

08.02.2023
Sl. No.24(DL)
srm

W.P.A. No. 13765 of 2019
Sewli Khatun
Versus
The State of West Bengal & Ors.

Mr. Golam Mahammad
....for the Petitioner.

Mr. Jahar Lal De,
Mrs. Debarati Sen (Bose)
...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondent Nos.7 to 10.

The petitioner has moved this application challenging the engagement of the respondent No.8. The respondent No.8 was engaged as an Accredited Social Health Activist (ASHA) of Raninagar sub-centre within Raninagar-I Gram Panchayat, District-Murshidabad.

The engagement of the respondent No.8 was on the basis of a direction of a co-ordinate Bench of this Court dated February 27, 2013 passed in WP 3028(W) of 2013. The relevant portion of the said order is quoted below:-

“A report of the Block Development Officer, Raninagar-II Development Block, has been handed up by the learned advocate representing the State, which may be taken on record.

Perusing the same, it appears that it has been categorically stated therein that the writ petitioner should be selected under Raninagar village in place of Chakranpara village. It was an error committed by the concerned Section Committee. The Block Family Welfare Samity, however, has no such way to correct any error done by the Selection Committee.

Considering the report of the Block Development Officer, Raninagar-II Development Block, the writ petition is disposed of with a direction upon the said Block Development Officer to immediately direct the concerned Selection Committee to effect necessary correction in their records so as to ensure that the writ petitioner is engaged as an ASHA karmee/worker in respect of Raninagar sub-centre, which falls within the jurisdiction of Raninagar-I Gram Panchayat."

The petitioner moved WP No.36551 (W) of 2013. The said writ petitioner was disposed of on April 7, 2014 without any orders. The relevant order is quoted below:-

"Having heard the learned advocates for the parties and upon perusing the instant application, it appears from the report in the form of an affidavit filed on behalf of the Chief Medical Officer of Health, Murshidabad, that the petitioner stood fourth in the panel for the post of ASHA Karmee in respect of Godhanpara Block Primary Health Centre. The petitioner was not engaged for the post-in-question since there were only three vacant posts.

In such circumstances, there is no scope for the writ Court to pass any further order in the matter, save and except a direction upon the Chief Medical Officer of Health, Murshidabad, to proceed in accordance with law.

The writ petition stands disposed of accordingly."

The petitioner submits that subsequently she had complained before the authority that Banera Khatun was over age at the time of application for the post of ASHA.

The Block Medical Officer of Health, Godhanpara Block Primary Health Centre, Raninagar-II Block, passed an order, *inter alia*, stating that the petitioner's objection with regard to the date of birth of Banera Khatun could not be reopened in view of the fact that Banera Khatun was engaged as per the direction of the High Court. Moreover, Banera Khatun scored 56.04 marks at the selection process whereas, the petitioner scored 49.80. Although the 'Reasoned Order' refers to WP 3028 (W) of 2013, this court did not direct the authority to grant any hearing to the parties and decide any issue. Rather, a mandatory direction was passed to effect necessary correction in the records so as to ensure that Banera Khatun was engaged as an ASHA in respect of Raninagar sub-centre, in the third vacancy. In the proceeding before His Lordship, the Block Development Officer, Raninagar-II Development Block through the learned Advocate for the State-respondents had submitted that the selection of Banera Khatun for Chakranpara sub-centre was erroneous as she had applied for Raninagar sub-centre. Such mistake was directed to be corrected and Banera Khatun was directed to be engaged. Thereafter, Banera Khatun was

appointed and her service was approved and she has been discharging her duties.

The petitioner had filed WP 36551 (W) of 2013. The writ petition was disposed of without any orders as it was found that the petitioner had attained the fourth position in the selection process and there were only three vacancies. No order was passed in favour of the petitioner.

In 2019, this writ petition has been filed alleging that the Head Teacher of 41, Radhakantapur Primary School had given a certificate to the petitioner in 2014, at the petitioner's request, indicating that the date of birth of Banera Khatun in the records of the school was April 2, 1967. The selection process was notified sometime in April 2008 and completed before the said certificate had been given.. The petitioner also procured another document from the Nabipur Saralabala High School (HS) dated January 6, 2020 issued by the Headmaster of the said school, *inter alia*, stating Banera Khatun, daughter of Inser Ali Shaikh, was a *bona fide* student of Class-V and she appeared at the Higher Secondary in the year 1980. Such certificate was issued at the behest of the petitioner. The contents of the certificate seems to be self-contradictory.

Contrary to the aforementioned documents, the pass certificate from Rabindra Mukta Vidyalaya which is

equivalent of the Madhyamik examination stated that the date of birth of Banera Khatun as April 2, 1969. The eligibility criteria for engagement to ASHA is Madhyamik and or equivalent examination. The Madhyamik mark sheet and the age of Banera Khatun was taken by the authority to be the proof of age.

The two certificates which were relied upon by the petitioner were procured by the petitioner at a subsequent stage after the engagement was given to Banera Khatun. They were issued by heads of some institutions at the behest of the petitioner.

The writ petition filed by the petitioner was also disposed of without any orders. Such question was never raised by the petitioner at the relevant point of time. The petitioner did not prefer any appeal against the said orders passed by a co-ordinate bench either with regard to the engagement of Banera Khatun or with regard to non-consideration of the petitioner's prayer for engagement in the two successive writ petitions. Later, the petitioner procured some documents, from two schools, prepared by the Headmasters to build up a case that Banera Khatun was over age at the time of selection process. Moreover, when a co-ordinate Bench had directed that Banera Khatun be appointed, this Bench cannot take up the issue at all. The

documents were before the Court when such order was passed and the authorities did not ever raise any plea of ineligibility of Banera Khatun.

The authorities are experts. The selection committee as an independent authority has the discretion to set the terms and conditions of engagement. The age in the Madhyamik certificate from Rabindra Mukta Vidyalaya, West Bengal (West Bengal State Open School) was accepted by the authority to be correct. After more than 10 years from the date of engagement of Banera Khatun, the writ Court cannot hold a trial on evidence with regard to the authenticity of the certificates issued by the Headmasters of the schools when such certificates were not a part of the selection process and were not relied on either by Banera Khatun or by the authorities. Moreover, this issue could have been urged by the petitioner when WP 36551 (W) of 2013 was filed and disposed of.

Thus, the disputes between the petitioner and Banera Khatun with regard to the selection process, have reached a finality. The point of over age, if not raised in the earlier writ petition, cannot be reopened now and such plea of the petitioner is hit the principle of constructive *res judicata*.

The writ petition is, thus, dismissed.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)