

AD-11
Ct No.09
09.08.2023
TN

WPA No. 17831 of 2023

Shagufta Ara
Vs.
The State of West Bengal and others

Mr. Soumen Kr. Dutta,
Mr. Sabyasachi Bhattacharjee

.... for the petitioner

Mr. Ashim Kr. Ganguly,
Mrs. Jyotsna Roy Mukherjee

.... for the State

The petitioner contends that vide order dated June 15, 2022, a coordinate Bench of this court had, while disposing of the W.P.A. 2790 of 2022, directed the respondent nos. 2 and 3, being the Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal and the District Registrar, Hooghly, respectively, to take appropriate steps in terms of the order of the department dated 22nd June, 2020, in respect of appointment of the petitioner as a temporary Muslim Marriage Registrar within two weeks from that date. The petitioner was also given liberty to mention before the court in case there was any delay on the part of the concerned respondents.

Thereafter, pursuant to the said order of the coordinate Bench, vide order dated June 28, 2022, the

District Registrar, Hooghly had given appointment to the petitioner on a temporary basis.

However, it is alleged that even thereafter, no licence has been issued to the petitioner, although the order dated June 28, 2022 clearly stipulates that the order will take effect from the date on which the petitioner assumes the charge of the office “on obtaining license from Law Department, Government of West Bengal”.

Learned counsel appearing for the respondent-authorities submits that the petitioner does not have the minimum qualification for being appointed as Mohammedan Marriage Registrar. Learned counsel places reliance on a Notification bearing Notification No. 620-Regn.-14th August, 1929, in terms of Rule 4(1) of which candidates selected for the post of Mohammedan Registrars shall possess a sufficient acquaintance with the Arabic language and Mohammedan Law of Marriage and Divorce.

It is submitted that the petitioner holds a Masters Degree in Urdu and not in Arabic and is not acquainted sufficiently with the Arabic language.

Learned counsel for the respondents also places reliance on Rule 5 of the said Notification, which stipulates a pre-requisite of furnishing a certificate by an applicant for the post of Mohammedan Marriage

Registrar, that he or she possesses sufficient acquaintance with the Arabic language and the Mohammedan Law of Marriage and Divorce, which certificate is to be “signed by two Mohammedan gentlemen of respectability and position”. It is argued that the petitioner, apart from having no knowledge of Arabic, furnished a certificate which was purportedly signed by two Hindu gentlemen, as such, failing to qualify for a candidature to the post of Mohammedan Marriage Registrar, since two Mohammedan gentlemen had not signed the petitioner’s certificate.

A bare perusal of the order of the coordinate Bench dated June 15, 2022 passed in W.P.A. 2790 of 2022 shows that the points urged before the court today were not raised before the said coordinate Bench by the State. By its order, the writ petition was disposed of by the coordinate Bench and a direction was specifically given for the respondent nos. 2 and 3 therein “to take appropriate steps in terms of the order of the department dated June 22, 2020 in terms of appointment of the petitioner as a temporary Muslim Marriage Registrar”.

The said order of the department dated June 22, 2020 has also been annexed at page-18 of the present writ petition. As per the same, the Special Law Officer & ex-officio Deputy Secretary (Law) wrote to the IGR &

CSR, West Bengal to the effect that the said author of the communication was directed to state that the State Government had accorded approval for appointment of the petitioner as temporary MMR in Chandannagar P.S. area, District – Hooghly. Accordingly, the IGR & CSR, West Bengal was requested to take necessary action for appointment of the petitioner as temporary MMR in the said police station area.

The said order of the department dated June 22, 2020, read in conjunction with the order of the learned Single Judge dated June 15, 2022, leave no scope of doubt that it was incumbent on the respondents to give an appointment to the petitioner as a Mohammedan Marriage Registrar.

Not only that, let alone challenging the order of the coordinate Bench in appeal, the respondent-authorities had implemented the same without demur by giving a temporary appointment to the petitioner as Mohammedan Marriage Registrar for the concerned police station area by its order dated June 28, 2022 (Estt Order No: 150/DR/22). In the said order, it was also mentioned that the order would take effect from the date when the petitioner assumes charge of the office on obtaining license from the Law Department, Government of West Bengal.

After having issued such appointment and in view of the order of the coordinate Bench, no option remains before the State to reopen the issue of qualification of the petitioner for temporary appointment as Mohammedan Marriage Registrar.

The said chapter is long over, in view of the order of the learned Single Judge having attained finality and having been given effect to by the respondents themselves. As such, the respondents are, in any event, bound by the said order of the coordinate Bench as well as by the principle of acquiescence, from raising any further dispute as to qualification of the petitioner for the candidature of temporary Mohammedan Marriage Registrar.

It is most unfortunate that what the respondents could not directly do, they did in an indirect manner by granting the appointment of the petitioner as a temporary Mohammedan Marriage Registrar but withholding the licence from the petitioner, thereby preventing the petitioner from acting as a Mohammedan Marriage Registrar so long, since June 28, 2022, when the appointment was given to the petitioner.

As such, the respondents are required to compensate the petitioner for the loss incurred by the

petitioner in the interregnum, due to non-compliance of the order of the coordinate Bench in spirit.

Accordingly, WPA No. 17831 of 2023 is allowed, thereby directing the respondent no. 1, that is, the State of West Bengal, through the Secretary, Department of Law, to issue the licence to the petitioner to function as a temporary Mohammedan Marriage Registrar, in terms of the order of appointment of the petitioner dated June 28, 2022 (Annexure P/6 of the writ petition) within a fortnight from date.

In order to compensate the petitioner's loss for the period from June 28, 2022 till date, the respondent no. 1 shall pay costs of Rs.20,000/- (Rupees Twenty Thousand) to the petitioner, also within a fortnight from date. In default of payment of such costs, the petitioner will be at liberty to approach this court in contempt.

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.)