

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 21946 of 2014
With
I.A. No. 2 of 2017 (Old CAN 11726 of 2017)
Pramila Bera (Maiti)
VS.
The State of West Bengal & ors.**

For the petitioner : Mr. Debabrata Roy,
Mr. Manojit Pal,
Mr. Sarbani Mukhopadhyay
Mr. Soumik Mondal advocates

For the State : Mr. Sk. Md. Galib,
Mr. K.M. Hossain advocates

For the Respondents 7 to 13 : Mr. Anil Kr. Chattopadhyay
Mr. Dinesh Pani Advocates

Reserved on : 10.05.2023

Judgment on : 05.10.2023

Hiranmay Bhattacharyya, J.:

1. The writ petitioner has prayed for a direction upon the respondent authority to appoint her in the post of Anganwari helper under I.C.D.S. project, Mahishadal-1 (Nandakumar).
2. The petitioner applied for the post of Anganwari helper/sahayika of I.C.D.S. project, Mahishadal-1 (Nandakumar). Petitioner appeared in the written examination. She participated in the viva voce which was held on 16.12.2009. The petitioner claims that her name appeared in the panel dated 02.07.2010 at serial no. 11. It has been alleged in the writ petition that the respondent authority appointed one Sibani Mal (Barman) whose name was appearing under Serial No. 17 in the panel

instead of appointing the petitioner whose name was well above in the said panel at Serial No. 11. Alleging that the respondent authorities have illegally appointed the candidate who was placed in the panel below than that of the petitioner, the instant writ petition has been filed.

3. Mr. Roy learned advocate appearing for the petitioner submitted that the respondent authorities have appointed the candidate whose name was appearing under Serial no. 17 in the panel by overlooking the candidature of the petitioner who was placed in the panel under Serial No. 11. Mr. Roy submitted that the petitioner secured more marks than that of Sibani Mal (Barman) who was appointed in the post of Anganwari helper by the respondent authority. Mr. Roy further submitted that in a petition for Special Leave to Appeal (Civil) nos. 20036/2010 the Hon'ble Supreme Court passed an order on 06.08.2010 thereby staying the operative directions of the order of the Hon'ble High Court dated 17.05.2010 in MAT 289 of 2010. By the said order the State of West Bengal was directed not to make any fresh appointment from the existing panel. Mr. Roy submitted that the appointment of the Anganwari helpers have been made by the respondent authorities in violation of the order passed by the Hon'ble Supreme Court and therefore, such appointment are liable to be set aside and cancelled and the authorities are to be directed to initiate the selection process afresh.
4. Mr. Galib, learned advocate appearing for the State of West Bengal seriously disputed the submissions of Mr. Roy. He submitted that one Anima Samanta (Mondal) who was a candidate belonging to General category was placed under Serial no. 10 in the said panel but she was not engaged as she did not come within the zone of consideration. He further submitted that one Sibani Mal (Barman) who was placed under Serial no. 17 of the panel belonged to the scheduled caste

community and she was appointed against a scheduled caste vacancy. Mr. Galib submitted that after the Hon'ble Supreme Court passed the order dated 06.08.2010, the Department of Women and Child Development and Social Welfare issued a Memorandum dated 17.08.2010 directing that no fresh appointments shall be made for filling up of vacancies to the post of Anganwari workers/ Anganwari helpers from the existing panels with effect from 06.08.2010. He submitted that no appointments have been made in violation of the order passed by the Hon'ble Supreme Court.

5. Mr. Chattopadhyay learned advocate appeared for the added respondent nos. 7-13 and submitted that the added respondents duly participated in the selection process for the post of Anganwari helper under I.C.D.S. project under Nandakumar Block in the district of Purba Medinipur. The added respondents became successful in the selection process and they were appointed as Anganwari helper in different sub centre as Mahishadal-1 Nandakumar with effect from 09.07.2010. He further submitted that the added respondents are enjoying monthly remuneration with effect from July, 2010 till date.
6. Heard the learned advocates for the parties are perused the materials placed.
7. Record reveals that the selection process was initiated by issuance of a memo dated 24.01.2009 for filling up the vacant posts of Anganwari helpers under Mahishadal-1 (Nandakumar) I.C.D.S. including nine posts under GP No. 11. Out of the aforesaid nine posts two posts were reserved for Scheduled caste candidate, one post was reserved for Scheduled Tribe candidate and the remaining six posts were for General category candidates. From the panel of Anganwari helpers of I.C.D.S. project Mahishadal -1 (Nandakumar) which has been annexed in the writ petition it appears that the writ petitioner, who belongs to General category, secured 18.44 marks and was placed

under Serial no. 11 in the said panel. One Sandhyarani Bhunia (Dolai) who belongs to Scheduled Caste community secured 20.89 marks and was placed under Serial No. 2 in the panel prepared on the basis of merit. One Snehalata (Dolai) Bhunia who belongs to Scheduled Caste community secured 19.22 marks and was placed under Serial no. 7 in the panel.

8. As per the statutory provisions prevailing in the State of West Bengal for reservation of posts, an unreserved vacancy can be filled up by a meritorious reserved category candidate and the vacancy so filled up by such reserved category candidate shall not be adjusted against the reserved category vacancies.
9. It appears from the record that out of six unreserved vacancies one such vacancy was filled up by a candidate belonging to Scheduled Caste community namely Sandhyarani Bhunia (Dolai) as she secured second position on the basis of merit in the panel. Therefore, the authorities were justified in appointing Sandhyarani Bhunia (Dolai) against an unreserved vacancy and by not adjusting such vacancy with that reserved for Scheduled Caste candidates. The two posts reserved for Scheduled Caste candidates were rightly filled up one by Snehalata Dalui (Bhunias) who was placed under Serial No. 7 and Sibani Mal (Barman) who was placed under Serial No. 17. The writ petitioner belongs to General category and she was placed under Serial NO. 11. The petitioner could not come within the zone of consideration for appointment as an Anganwari helper and for such reason she was not appointed. It is also not the case of the petitioner that any candidate belonging to General category and was placed in the panel at a rank below the petitioner was appointed.
10. Now question arises whether the appointments to the post of Anganwari helper was made in violation of the order of the Hon'ble Supreme Court dated 06.08.2010 passed in the petition for Special

Leave to Appeal (Civil no. 20036 of 2010). From the documents annexed to the affidavit in opposition filed by the State and the added respondent, it appears with that appointment letters were dated 02.07.2010. The added respondents in their affidavit filed pursuant to an order passed on 22.02.2003 have stated that they have been working since July 2010 and receiving monthly honorarium with effect from July 2010 at the prescribed rates. The writ petitioners have not produced any materials before this Court to show that appointments were made in violation of the order dated 06.08.2010 passed by the Hon'ble Supreme Court in the petition for Special Leave to Appeal (Civil) No. 20036 of 2010.

11. The writ petitioner has failed to demonstrate that the respondent authorities have acted de hors the statutory provisions prevailing in the State of West Bengal with regard to reservation policy or that the authorities have acted illegally and/or in any arbitrary manner by appointing Sibani Mal (Barman) a Scheduled Caste candidate.
12. The writ petition is thus devoid of any merit and the same is liable to be dismissed. Accordingly the writ petition stands dismissed without, however, any order as to costs. The application also stands disposed of.
13. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)