

Ct. 03.02
No. 2023
14

Item
No.2

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

WPA No. 22938 of 2017

Minoti Mondal @ Mina Mondal (Sarkar)

-Versus-

The State of West Bengal & Ors.

Mr. Debabrata Mondal

Ms. Sreetama Neogi

...For the Petitioner

Mr. Santanu Kumar Mitra

...For the State

Md. Sarwar Jahan

Ms. Mousumi Mitra

Mr. Asif Mehdi

...For the Respondent No.10

The writ petitioner Minoti Mondal @ Mina Mondal (Sarkar), in response to an advertisement dated 20.11.2006, issued by the Secretary, Jagaipur Mothbari, Sishu Shiksha Kendra, made application to the Secretary of the Shiksha Kendra seeking engagement as Sahayika in the Kendra. As spelt in the advertisement, the candidate should be woman having qualification of Madhyamik examination and should be above 35 years of age.

The selection committee on consideration of the application made by the petitioner selected her to be engaged as a Sahayika in Jagaipur Mothbari Sishu Shiksha Kendra. Thereafter, she was engaged as a Sahayika in the Kendra.

The respondent No.8 Serina Khatun Bibi, in the year 2008 filed a writ petition being WP No. 1177(W) of 2008 in this Court challenging the process of selection and engagement of the petitioner as Sahayika. By order dated 31.01.2008 a learned Single Judge disposed of the writ application directing the Block Development Officer, Nowda Block, District Murshidabad to make necessary enquiry giving opportunity of hearing to the petitioner,

the authority of the Kendra, and any other person or authority that may be affected by a reasoned order. In compliance of the direction of this Court the Block Development Officer recorded the decision to this effect that the procedure followed in the engagement of the petitioner as a Sahayika of Jagaipur Mothbari Sishu Shiksha Kendra was not in accordance with the guideline issued by the Department of Panchayats and Rural Development vide its Memo no. 3721 (19)- PN/O/I/3S-340/04 dated 8th November, 2004. Following such order, the Executive Officer, Nowda Panchayat Samity intimated the District Nodal Officer, SSK and MSK, Murshidabad that Siksha, Sanskriti, Tathya-O- Krira Sthayee Samity by convening a meeting took decision to terminate the engagement of the petitioner as Sahayika of the Kendra. Challenging the order of the Block Development Officer, Nowda Amtala, Murshidabad and the communication of the Executive Officer, Nowda Panchayat Samity the petitioner submits that the Block Development Officer did not consider that the petitioner made the application to be engaged as Sahayika in strict compliance with the advertisement issued by the Secretary of the Managing Committee of the Sishu Shiksha Kendra. The Block Development Officer did not give opportunity of hearing to the affected parties. Under such circumstances, the order of the Block Development Officer and the decision of the Siksha, Sanskriti, Tathya-O-Krira Sthayee Samity terminating the engagement of the petitioner is bad in law and the same is liable to be set aside.

Since no affidavit has been invited from the respondent authorities, the averments as made in the writ application shall be deemed to have been not admitted by them.

As pointed out by learned counsel appearing for the petitioner, the Secretary of the Managing Committee

of Jagaipur Mothbari Sishu Shiksha Kendra, by advertisement dated 20.11.2006 invited applications from women aged more than 35 years and passed Madhyamik examination for engagement of a Sahayika in Jagaipur Mothbari Sishu Shiksha Kendra. In her application dated 23.11.2006 the petitioner stated that on the date of the making the application she was aged more than 35 years and she passed B.A examination.

Admittedly, the petitioner was engaged as Sahayika in the aforesaid Kendra.

