

13.10.23
Sl-04
Ct.11
(S.R.)

**MAT 425 of 2021
with
CAN 1 of 2021
and
CAN 2 of 2021**

**The State of West Bengal & Ors.
v.
Smt. Rita Roy (Maity) & Anr.**

Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Avishek Prasad ... for the appellants.

Mr. Soumik Ganguli
Mr. Lal Ratan Mondal
Mr. Dilip Kumar Sadhu
Ms. Chandana Chakraborty
... writ petitioner/respondent no.1.

The present appeal has been preferred challenging an order dated 20th January, 2021 passed by the learned Single Judge in a writ petition being WPA 11056 of 2020.

This case has a chequered history. In the month of October, 2006, the appellants published a notice in a local newspaper inviting applications from eligible candidates for engagement in the post of Auxiliary Nurse-cum-Mid-wife (in short, ANM) on contractual basis in the sub-health centres in different blocks of the district. In response thereto, the writ petitioner/respondent no.1 herein, namely, Rita Roy (Maity) (in short, Rita) submitted an application annexing the relevant documents and the same was dropped in a box prescribed therefor in the office of the appellant no.5. As no intimation was furnished thereafter, Rita preferred a writ petition being

WP No.28389 (W) of 2006, which was disposed of by an order dated 22nd January, 2008 with liberty to Rita to submit a representation annexing thereto a copy of the writ application as well as all other supporting material documents before the appellant no.4. It was further directed that upon receipt of such representation the said authority shall consider the matter in its proper perspective after giving an opportunity of hearing. Rita accordingly submitted a representation annexing her academic qualification certificates, ration card, EPIC, gram panchayat certificate and voter list. Upon receipt of the same, the appellant no.4 passed an order on 30th April, 2008 rejecting Rita's claim. Aggrieved by the said order, Rita again preferred a writ petition being WP No.16842 (W) of 2008, which was disposed of by an order dated 2nd December, 2009 setting aside the order passed by the appellant no.4 observing *inter alia* that there was no discussion whatsoever in the said order as to why the documents relied on by Rita were not relevant. The matter was remanded to the self-same authority to consider the matter afresh in terms of the earlier order passed by the Writ Court on 22nd January, 2008. Pursuant to such direction, the appellant no.4 passed an order on 17th January, 2020 again rejecting Rita's claim. Aggrieved thereby, Rita again preferred a writ petition being WPA 11056 of 2020, which was disposed of by the

order dated 20th January, 2021 impugned in the present appeal. As the said order was not being complied with, Rita preferred a contempt application and during pendency of the same, Rita was engaged as 2nd ANM at Kutki sub centre in the Narayangarh Block, Paschim Medinipur by a memo dated 15th December, 2021 issued by the appellant no.3 recording *inter alia* that such engagement would abide by the result of the pending appeal.

Mr. Mukherjee, learned Additional Government Pleader, assisted by Mr. Prasad, learned advocate appearing for the appellants, argues that the writ petition was abruptly disposed of without calling for affidavits and without setting aside the order impugned in the same. As the *lis* involved disputed question of facts, the appellants ought to have been granted an opportunity to file an affidavit. In view thereof, the order impugned is not sustainable in law *moreso* when the same has been passed without taking into consideration Rule 38 of the Writ Rules. In support of such contention reliance has been placed upon a judgment delivered in the case of *Satpalsa High School and Ors. -vs- Krishna Ram Bhattacharya & Ors.*, reported in (2018) 1 CHN 222.

He further argues that the order engaging Rita in the post of 2nd ANM was passed on threat of contempt and such act does not render the present appeal infructuous

and does not debar the authorities from challenging the same in an appeal. In support of such contention reliance has been placed upon a judgment delivered in the case of *Union of India and Ors. –vs- Ram Kumar Thakur*, reported in (2009) 1 SCC 122.

