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19.04.2024
Ct. No. 11
rrc

WPA 8839 of 2008
(Asima Halder Vs. The State
of West Bengal & Ors.)

Mr. Indranath Mitra
Mr. Neil Basu
Mr. Sankha Biswas
.... For the petitioner

Mr. Pantu Deb Roy
Mr. Shamim ul Bari
.... For the State

This present writ petition has been preferred to question the justifiability of the order of the District Magistrate, Nadia on 14th February, 2008 issued in deference to the order dated 12th October, 2007 handed down in a writ petition being WP 14719 (W) of 2007.

The facts need to be narrated for effective adjudication of this writ petition are that a selection process was undertaken in 2006 to fill up certain numbers of the post of Auxiliary Nurse and Midwife (in short, ANM) for various sub-health centers under different blocks of Nadia District. As such, 33(thirty-three) numbers of vacancies were notified for the sub-health centers of Chapra block.

Further to such initiative, a notification was published inviting applications for the eligible and intending candidates for the post. One of the essential criteria for that post was that on or before the date of submission of the application for the post, the candidate must have to be a legally married wife or a widow or a divorcee. The petitioner claiming herself to

be eligible for the post offered her candidature for the same. However, after completion of the selection process, a panel was prepared placing the private respondent at the top of the panel. The petitioner by making an application dated 2nd May, 2007 to the District Magistrate, Nadia ventilated her grievances on the score that though the petitioner secured higher marks than any of the participants of the selection process, yet she has not been placed in the first position in the panel for reason best known to competent authority.

Despite receipt of such application, the same was left unattended which prompted the petitioner to approach this Court with a writ petition being WP 14719 (W) of 2007, which was disposed of directing the District Magistrate, Nadia to look into the grievances of the petitioner after affording opportunity of hearing to the petitioner and the private respondent and pass a reasoned order strictly in accordance with law within a specified time frame. In obedience to that order, the District Magistrate, Nadia by an order dated 14th February, 2008 negated the petitioner's claim. Aggrieved by that order and seeking an order upon the respondents to engage her in the post, this writ petition has been instituted.

Mr. Mitra, learned advocate appearing for the petitioner seeks to argue that to wrap up the misdeeds done by the selection committee the District Magistrate, Nadia in his order had tried to give a new twist in the dispute by introducing a new question whether or not the petitioner had submitted application for the post.

Mr. Mitra strenuously contends that though the private respondent was undoubtedly ineligible for the post, yet she has been favoured with the engagement in the post. It is argued by him that to cover up the illegality perpetrated in the selection process, the respondents have taken recourse to the plea of non-availability of the records and/or documents relating to the selection process.

Inviting my attention to the observation of the District Magistrate, Nadia it is contended by him that from the certificate of marriage of the private respondent it is reflected that the date of notice was 6.11.2006. According to him, one month's time has been prescribed as waiting period for registration of marriage. As such, it can easily be comprehended that the marriage of the private respondent took place after the date of submission of the application for the post. He asserts that private respondent was not a married lady before presentation of her application for the post.

Mr. Deb Roy raises vehement objection to such contention of Mr. Mitra. He claims that a ceremony of marriage had been performed and then, the private respondent took step to complete the procedure of registration.

Despite receipt of notices on repetitive occasions, the private respondent chooses not to appear to defend the writ petition.

Therefore, the disputes involved in the writ petition primarily hinges on two questions of fact, namely, i) whether the petitioner applied for the post and ii) whether the private

respondent tied her knot before presentation of her application for the post.

These questions appeared to be resolved upon appreciation of the documentary evidence. As such, the Court asked both the District Magistrate, Nadia and the Block Development Officer concerned to produce the record but it is quite astonishing to note that both of them conjointly voiced that the records are not available and only a photocopy of a document styled as a panel prepared for the post was placed showing that the private respondent, Mithu Ghosh acquired 1st position followed by one Rukia Khatun (Bibi) and one Sonarekha Khatun (Bibi) which secured the second and third position of the panel respectively.

It is unfortunate to comment that both the B.D.O. concerned and the District Magistrate were aware of the fact that this Court being a Court of record and having power to issue a writ of Certiorari is seized of the matter, yet the records have not been preserved and/or maintained.

Admittedly, there are no receiving endorsements on the documents as produced by the writ petitioner claiming to be a copy of the application. Mr. Mitra asserts that no receipt copy and/or memo were issued to any of the candidates.

The Court is forced to take cognizance of the fact that the State or any of its functionaries did not raise such issue that the petitioner did not apply for the post at the first round of litigation. It is quite difficult to digest that one common lady from a remote village of District-Nadia without applying for the post made a representation to the highest executive of the District seeking redressal of her grievance which has its

origin in the selection process and even, that lady approached the highest temple of justice of the State with a writ petition praying for a writ of mandamus commanding the respondents to engage in the post for which she even did not offer her candidature.

The order under challenge in this writ petition indicates that the B.D.O. concerned did not make it clear whether Mithu Ghosh had knotted HER nuptial tie before submission of her application. It is surprising enough that the District Magistrate based on assumption in coming to the conclusion that Mithu Ghosh had got married before the last date of submission of the application for the post.

From the order itself it transpires that the date of notice mentioned in the certificate of marriage was 6th November, 2006 whereas the last date for submission of that application was 23rd October, 2006.

In the Special Marriage Act, 1954, provisions of two types of notice relating to solemnizing of marriage have been incorporated. One is notice of intended marriage which the parties shall give and other is a notice of registration of marriage celebrated in other forms. The District Magistrate based on an affidavit affirmed either by the private respondent or her husband to find an answer to this question.

The incidence of missing of record, non-appearance of the private respondent despite receipt of notice, non-furnishing of report by the B.D.O indicating whether Mithu Ghosh was married or not, introduction of new question of fact in the order of District Magistrate and taking recourse to

an assumption by the District Magistrate to opine that Mithu Ghosh got married before submission of her application for the post are sufficient enough to draw adverse inference but this Court is of the view that it would not be apposite to abruptly jump to any conclusion taking any adverse inference against any of the party to this proceedings.

Better it is to relegate the issue to the authority or authorities who directly or indirectly contributed to the dispute to find out a suitable resolution of the issue.

In such conspectus, the District Magistrate, Nadia being the head of the administration of the District is directed to revisit the issues and come out with specific answers to the aforesaid questions of facts formulated once again for his convenience hereinbelow:

- i) *whether the petitioner made application for the post or not;*
- ii) *whether the first empanelled candidate, namely, Mithu Ghosh, had tied her nuptial knot before the date of submission of the application for the post or not; and*
- iii) *whether the petitioner for securing highest mark deserved to be appointed in the post or not.*

The District Magistrate shall decide the issues after affording an opportunity of hearing to the petitioner and to the private respondent. It is made clear that the District Magistrate, Nadia shall make decision independently without being influenced by any of the observations made in the

order dated 14th February, 2008. Such decision must be communicated to the petitioner.

The entire exercise shall be completed within two months from the date of receipt of the copy of this writ petition.

With these observations and order the writ petition being **WPA 8839 of 2008** is disposed of.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.)