

19.04.2023
Court No. 19
Item no.10
CP

WPA No. 7446 of 2023

Morjina Begum
Vs
The State of West Bengal & Ors.

Mr. Samrat Choudhury
Mr. Anit Dey

... for the Petitioner.

Mr. Nilotpal Chatterjee
Mr. Amrita Lal Chatterjee
Mr. Yash Singhi

... for the State.

Md. Sarwar Jahan
Md. Ashraful Huq

....for the respondent no. 10.

Mr. Dhananjay banerjee
Ms. Oindrila Ghosh

....for the respondent no. 8.

The affidavit of service is taken on record.

The petitioner is aggrieved by the decision of the Additional District Mission Director, DMMU, Anandadhara, Murshidabad who is also the Project Director, District Rural Development Cell, Murshidabad. By the order impugned, the authority directed the Sanhati Sangha Mahila Samabay Samity Ltd. of Bhabta – I Gram Panchayat to issue an offer letter in favour of Rehena Khatun, the respondent no. 10 herein, for engagement to the post of Community Service Provider (IB) of the said Sangha and also to allow her to join the

said post upon compliance of all formalities as laid down in the West Bengal State Rural Livelihoods Mission's guidelines which was circulated vide Memo No. 655-WBSRLM/Prog./6P-81/2013 dated October 13, 2014.

The respondent no. 10 had approached this court by filing a writ petition which was registered as WPA No. 16118 of 2022. The said writ petition was disposed of by this court by an order dated September 22, 2022, with a direction upon the Additional District Mission Director, DMMU, Anandadhara, Murshidabad to treat the writ petition as a representation and dispose of the same in accordance with law, upon hearing the respondent no. 10 and all other interested parties involved in the selection process.

The grievance of the petitioner was that although she had scored the highest marks in the examination, she had not been selected for the post of Community Service Provider. Pursuant to the direction of this court, the order impugned has been passed. The authority recorded the statements and deposition of all the persons who were called for the hearing. The petitioner also deposed. The petitioner contends that the impugned order suffers from material irregularities, inasmuch as, the authority failed to consider the marks allotted at the interview.

Learned advocate who appears on behalf of the Sangha also submits that the marks of the petitioner at

the interview was higher. Hence, the petitioner was appointed upon calculating the total marks obtained at the interview and at the written test.

On the contrary, it appears that the Secretary of the Sangha appeared at the hearing before the Additional District Mission Director and submitted that she was not present on the date of the selection test held on October 5, 2021 and, as such she was not aware as to whether the respondent no. 10 had secured the highest marks. However, the Secretary informed the authority that the petitioner had been engaged after such selection test, on the basis of the decisions of the board of the concerned Sangha.

The Chairman of the Sangha appeared before the authority and submitted that the respondent no. 10 had stood first in the written test but the petitioner was offered the engagement and consequently engaged. The members of the Sangha had come to know that the respondent no. 10 had been engaged in other activities and was thus not considered. The petitioner appeared and also submitted before the authority that she had come second in the competitive examination held on October 5, 2021.

The Joint Block Development Officer, Beldanga – I Development Block submitted that even if the respondent no. 10 was engaged in other part-time work, the same could not be a ground for disqualification as

per the guidelines applicable. The Inspector of Co-operative Societies, deposed that although the respondent no. 10 stood first at the written test, the petitioner who stood second was engaged as per the decision of the board of directors of the Sangha.

Thus, the admitted facts which transpire from the depositions of the persons who appeared at the interview are as follows:

- a) Both the petitioner and the respondent no. 10 appeared at the written test.
- b) The written test was admittedly held on October 5, 2021.
- c) The respondent no. 10 stood first in the test held on October 5, 2021.
- d) The petitioner stood second.
- e) The decision to engage the petitioner in place of the respondent no. 10 was taken by the board of directors of the Sangha.
- f) The Secretary was not present during the process of selection.
- g) The Chairman of the Sangha admitted that the respondent no. 10 was the candidate who had secured highest marks in the test held on October 5, 2021.
- h) The Inspector of the Cooperative Societies was also involved with the selection process as the Sangha is a registered cooperative society and

he also submitted that a decision was taken to engage the petitioner, although she stood second. Such decision was taken by the board of directors of the Sangha.

- i) None of the persons whose statements were recorded by the authority had even mentioned anything about the subsequent interview which was allegedly held on October 11, 2021.

Even the Secretary, under whose instruction the learned advocate for the Sangha appears before the court today, did not mention anything about the said interview. The Secretary deposed that she was not present on the date of selection test held on October 5, 2021.

The contention of the petitioner that a selection process was conducted in two phases, i.e., written and viva/interview, is not supported either by the documents or by the statements of the persons involved in the selection process or by the petitioner's own deposition before the authority.

The court does not have any reason to take cognizance of such submission. The document which has been annexed to the writ petition at page 30, reflecting that some questions had been posed to the petitioner at the interview, which she had answered, merits no consideration. The document also does not reveal who were the members of the interview board.

Moreover, the submission of the Joint Block Development Officer that the respondent no. 10 was engaged in some other activities but such engagement would not disqualify the said respondent from being appointed as the community service provider, is relevant.

The Additional District Mission Director further recorded that no one could produce any document to show that the respondent no. 10 had been gainfully employed in some other post, which would disqualify her.

The court has gone through the depositions of each of the participants at the hearing, including the petitioner and the plea that an interview had been held on October 11, 2021 has never been raised before the authority. The basis of engagement of the petitioner as a Community Service Provider is the written test.

In any event, a person cannot hold two posts at the same time. Even if the respondent no. 10 had been engaged in some other part time work at the time of filing the application, the same could not be a ground for her disqualification. The respondent no. 10 could not have served in two posts at the same time and reap the benefits from both. The respondent no.10 would have to resign from any other engagement upon being selected as the Community Service Provider.

Under such circumstances, the writ petition is disposed of without interference.

The report filed by the State respondents is taken on record.

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.)