

D/L. 18.
September 6, 2023.
MNS.

WPA No. 10588 of 2023

Zamiruddin Mallick
Vs.
State of West Bengal and others

Md. Mokaram Hossain,
Mr. Anwarulla Sk.,
Mr. Sandipan Maity

... for the petitioner.

Mr. Amal Kumar Sen,
Ms. Ashima Das (Sil)

...for the State.

Md. Nauroz Rahber,
Mr. Mohammad Junewad

...for the private respondent.

1. Affidavit-of-service filed in court today be kept on record.
2. Learned counsel for the petitioner contends that the private respondent was erroneously appointed as Muhammadan Marriage Registrar (MMR) for the Joypur Police Station area despite not being a resident of Joypur.
3. Previously, upon a writ petition being moved by the petitioner, a co-ordinate Bench of this Court had directed a fresh factual consideration on merits, recording that the documents relied on by the private respondent

show that those were obtained after the advertisement dated August 4, 2019 for such appointment.

4. Despite such specific direction of the co-ordinate Bench, it is argued that the District Registrar, Howrah, repeated a similar exercise, not clearly acting in terms of the order of the co-ordinate Bench.
5. It is submitted that the context in which the previous co-ordinate Bench directed the reconsideration, that is, the documents produced by the private respondent were issued mostly after the advertisement, was not considered.
6. Learned counsel appearing for the State places reliance on the concerned Notification No. 10-JL dated January 6, 2017, published on January 19, 2017 in the Official Gazette. In terms of Rule 4(3), as mentioned therein, the residence is only one of the factors, subject to compliance of other qualifications, for giving preference to the claims of local people, it is argued.
7. Learned counsel for the State also hands over a copy of a panel of candidates chosen, which indicates that the private respondent is much

more educationally qualified than the petitioner for the said post and is also a resident of Joypur.

8. Learned counsel for the private respondent argues that the petitioner himself is not a resident of the concerned police station and is not qualified to get the post of MMR. As such, the petitioner, it is argued, has no *locus standi* to prefer the present writ petition.
9. That apart, learned counsel for the private respondent reiterates the contentions made before the authorities, by placing reliance on certain portions of the impugned order, which refer to recommendation letter of a Member of Parliament, as well as the Aadhaar Card issued in favour of the petitioner and other documents to argue that the point in contention was duly decided by the District Registrar, Howrah. Although the private respondent, through counsel, seeks to produce certain other documents for perusal of this Court, such permission is refused to the private respondent, since the writ court is not a fact-finding authority, where an exercise has already been undertaken by the District Registrar.

10. Upon a perusal of the relevant Notification handed over by the State, it transpires that subject to being qualified on other counts, as indicated in the concerned Notification, preference is to be given to the claims of the “local men of respectable character and suitable attainments”.

11. The parent Notification No. 620 Regn. Dated 14th August, 1929 governs the field regarding claims of local men and also stipulates other qualifications, including knowledge in Arabic language and Muhammadan Law of Marriage and Divorce and good moral character.

12. Apart from that, the candidates to be selected for the post of MMR have to be Indian citizens having permanent address in the State of West Bengal.

13. Thus, the preference to be given to local candidates is circumscribed by the pre-condition of satisfaction of proper eligibility criteria as indicated above.

14. In the event several candidates of similar stature apply for the said post, preference shall be given to local men of respectable character and suitable attainments.

15. We have to look into the context of the order of the co-ordinate Bench on such score. Although the learned Single Judge observed that the documents produced previously by the private respondent were obtained after the advertisement dated August 4, 2019, ultimately the direction issued by the learned Single Judge was to consider the factual particulars as to the residence of the private respondent "in accordance with the governing Act and the Notifications". Hence, such factual reconsideration was to be in accordance with the governing Act and the Notifications.

16. By the impugned order, the District Registrar took into consideration the relevant provisions of the governing Notification as well as certain other documents, apart from those produced previously by the private respondent, which were placed before the authority.

17. The District Registrar clearly took note of a copy of an Aadhaar Card issued on September 17, 2012 that is seven years prior to the advertisement as well as the recommendation letter of a Member of Parliament and a certificate of the Proddhan of

the Kashmoli Gram Panchayat as proof of the petitioner's residence within the territorial jurisdiction of the Joypur Police Station. Hence, the factor of residence was duly considered by the District Registrar. However, the additional context, which comes in, is that the private respondent was, as per the educational qualification shown before the authority, more qualified than the petitioner, since the private respondent was BA Kamil (Honours), whereas the petitioner was only Kamil.

18. The preference to be given to claims of local men, read with conjunction with all other qualifications as stipulated in Clause 4 of the Notification of 1929, as substituted by Notification No. 10-JL dated January 6, 2017, clearly shows that the primary consideration was the possession of sufficient acquaintance with the Arabic language and Muhammadan Law of Marriage and Divorce and to be of good moral character, apart from permanent residence in the State of West Bengal.

19. As an additional qualification, preference was to be given to local men of respectable character and suitable attainments. By

necessary implication, the question of giving preference arises only in cases where people of otherwise similar qualification are available, among whom one is a local resident and the other is not.

20. In the present case, however, the private respondent is more educationally qualified than the petitioner for being chosen as an MMR and, as such, rendering redundant the question of preference on the ground of residence.

21. In any event, the District Registrar recorded the production of Aadhaar Card issued much prior to the advertisement as well as recommendation letter of the Member of Parliament and certificate of the local Gram Panchayat as proof of residence, which were issued prior to the advertisement.

22. Moreover, the relevant date of satisfying the qualifications is the date of submitting the application and not the date of the advertisement.

23. That apart, since the private respondent is otherwise more educationally qualified, the line of distinction drawn by the respondent

authorities cannot be faulted on law and on considerations of natural justice.

24. The reconsideration directed by the learned Single Judge was not restricted only to the residence aspect, but also directed to be in accordance with the governing Law and the Notifications, which was duly done by the respondent authorities.

25. Hence, there is no scope of interference in the present matter.

26. Accordingly, WPA No. 10588 of 2023 is dismissed.

27. There will be no order as to costs.

28. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)