

73.
24.7.2023
S.D.

W.P.A. 28308 of 2022

**Tarifa Bibi
Vs.
State of West Bengal & Ors.**

Mr. Robiul Islam
Mr. Raju Mondal

.....For the petitioner

Mr. Ayan Kumar Boral
Mr. Anisur Rahaman

..For the Respondent No. 7

Mr. Rezaul Hossain

...For the State

The petitioner has applied for engagement as an Accredited Social Health Activist (ASHA) Karmee in Padamanavpur Madrasah School Para (house of Abasuddin Sk. to house of Abdul Kalam Sk.), P.S. Hariharpara, District - Murshidabad pursuant to a Notification dated January 3, 2022. The petitioner's grievance is that despite the fact that the petitioner resides within the *service area* stipulated in the advertisement, the private respondent no. 7 was engaged even though she does not reside within the *service area*, stipulated in the said advertisement.

Mr. Islam, learned counsel appearing on behalf of the petitioner submits that engagement of the private respondent no. 7 has been done by way of fraud and, therefore, the entire panel should be cancelled.

Mr. Hossain, learned counsel appearing on behalf of the State respondents hands over an Additional Report on Affidavit. From the said Additional Report, it appears that 37 candidates including the petitioner applied for engagement as ASHA Karmees. Out of the said 37 applications, 7 applications were found to be of *eligible* candidates. 7 candidates were interviewed on May 26, 2022.

Panel of three best candidates was prepared. The writ petitioner stood fifth in the said interview. Hence, was not a part of the selected panel.

The process was completed as per the Government Order dated June 27, 2012. Based on complaint of one Sanjita Bibi on November 7, 2022, an enquiry was conducted. Thereafter, the Sub-Divisional Officer vide Memo dated March 27, 2023 issued to the Block Medical Officer of Health (BMOH) intimated that the present, CHA (Community Health Assistant), one Sahina Khatun who was entrusted for the field level enquiry intentionally submitted fake and false report due to nepotism. She misguided the authorities and

suppressed materials facts. Therefore, the BMOH was directed to lodge an FIR against the said Sahina Khatun, CHA.. As directed by the SDO, the BMOH lodged an FIR against the said Sahina Khatun on March 29, 2023. The SDO wrote to the Inspector-in-Charge, Hariharpara Police Station on May 12, 2023 to enquire about the Action Taken Report by May 15, 2023. It appears from the Action Taken Report forwarded by the S.I. of Police that the said Sahina Khatun did not comply with the directions given by the S.I. and did not turn up at the Police Station. However, the investigation against her is proceeding.

Mr. Boral, learned counsel appearing for the private respondent no. 7 submits that she was a resident of the '*service area*' advertised and there was no infirmity in her engagement.

Considering the rival submissions of the parties and the materials placed on record, it appears to this Court that the CHA is not cooperating in the investigation and is trying to avoid the same. Hence, the private respondent no. 7's engagement shall be kept in abeyance till the completion of the investigation against the CHA, her in accordance with law. No further payment shall be made to the private respondent no. 7 till the completion of such investigation.

This Court does not find much substance in the argument that the entire panel needs to be cancelled since the private respondent no. 7 appears to have been fraudulently appointed. Such a prayer is also not made in the writ petition. The petitioner has prayed for her appointment in place and stead of the private respondent no. 7. Upon coming to learn that the petitioner is the fifth candidate out of the seven candidates who were interviewed now an alternative prayer is sought to be made on behalf of the petitioner.

Such prayer is considered and rejected.

The State respondents are permitted to take necessary steps, for the purpose of engagement of ASHA Karmee, in accordance with law, during the pendency of such investigation against the CHA, on temporary basis. Such engagement shall be subject to the final result of the criminal investigation.

With the directions aforesaid, **W.P.A. 28308 of 2022** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

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

(Lapita Banerji, J.)