

69.
19.6.2023
S.D.

W.P.A. 7411 of 2023

**Rousanara Khatun @ Rousanara Khatun Sekh
Vs.
Stat of West Bengal & Ors.**

Mr. S.N. Biswas

..For the Petitioner

Mr. Rezaul Hossain

...For the State

Mr. Firdous Samim

Ms. Gopa Biswas

Ms. Mousumi Hazra

Ms. Payel Shome

Ms. Sampriti Saha

...For the Respondent No. 8

The petitioner's grievance is that the petitioner has been unfairly eliminated from the selection process of being engaged as an Accredited Social Health Activist (ASHA) Karmee. The petitioner was a resident of Block- Nakashi Para, Gram Panchayat – Dhananjoypur, Sub-Centre – Dhananjoypur, Service Area – Paschim Para (Dhaparua), Sansad-8.

A Report on Affidavit has been filed on behalf of the State respondents. From the said Report on Affidavit, it

appears that a field inspection has been conducted by the respondent authorities. As per Report of the said field inspection, it clearly appears that the private respondent no. 8 was not a resident of the service area for which the Recruitment Notification was issued. The private respondent no. 8 was a resident of Dhaparia, Paschim Para which is Sansad-7.

It has also been stated in the field inspection that the private respondent tried to mislead the Inspectors by stating that she is a resident of Sansad-8. However, there is a definite finding that she is a resident of Sansad-7 and, therefore, not eligible to be engaged as an Asha Karmee from the eligibility criteria.

Mr. Hossain, learned counsel appears on behalf of the State respondents submits since the petitioner has throughout in the writ petition described herself as daughter of Sorabuddin Sk. and has not mentioned her husband's name, she is *ineligible* for appointment as an Asha Karmee since the *eligibility* criteria requires an Asha Karmee to be 'married woman' or to be 'divorced' or 'widowed' woman.

Mr. Samim, learned counsel appearing on behalf of the private respondent no. 8 submits that *eligibility* criteria (i) and eligibility criteria no. (ii) in the recruitment Notification dated

October 8, 2022 have to be read conjointly and therefore, only the women who reside with their husbands at the husbands' residential place and the same were within the **service area** of the Recruitment Notification will be *eligible* for such engagement. He submits that the Report by the State respondents has not been served on the private respondent and she also resides in the same **service area**. Furthermore, she obtained more marks than the private respondent.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the eligibility criteria no. (i) should be read disjunctively with eligibility criteria no. (ii) of the recruitment Notification. The first criteria requires the candidate be a married woman. Being a married woman, the candidate may reside at her husband's place or at her father's place or at her own of residence,, as long as she is within the **service area** for which the Recruitment Notification has been issued, the second *eligibility criteria* will be met.

This Court also finds it perplexing how divorced woman is expected to live at the place of residence of her ex-husband to make herself an *eligible candidate* with regard to the clause 2as stated in the recruitment Notification.

This Court also finds no infirmity in the writ petitioner describing herself as the daughter of her father. The fact that she has chosen to describe herself as the daughter of a person does not alter her marital status in anyway.

Before considering whether or not the petitioner is *eligible* for engagement as an Asha Karmee, the petitioner's documents with regard to her marital status and residence will be verified by the authorities concerned.

Whether or not the private respondent is a resident of the same **service area** is a disputed question of fact that cannot be agitated before this Court. The Court has proceeded on the basis of available records before it. This Court has no reason to not rely upon the Report-on-Affidavit filed on behalf of the State respondents.

In the light of the discussions above, the engagement of private respondent no. 8 is forthwith terminated. The petitioner's eligibility will be considered by the respondent authorities within one week from submission of the necessary documents and in the event she is found to be eligible upon compliance of all the formalities, she will be engaged in the post of Asha Karmee with immediate effect for which the Recruitment Notification was issued.

With the directions aforesaid, **W.P.A. 7411 of 2023** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

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

(Lapita Banerji, J.)