

19.04.2023
Item No.09
Court No.6.
S. De

**M.A.T. 717 of 2022
with
I.A. No. CAN/1/2022**

**Jali Dash (Panda).
Vs
The State of West Bengal & Ors.**

Mr. Jayanta Kr. Das,
Mr. S.K. Anwar Ali,
Ms. Madhumanti Das,
...for the appellant.
Ms. Chaitali Bhattacharyya,
Mr. Kartik Chandra Kapas,
..for the State.
Mr. Anindya Bose,
Mr. Diptendu Mondal,
Mr. Mridul Biswas,
...for the respondent no.9

This appeal is directed against a judgment and order dated March 14, 2022, whereby the appellant's writ petition being WPA 23507 of 2014 was dismissed.

The appellant/writ petitioner approached the learned Single Judge with the grievance that although she duly submitted her application for the post of '**ASHA**' under Barida Gram Panchayat, within Egra-I Block of District-Purba Medinipur, she was not called for interview. The appellant had earlier filed a writ petition being W.P. 2485(W) of 2014 with the same grievance which was disposed of by an order dated April 24, 2014, by permitting her to make a representation to the concerned Sub-Divisional Officer who was directed to take a reasoned decision in the

matter. The writ petitioner made such a representation dated July 7, 2014, which was disposed of by an order dated July 30, 2014, passed by the concerned Sub-Divisional Officer. Challenging the said order dated July 30, 2014, the appellant filed the present writ petition. The Sub-Divisional Officer recorded in the order impugned before the learned Single Judge that the writ petitioner's application had been summarily rejected on the ground of incompleteness for non submission of copies of marksheet as required by the advertisement issued for recruitment to the post of **'ASHA'**.

Before the learned Single Judge, the appellant argued that she had submitted all relevant documents. She was the only candidate with first division marks. She was the most qualified and suitable candidate. She should have been appointed.

When the writ petition was moved by an order dated May 14, 2015, a learned Single Judge had directed the District Magistrate, Purba Medinipore, to *"conduct an appropriate enquiry and file a report as to whether the petitioner had submitted a copy of her marksheet along with the application and as to the veracity of the register which has been relied upon by the authorities."*

An enquiry was held by the District Magistrate. She passed an order dated July 1, 2015. The material portion of the said order reads as follows :-

“The Writ Petitioner stated that she is Higher Secondary passed but she did not submit any document in support of her claim.

As enclosures she has furnished ad seriatim following documents :-

- 1) Xerox copy of Admit Card of WB Secondary Education.*
- 2) Xerox copy of Certificate of WB Secondary Education.*
- 3) EPIC Card of Petitioner.*
- 4) Ration Card*
- 5) Marriage delcaration.*

Thus it is very difficult to presume that one of the documents which is claimed to be submitted by the writ petitioner has been missed by the receiving office. Receiving clerk of the Block Development office also stated that he was not mindful of the required documents as there was no check list.

Sub-Divisional Officer, Egra also stated that out of total 140 applications received from different Block Development offices in his jurisdiction five applications have been rejected for non-submission of Marksheet of Madhyamik Pariksha which was mandatory for submission as per the advertisement. He also stated that none of the Block Development office has taken any signature of the candidates in the received register as there was no guideline regarding format of the application receiving register.

On verification of concerned register, it is found that the applications received from different Gram

Panchayats under Egra-I block have been entered separately in the register under due authentication of the Block Development officer himself. So there is no space left for any doubt regarding veracity of the register as questioned by the petitioner.

The applicant's application alongwith all other incumbents have duly been acknowledged through the counterpart handed over to each and every incumbent under proper seal and signature of the receiving clerk. The petitioner also failed to substantiate her claim with any supporting documents.

In view of the above I am of the opinion that so far to the best of my observation I found no ill-motive of malafide tendency either from the end of Block Development Officer or from the end of Sub-Divisional Officer concerned behind non-consideration of the matter of the petitioner”

The learned Judge observed that the contention of the writ petitioner that copy of the register annexed at page 19 of the affidavit-in-reply filed by the writ petitioner, is a forged and manufactured one as the same does not bear the signature of the writ petitioner, was not pleaded in the writ petition and she also did not plead her case that she had put her signature on the said register. The learned Judge held that the writ petitioner has tried to make out a new case in the affidavit-in-reply.

The learned Judge also took into consideration the order of the District Magistrate dated July 1, 2015. The learned Judge held that the findings of fact arrived

at by the District Magistrate did not suffer from any infirmity and cannot be interfered with by the High Court under Article 226 of the Constitution of India.

Finally, the learned Judge disposed of the writ petition with the following observations :-

“Since the only dispute which is germane is whether the writ petitioner’s candidature was rightly cancelled, this Court is of the view that the order dated July 30, 2014 rejecting the application of the petitioner cannot be said to be a non-speaking and cryptic order, as contended by the learned advocate for the petitioner, as the reason for rejection has been disclosed therein.

Selection to the said post is based on marks obtained in the Madhyamik or equivalent examination and the score in the interview. Therefore, marksheet of the applicant is a vital document for such selection. An application is thus liable to be cancelled for non-submission of the said document and the authority was justified in cancelling the application of the petitioner.”

Being aggrieved, the petitioner is before us by way of this appeal.

We have heard learned counsel for the parties at length. The short dispute is whether or not the appellant submitted her marksheet along with her application? She says she had done so. The State says otherwise. This is a factual dispute which is impossible for the writ Court to decide. That is why a learned Single Judge, at the time of admission of the present writ petition, had directed the concerned District Magistrate to conduct a fact finding exercise.

The District Magistrate has submitted her report which has been considered by the learned Single Judge. The District Magistrate has recorded that although other documents have been submitted, the appellant did not submit the marksheet.

We are not in a position to go into such a factual dispute. The learned Judge has rightly accepted the order of the District Magistrate. The learned Judge was also not in a position to decide the factual dispute.

Having expressed our opinion above, we find it difficult to understand as to why the appellant, who had secured first division marks in Madhyamik, would not submit the marksheet along with the application knowing well that the same would make her application ineligible for consideration. However, the dispute is of such a nature that we are unable to grant any relief to the appellant.

Before parting we would like to say that in connection with any public recruitment process, after receiving applications along with supporting documents from the candidates, the concerned recruitment board should ascertain whether or not there are defects in the applications of the candidates. If a candidate's application is found to be defective, but the defect is of a curable nature, e.g., where the candidate has not submitted requisite certificates or

other documents, an opportunity should be given to such candidate to rectify the defect within a stipulated time. The concerned candidate may be notified through electronic mode or by publication in the website of the board or through any other acceptable mode as the board may decide. If the defects are not removed within the time stipulated, the application may be rejected on that ground. No such exercise need be undertaken where an application is found to be suffering from a defect which is incurable, e.g., when the candidate is under age or over age as per the advertisement.

Accordingly, the appeal being MAT 717 of 2022 is dismissed along with the application being I.A. No. CAN 1 of 2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)