

02.03.2023
Court No. 19
Item no.04
CP

WPA No. 24223 of 2022

Aziza Khatun @ Ajija Bibi @ Aahija Bibi
Vs.
The State of West Bengal & Ors.

Md. Salahuddin
Md. A. Zaman

...for the petitioner.

Mr. Raghunath Chakraborty
Mr. M. Ahmed

...for the respondent no. 9.

Mr. Rezaul Hossain

...for the State.

Perused the report in the form of an affidavit filed by the respondent no. 5. Upon enquiry being made, it was found that the pradhan did not issue any birth certificate as had been submitted by the learned advocate for the petitioner on the earlier occasion.

Today, the learned advocate for the petitioner submits that the birth certificate was issued by the Department of Health and Family Welfare on April 11, 1984 and the date of birth of the respondent no. 9 has been recorded as March 5, 1984. Inadvertently, the earlier submission had been made.

The authority after making the enquiry as per the direction of this court, has found that as per the primary school as well as secondary school records

the date of birth of the respondent no. 9 was March 5, 1979.

The writ petition has been filed, inter alia, on the ground that the respondent no. 9 was not qualified to be selected as an Asha as she had already crossed the age bar at the time of advertisement.

There are controversies with regard to the date of birth of the respondent no. 9 and different dates of birth have been mentioned in the different documents of identification, namely, the Voter's Card, Aadhar Card and membership of the self-help group etc.

Unfortunately, the authenticity of the birth certificate issued by the Department of Health and Family Welfare could not be ascertained by the Sub-Divisional Officer as the register of 1984 was missing.

This court had directed the aforementioned enquiry as disputed questions of fact could not have been adjudicated by the court. The allegation of the petitioner, prima facie, appears to be correct as per the enquiry held.

The authority is yet to take a decision with regard to the appointment of the respondent no. 9 and the enquiry has just been completed.

However, the court cannot overlook the fact that the documents of the respondent no. 9 are misleading. Apart from the alleged birth certificate issued by the Department of Health and Family Welfare, none of the documents mentioned March 5, 1984 as the date of birth.

At this juncture, this court is of the view that no useful purpose would be served to keep the writ petition pending. The authority, namely the Sub-Divisional Officer, Rampurhat is directed to treat the writ petition as a representation and the enquiry report as a preliminary enquiry and dispose of the same in accordance with law by taking a decision with regard to the eligibility of the respondent no. 9 to be appointed as an Asha.

The only issue that is germane for detection would be whether at the time of advertisement the respondent no. 9 crossed the age bar.

As per the preliminary report which has been filed in court today, it appears that the respondent no. 9 was 40 years 9 months and 26 days old on the date of the advertisement. Whereas, the eligibility criteria prescribed that the candidate must be within 30 to 40 years.

Although Mr. Chakraborty, learned advocate for the respondent no. 9, shown that 40+ should be counted within 40 years. The court does not

entertain such plea as the court is of the view that the entire issue should now be decided by the Ex-Officio Member Secretary of the Asha Selection Committee.

In the prima facie opinion of the court, the decision cited by the respondent no. 9 reported in (2009) 7 SCC 283 [CIDCO vs. Vasudha Gorakhnath Mandevlekar] shall not be applicable in this case as the correctness of the birth certificate could not be verified due to loss of the register of 1984. The presumption of correctness would only arise if the issuing authority had certified that the said certificate was genuine.

Claim of the respondent no. 9 is not convincing to the court in view of the above facts. An educated person who claims an employment under the state, should have ensured that the correct date of birth was recorded in the official documents. The matter is suspicious and hence, a further enquiry and a final decision by the authority is required.

The date of birth of the respondent no. 9 in the primary school as well as secondary school register was March 5, 1979. In the Voter's Card, the age of the respondent no. 9 was mentioned as 44 years as on January 1, 2020. In the membership of the self-help group, the date of birth of the respondent no. 9 was mentioned as June 12, 1974.

Over age is a disqualification. Any appointment given to a person who was ineligible at the time of the initiation of the recruitment process, cannot be allowed to be continued. Such ineligibility strikes at the very root and the appointment must be set aside in accordance with law.

Steps are to be taken on the basis of the final decision to be arrived at after hearing the parties or their authorized legal representatives. A reasoned order shall be passed and communicated to all.

If the appointment of the respondent no. 9 is ultimately set aside, then consequences will follow.

The observations made hereinabove are for the disposal of the writ petition and the authority shall continue with an independent enquiry and decide whether the respondent no. 9 should be continued in the post or not.

The respondent no. 9 is at liberty to pray before the authority for a medical ossification test by constitution of a medical board, in order to substantiate her claim. None of the documents which have been submitted by her, prove that she was within 40 years at the time of making the application apart from the birth certificate.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis
of the server copy of this order

(Shampa Sarkar, J.)