

18
3.2.2023
S.D.

**W.P.A. 17775 of 2018
With
CAN 1 of 2022**

**Nazbul Islam
Vs.
The State of West Bengal & Ors.**

Mr. Indranil Roy
Mr. Sunit Kumar Roy
... For the Petitioner
Mr. Avishek Prasad
...For the State

In re: **CAN 1 of 2022**

This is an application for reinstatement of the petitioner to the position of Senior Treatment Supervisor and for disbursement of his arrears of salaries pursuant to an order passed by a Coordinate Bench on July 10, 2019 in W.P. No. 17777 (W) of 2018 (Mamun Shaikh Vs. State of West Bengal & Ors.). The petitioner claims to be one of the eight candidates who were working as Senior Treatment Supervisors (STS) and whose services have been terminated by the Impugned order dated August 17, 2018. The petitioner prays for setting aside and/or quashing of the Impugned order in the present writ petition being W.P.A. 17775 of 2018. The Impugned order was preceded by a show-cause notice dated July 18, 2018.

The petitioner applied for the post of STS pursuant to an advertisement dated December 29, 2015 issued by the Secretary and Chief Medical Officer of Health, District Health and Family Welfare Samity. The relevant eligibility criteria was that the petitioner was required to have a Bachelor Degree **OR** Recognized Sanitary Inspector's Course. The petitioner's service was terminated from August 2018 on the ground that the petitioner failed to comply with the minimum essential educational qualification. Since the diploma in Sanitary Inspector's Course was purportedly from an unrecognized institution, the petitioner was held not to have essential qualification for the post of STS.

It is also the case of the State that since the petitioner obtained less than 50% marks in the Bachelor Degree, the said qualification does not fall within the eligibility criteria even though the Bachelor Degree has been obtained from a recognized institute.

The Hon'ble Coordinate Bench by its judgment and order dated July 10, 2019 held that since the advertisement did not clearly stipulate that the Sanitary Inspector's Course had to be from a recognized University or a minimum of 50% was required to fulfil the essential conditions of eligibility, the said conditions could not be later introduced. The

Coordinate Bench held that the eligibility criteria of the Bachelors Degree had to be read disjunctively with the eligibility criteria for diploma in the Recognized Sanitary Inspector's Course. It held that the condition **OR** cannot be read as **AND/OR** and if such a course was allowed that would lead to an amendment of material nature of the advertisement/representation made to the public. Therefore, the Impugned order was quashed and/or set aside and the petitioner in W.P. 17777 (W) of 2018 was directed to be reinstated immediately.

A review application being R.V.W. 111 of 2021 was preferred by the State belatedly without any valid explanation as to the cause of delay. The said review application was dismissed by this Court by a judgment and order dated December 21, 2022.

Therefore, the order dated July 19, 2019 has attained finality since no appeal has been admittedly preferred from the said order.

Mr. Roy, learned counsel appearing on behalf of the petitioner submits that not only have the State respondents sought to alter the terms of the advertisement by seeking to interpret the word **or** as **and/or**, but the State respondents had already made up their mind to terminate the petitioner from

service by a resolution dated May 24, 2018 prior to the issuance of the show-cause notice dated July 18, 2018. The bias and/or arbitrariness of the State's action/conduct is apparent from the said course of action. Therefore, he prays for setting aside of the impugned order dated August 17, 2018.

Mr. Prasad, learned counsel appears on behalf of the State authorities.

He submits that the terms of the advertisement have not been complied with. He further submits that the Terms of Reference (TOR) issued by the competent authority or the District Recruitment Committee were to be applicable for a particular course. Such was stated in the advertisement.

Having considered the rival submissions of the parties and the materials placed on record, this Court finds no reason to differ with the reasoning/finding in the judgment and order passed by the Coordinate Bench dated July 10, 2019. This Court has already dismissed the review application wherein the learned counsel appearing on behalf of the State sought to reopen the matter on merits.

In the circumstances, the impugned order dated August 17, 2018 is set aside and/or quashed.

The writ petition being W.P.A. 17775 of 2018 is directed to be treated as a representation by the respondent no. 3/the Chief Medical Officer of Health and the representation is to be disposed of within four weeks from the date of this order. The petitioner is to be given a personal hearing and a reasoned order be communicated to the petitioner within two weeks of passing thereof. In considering the representation of the petitioner, the respondent no. 3 shall take into account the directions passed by the Coordinate Bench on July 10, 2019 and the observations by this Court made by the judgment and order dated December 21, 2022 and also the order passed today.

With the directions aforesaid, **CAN 1 of 2022** and the writ petition being **W.P.A. 17775 of 2018** are **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)

