

01.09.2023
Item No.09
Court No.6.
S. De

**F.M.A. 4569 of 2014
with
I.A. No. CAN/1/2014
(Old No. CAN/7621/2014)**

**Mussamat Sufia Banu (Mina).
Vs.
The State of West Bengal & Ors.**

Mr. Golam Mostafa,
Mr. Subir Sabud,
Mr. T.S. Samanta,
...for the appellant.

This is an old appeal of 2014. It has been listed at our instance. Nobody appears for the respondents. However, in view of the order that we propose to pass, we are not inclined to defer hearing of this appeal.

The appellant had approached the learned Single Judge by filing WP 11458(W) of 2011 with the grievance that although she was the second empanelled candidate for the post of Auxiliary Nurse & Midwife and the first empanelled candidate had not joined the post in question, her name was wrongfully not recommended.

The learned Single Judge dismissed the writ petition by the impugned order dated June 4, 2014 with the following observations :-

“Having heard the learned advocates for the parties and upon perusing the instant writ petition as well as the affidavit-in-opposition filed on behalf of the State respondent, this Court does not find any merit in the writ petition, since the petitioner was never empanelled for the post-in-question, as per documents available on record. Moreover, the writ petition appears to have been filed on the basis of an affidavit verified and affirmed by one Md. Abdul Alim, who claims to be the husband of the petitioner, even without annexing any power of attorney or authority which would have reflected that he was duly empowered to verify and affirm the writ petition on behalf of the writ petitioner.

That apart and in any event, the post-in-question was purely a contractual one and non-empanelment of the writ petitioner cannot be a subject-matter of judicial review under Article 226 of the Constitution of India.”

Being aggrieved, the petitioner came up by way of this appeal.

We find no such infirmity in the order under appeal as would warrant our interference. Admittedly, the writ petition was not supported by an affidavit verified or affirmed by the writ

petitioner. Such affidavit was affirmed by one Md. Abdul Alim who claimed to be the writ petitioner's husband. No power of attorney or other authority was disclosed which would have reflected that Abdul Alim was empowered to verify and affirm the affidavit on behalf of the writ petitioner.

Accordingly, we do not interfere with the order under appeal.

However, Mr. Mostafa, learned advocate for the appellant/writ petitioner hands up a copy of a Memo dated June 18, 2015 issued by the Chief Medical Officer of Health, Murshidabad, addressed to the Additional Mission Director, National Health Mission, Government of West Bengal. Let the same be kept with the records. From that Memo it appears that subsequent to the dismissal of the writ petition, the name of the appellant/writ petitioner has been recommended to the competent authority in the State Administration. We dispose of this appeal and the connected application by observing that the competent authority in the Government shall carry forward the issue of appointment/engagement of the appellant in the

concerned post, in accordance with law, to its logical conclusion.

FMA 4569 of 2014 is disposed of along with the application being I.A. No. CAN/1/2014 (Old No. CAN/7621/2014).

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)