The advertisement indicates that the Asha unit is situated within Radhaballavpur Village and the area to be catered to, is within booth no. 159.

Mr. Acharya, learned advocate for the respondent no. 6, submits that the village or area cannot be narrowed down to mean only the area within booth no. 159, i.e. to the area to which the said sub-centre would cater. Residential status

cannot be determined by the said area, but by the village in which the applicant resides as per the revised guidelines for selection of Asha dated June 27, 2012. It is submitted by him that the advertisement mentions the village and the area meaning, thereby, village Radhaballavpur. He further submits that the Block Medical Officer of Health, Chandrakona Rural Hospital of Chandrakone-II Block informed the Sub-Divisional Officer that sub-centre no. 14 of Chandrakone-II Block catered to the entire Radhaballavpur mouza. Mr. Acharya also submits that the respondent no. 6 has been working as Asha in the said post.

Mr. De, learned Additional Government Pleader, submits that in the revised guidelines for selection of Asha and also in the advertisement pursuant to which the selection process was conducted, the eligibility criteria has been mentioned as the village or the region ('Elaka'). According to him, the area within booth no. 159 to which the Asha sub-centre would cater, cannot be the local limit within which the applicant must reside.

Heard the rival contentions of the respective parties.

The revised guidelines for selection of Asha contains the eligibility criteria, which is as follows:

“B. Eligibility for being an ASHA:

B.1: Should be a married/divorced or widowed woman.

B.2: Should be a resident of the same village for which she will be selected.

B.3: Should be within the age group of 30-40. In case of SC and ST candidates, the lower age limit may be relaxed to 22 years.

B.4: Should be Madhyamik appeared or equivalent.

B.5: Women candidates who are Madhyamik pass or possessing higher qualification are also eligible. However, in case of candidates possessing higher qualification, only marks obtained in Madhyamik or equivalent examination will be considered.”

Clause B.2 states that the applicant should be a resident of the same village for which she will be selected. The village and the mouza in respect of which the selection process to the post of Asha was conducted in this case, was Radhaballavpur. It is the admitted position that the respondent no. 6 is a resident of Radhaballavpur. The advertisement also provides that the applicant must be a resident of the village or the region in respect of which the selection to the post of Asha was held.

The demarcated area to which the Asha sub-centre was to cater to or would cater to, cannot be treated as the local limits, in determining the residential status of a candidate. If such interpretation is permitted, then it would amount to revising the guidelines of 2012, which is the parent guideline dealing with the eligibility criteria of an Asha.

The advertisement also does not mention that the applicant has to be a resident of the specified area to which the Asha sub-centre would cater. The notification states that the applicant must be a resident of the village or the 'Elaka' in respect of which she is applying. Dictionary meaning of the Bengali word 'Elaka' is 'Region'.

Under such circumstances, the Sub-Divisional Officer being the Member Secretary of the Asha Selection Committee has interpreted the eligibility criteria as per the guidelines and notification. The selection committee comprises of experts who are entitled to fix their own terms and conditions of service and interpret the same. The writ court cannot interpret the eligibility clause by adding thereto or subtracting therefrom. The fact that the respondent No.6 got higher marks has been recorded in the order of the Sub-Divisional Officer.

The court does not find any irregularity on the part of the authorities in accepting the residential status of the respondent no. 6, who admittedly, is a permanent resident of the village in which the Asha sub-centre was to be filled up. The area covered by booth no. 159 cannot be taken as the residential limit. Such interpretation would amount to depriving the eligible candidates of the village from participating in the selection process.

Accordingly, the writ petition is disposed of without any orders.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)