He further argues that training is mandatory for appointment to the post of 2nd ANM. The scheme to that effect had already been discontinued by the competent authority, as would be explicit from the memo dated 13th March, 2015 issued by the Mission Director. Rita was not a selected candidate in the recruitment process, which was initiated in the year 2006 and training cannot be imparted to Rita at this stage since the scheme has already been discontinued. The post in which Rita was asked to be engaged had already been filled up and there is no existing vacancy. No legal right of Rita was infringed warranting interference of the Writ Court.

Per contra, Mr. Mondal, learned advocate appearing for the respondent no.1 submits that there is no dispute that the applicants were asked to deposit their applications along with relevant documents in a box prescribed therefor in the office of the appellant no.5. A perusal of the first order of rejection dated 20th March, 2008/30th April, 2008 would reveal that Rita did submit her application, however, allegedly, as the same was not accompanied with either the Ration Card or EPIC, the

application was rejected. The said order was set aside in the second writ petition as the documents annexed to the representation submitted by Rita were not considered. The Writ Court accordingly directed the appellant no.4 to consider the matter afresh dealing with the documents submitted. However, the second order of rejection was passed on 17th January, 2020 reiterating the grounds taken in the earlier order. From such sequence it is explicit that the appellants were determined to deny engagement to Rita in an arbitrary and *mala fide* manner.

He further argues that considering the fact that Rita had been continuously litigating since the year 2006 and as the delay was not totally attributable to her, the Writ Court rightly directed the authorities to engage Rita in the post of ANM indicating that such engagement was being issued in the peculiar facts and circumstances of the case and as an exception without creating any precedent and protecting the engagement of the respondent no.2. The order does not suffer from any infirmity warranting interference of this Court. In support of the arguments advanced reliance has been placed upon two unreported judgments delivered in the cases of *Ujjal Ghosh versus Prabir Kumar Chattopadhyay & Others* and *Chittaranjan Baidya versus Dipankar Mandal & Others*.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards the proposition of law laid down in the judgments upon which reliance has been placed by the appellants. The order impugned in the present appeal was passed in presence of the learned Advocate appearing for the State and upon hearing him and as such the judgment delivered in the case of *Satpalsa High School (supra)* is distinguishable on facts.

Mr. Mukherjee has strenuously argued that the scheme itself has been abolished and as such, the appellants are not in a position to impart training to Rita in the post at this stage. In support of such contention, reliance has been placed upon the memoranda dated 1st October, 2012, 10th December, 2014, 13th March, 2015 and 19th May 2015. The first order was passed by the appellant no.4 on 20th March, 2008/13th April, 2008. The said order was set aside by the Writ Court. The subsequent order was passed on 17th January, 2020. In none of the said orders ground as regards abolition of the scheme or as regards stoppage of training had been

urged. The litigation commenced from 2006 and the same ultimately culminated in the order impugned in the present appeal about 15 years thereafter.

The appellants have repeatedly rejected Rita's claim on the basis of a ground that she did not submit a proper application annexing copies of the documents, as specifically stated in the advertisement. Indisputably, the application along with the documents were asked to be dropped in a box. No receipt was provided by the authorities. No intimation was furnished that Rita's application had been rejected for non-availability of relevant documents. In the said conspectus, the learned Judge rightly directed the appellants to engage Rita in the post of ANM observing, *inter alia*, that '*there is no way of verifying the claim of the Medical Officer, Narayangarh or the Block Development Officer, Narayangarh that the petitioner did not furnish the Ration Card or the Voter's identity card/EPIC Card*'. The order was passed considering the peculiar facts and circumstances involved and as an exception without creating any precedent since denial of such engagement would have been iniquitous.

Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. Equity regards as done, which should have been done. It would be the bounden duty of the Court to put an end to a protracted long agony of the litigant, who had suffered the

distraught pain and was kept in animated tenterhooks in anticipation of an employment.

Applying such proposition and considering the peculiar facts and circumstances of the case, we do not find any infirmity in the order impugned.

In view thereof, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of the order if applied for, be made over to the parties as expeditiously as possible.

(Siddhartha Roy Chowdhury, J.) (Tapabrata Chakraborty, J.)