

28.11.2023
Sl. No. 49
Suman
Ct.No.24.

WPA 20177 of 2023

**Smt. Ferdousi Begum @ Fardousi Aleya
Begum**

Vs.

The State of West Bengal and Ors.

Ms. Pampa Dey (Dhabal)
..for the petitioner

Mr. N. C. Bihani
Ms. P. B. Bihani
..for the State

Mr. Amitava Chaudhuri
Mr. N. Roy
..for the private respondent.

Leave is granted to the learned advocate on record of the petitioner to correct the designation of the District Magistrate in the cause title appearing at page 3 of the writ petition. Proper party shall be the District Magistrate, Dakshin Dinajpur.

The petitioner is fighting for the post of 2nd ANM for the Nanaharpara Health Sub-Centre (HSC). The said post of 2nd ANM is also eyed by the private respondent. A writ petition was filed by the private respondent challenging the selection of the petitioner herein. The said writ petition being WP 5078 (W) of 2007 was taken up for consideration by a Co-ordinate

Bench of this Court and disposed of on 12th September, 2007 directing the respondent authority to consider the grievance of the petitioner.

In compliance of the aforesaid order, the District Magistrate, Dakshin Dinajpur, Balurghat, after hearing all the parties, passed an order on 20th March, 2008 mentioning that the question of cancelling the selection of the private respondent (the writ petitioner herein) as 2nd ANM does not arise.

Challenging the order passed by the District Magistrate a writ petition was filed by the private respondent herein being WP 18316 (W) of 2008. The said writ petition stood dismissed for default by a Co-ordinate Bench of this Court on 14th March, 2023.

The private respondent in the said writ petition i.e., the writ petitioner in the present writ petition appeared when the said writ petition was taken up for consideration.

On dismissal of the aforesaid writ petition the petitioner filed representation before the respondent authorities seeking implementation of the direction passed by the District Magistrate on 20th March, 2008. Due to non-consideration of the said writ petition, the instant writ petition has been filed.

The private respondent herein submits that an application for recalling the order of dismissal for default is pending consideration before the Hon'ble Court. It has been submitted that as the legality of the order passed by the District Magistrate has not been adjudicated by the Court on merit, accordingly, the prayer of the petitioner seeking implementation of the same ought not to be allowed.

Learned advocate representing the State respondents relies upon the instruction forwarded by the Programme Officer, National Health Mission and Deputy Secretary Health and Family Welfare Department wherein it has been mentioned that as per Order No. HFW/NRHM-21/2012/1631 dated 19th May, 2015, the Government of India has discontinued further approval of posts of contractual 2nd ANM and also sanction of expenditure of training for such personnel. Therefore, no proposal for approval towards training and subsequent engagement of 2nd contractual ANM shall be considered. Any panel, if prepared, shall be treated as invalid and shall stand cancelled with immediate effect.

Whether the order mentioned hereinabove dated 19th May, 2015 will be applicable in the facts and circumstances of the instant case is debatable.

As on date, there is no order setting aside or cancelling the reasoned order passed by the District Magistrate, Dakshin Dinajpur on 20th March, 2008.

The petitioner prays for implementation of the direction passed in the reasoned order dated 20th March, 2008 which is pending consideration before the District Magistrate and the Chief Medical Officer of Health.

In view of the above, the instant writ petition is disposed of by directing the District Magistrate, Dakshin Dinajpur to take a decision with regard to the prayer of the petitioner for implementation of the order dated 20th March, 2008 at the earliest, but positively within a period of four weeks from the date of communication of this order, provided, the said order is not set aside or cancelled by any Court of competent jurisdiction.

Learned advocate representing the petitioner is directed to forward the representation dated 11th April, 2023 to the District Magistrate, Dakshin Dinajpur for necessary action.

The writ petition is disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)