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06-02-2023
debajyoti
(Ct. no.06)

MAT 1379 of 2022
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IA NO:CAN/1/2022

Kalyani Das
Vs.
The State of West Bengal & Ors.

Mrs. Pampa Dey Dhabal,
Mr. Nikhil Kumar Gupta
... For the Appellant.

Mr. Santanu Kumar Mitra,
Ms. Jyotsna Roy Mukherjee
... For the State.

By consent of the parties, the appeal and the application are taken up together for hearing.

This appeal is directed against a judgment and order dated July 20, 2022, whereby the appellant's writ petition was dismissed by the learned Single Judge.

It appears that the appellant/writ petitioner was successful in a selection process for appointment in the post of "ASHA" and her name was approved in July, 2015 by the Joint Secretary (FW) and Additional Mission Director (NHM). However, she could not be given appointment since she had been elected as Pradhan of the concerned Gram Panchayat.

After her tenure as Pradhan was over, she made a representation dated December 10, 2018, addressed to the BMOH, Dhanyakuria BPHC, North 24 Pgs., requesting that she be appointed in the post of "ASHA". With the grievance that such representation was not considered and instead, the respondent no.12 was given appointment, the appellant approached the learned Single Judge.

The learned Judge observed that the writ petitioner chose to serve out her tenure as Pradhan of the Gram Panchayat and hence, under the applicable law, could not be appointed in the post of “ASHA”. The learned Judge did not find any illegality on the part of the respondent authorities and, accordingly, dismissed the writ petition. Hence, this appeal.

Learned advocate for the appellant says that the post in question was kept vacant even though the appellant could not take up the post. As on the date when the appellant made the representation dated December 10, 2018, the post was still vacant. Hence, without deciding the appellant’s representation, the respondent no.12 should not have been appointed in that post.

It is true that the appellant’s name was approved by the Competent Authority for appointment in the post of “ASHA”. However, since the appellant chose to act as Pradhan, she could not be appointed, as the law prohibits the same. After having served out her tenure as Pradhan, she claims that she has right to be appointed in the concerned post. We cannot agree with this submission of the appellant. Nothing prevented her from declining the post of Pradhan and joining the post of “ASHA” at the relevant point of time.

However, the Competent Authority, to whom the appellant has made a representation, should decide the same one way or the other. Accordingly, we direct the Competent Authority to whom the appellant has made the representation to dispose of the same by a reasoned order in accordance with law within a period of six weeks from the date of communication of this order, after affording an opportunity of hearing to the

appellant as also the respondent no.12 or their authorized representatives. The decision so taken shall be communicated to the concerned parties within a week from the date of the decision.

We make it clear that the Competent Authority shall decide the representation without being influenced by any observation in this order. The observations made in this order are only for the purpose of deciding whether or not the appellant has any right in law which can be enforced by issuance of a writ of mandamus.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)