After the petitioner was engaged as Sahayika, the respondent No.8 Serina Khatun Bibi by preferring a writ petition being WP No. 1177 (W) of 2008 challenged the engagement of the petitioner on the ground that as the employment notice was not published she could not offer her candidature. It was alleged by her that the petitioner was engaged wrongfully in lieu of money. By order dated 31.01.2008 the writ petition filed by the respondent No.2 was disposed by a learned Single Bench with the following direction:

“ For these reasons, I dispose of the writ petition ordering as follows. After making necessary inquiry and giving opportunity of hearing to the petitioner, the authority of the Kendra, the eight respondent, and any other person or authority that may be affected by the decision, the block development officer shall give a reasoned decision regarding the allegations made by the petitioner in her complaint, a copy whereof shall be supplied to the authority at the time of communicating this order. The decision shall be given within eight weeks from the date of communication of this order to the authority, and it shall be communicated to all concerned immediately. There shall be no order for costs.” In compliance of this order the Block Development Officer, Nowda, Amtala,

Murshidabad conducted an inquiry and by order dated 18.03.2013 recorded the finding that the procedure followed in the recruitment of 4th Sahayika at Jagaipur Mothbari Para Sishu shiksha Kendra was not in accordance with the guideline issued by the Department of Panchayats and Rural Development vide its Memo no. 3721 (19)- PN/O/I/3S-340/04 dated 8th November, 2004 which was in vogue at that time. It is observed in the body of the order that the notice of recruitment was received by the Librarian, Raghunathpur and by the local SKUS. But the same was not received by the Pradhan of the Gram Panchayat concerned.

Undisputedly, the Government order dated 8th November, 2004 issued by the Department of Panchayats and Rural Development, Government of West Bengal prescribed the procedure for selection of a Sahayika in a Sishu Shiksha Kendra. As the Government's order enjoins, a managing committee intending to engage any Sahayika shall publish a notice atleast 15 days in advance, inviting applications along with required documents in the SSK premises and in the office of the concerned Gram Panchayat. The notice itself shall contain the date, time and venue of the interview to be taken by the managing committee. Further, the guidelines as enumerated in the Government order may be stated as under:

- a) Woman of atleast 40 years of age and having passed Madhyamik examination of the West Bengal Board of Secondary Education or its equivalent examination will be eligible for consideration.
- b) The candidates must be resident of the Gram Sansad in which the SSK is located or in its absence of the adjoining Gram Sansad.
- c) In the case of any qualified candidate is not available in the area as stipulated above, age may

be relaxed for qualified candidates.

- d) In case of eligible candidates are less than 40 years of age, oldest candidate having requisite educational qualification should be considered, with the prior approval of the concerned Panchayat Samity. However, no candidate of less than 18 years of age shall be considered.

As it appears from the application of the petitioner seeking engagement as Sahayika and from the findings recorded by the Block Development Officer, the petitioner is not a resident of the Gram Sangsad in which the Sishu Shiksha Kendra is located and the notice of advertisement was not received by the concerned Gram Panchayat. As stipulated in the Government order, in case the eligible candidates are less than 40 years of age, oldest candidate having requisite educational qualification should be considered with the prior approval of the concerned Gram Panchayat Samity. Admittedly, the petitioner was aged less than 40 years and no document is forthcoming before this Bench to show that to engage the petitioner as a Sahayika prior approval was obtained from Panchayat Samity. Therefore, I concur with the findings recorded by the Block Development Officer that the petitioner was engaged without publishing notice in the office of the concerned Gram Panchayat as required vide the aforesaid Memo dated 8th November, 2004. Additionally, I find that the engagement of the petitioner was made without obtaining approval of the concerned Gram Panchayat Samity condoning the lesser age of the petitioner.

Therefore, the termination of the engagement of the petitioner recommended by the Shiksha, Sanskriti, Tathya-O- Krira Sthayee Samity cannot be said to be bad in law.

After the Memorandum dated 23.04.2010 issued by the Department of Panchayats and Rural Development, Government of West Bengal came into force, engagement of a Sahayika shall now be made by the Sub-Divisional Officer. That being so, this Court cannot direct the managing committee of the aforesaid Sishu Shiksha Kendra and the concerned Block Development Officer as well as the Executive Officer of the concerned Panchayat Samity to initiate the selection process afresh.

In view of the above, the writ petition merits dismissal.

Accordingly, the writ petition is dismissed on contest.

No order as to costs.

Parties may act upon Server Copy of this order duly downloaded from the Official website of this Court.

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

(Rabindranath Samanta,J.)

