

17.01.2024
Item No.07
Court No.11
Avijit Mitra

MAT 938 of 2023
with
IA No. CAN 1 of 2023

Jhuma Das
- Versus -
State of West Bengal & ors.

Mr. Kallol Kumar Basu,
Md. Jannat Ul Firdous
...for the appellants
Mr. Suman Dey,
Mr. Manoj Kumar Mondal
...for the State respondents

The sustainability of the order dated 4th May, 2023, passed by the learned Single Judge in WPA 1492 of 2023 has been called in question in this appeal.

Shorn of unnecessary details, the facts leading to this appeal are that in 2018, a selection process was undertaken by the concerned respondents to fill up the post of Accredited Social Health Activist (in short, ASHA) for various villages of 10(Ten) blocks under Basirhat Sub-Division and accordingly, the vacancies were notified by the Sub-Divisional Officer & Member Secretary of Asha Selection Committee, Basirhat Sub-Division *vide*. his memo no. 349/Dev dated 13th July, 2018 inviting applications from eligible and intending candidates for the posts.

From the notification, it is explicit that one of the essential eligibility criteria for the post was that the

candidate who would offer her candidature for the post must have to be a resident of the particular village/service area. The appellant by making an application offered her candidature for the post but after selection process is over, she found that the private respondent has been appointed in the post for Tantra Sub Centre though the private respondent after knotting her marital tie starting living at her matrimonial house which does not fall within the area where Tantra Sub Centre is located. Hence, challenging such appointment the appellant knocked on the door of this Court by preferring the writ petition being W.P.A.1492 of 2022 and upon contested hearing, the learned Single Bench dismissed the writ petition by passing an order dated 04.05.2023 which has been impugned in this intra-court appeal.

Mr. Basu learned advocate appearing in support of the appeal contends that though the private respondent after her marriage started living in her matrimonial house which does not fall within the territorial limit of the village and/or area in which Tantra Sub Centre is located yet she has been appointed in the post. He further contends that the private respondent did not change her residential address contained in her old EPIC card and ration card rather by using those EPIC card and ration card she applied for the post. Ignoring such fact, the Selection Committee selected the private respondent and appointed her in the post. According to Mr. Basu, such appointment

is palpably illegal but the learned Single Bench has glossed over this issue and returned an erroneous finding.

While opposing the appeal, Mr. Dey, learned advocate for the State respondents contends that vacancy was declared for the post of Mominpur (South) Hatkhola village. Two candidates, namely, Rima Das and Chandana Das applied for the post from that village. The appellant happened to be the resident of Neora Dighirpar village and hence, on scrutiny, the application of the appellant was rejected. A panel was prepared for the post and the private respondent being the 1st empanelled candidate was appointed in the post. He submits that there was no irregularity and/or illegality in the selection process. In his view, considering all these aspects, the learned Single Bench has rightly dismissed the writ petition.

Heard the learned advocates appearing for the respective parties and perused the materials placed before us.

From the vacancy-statement and other related documents, as produced by Mr. Dey, it transpires that for Tantra Sub Centre applications were invited from the eligible and intended candidates from the village, namely, Mominpur (South) Hatkhola. As per the revised guideline for selection of ASHA incorporated in the memo. dated 27th June, 2012 issued by the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal, candidate should be a resident of the same

village for which she would be selected. The appellant happened to be resident of Neora Dighipar village for which no vacancy was notified. Consequently, the appellant's application for the post was rejected. As per the instruction contained in the notification, the selection committee was required to decide the residential status of a candidate taking into account the information contained in the EPIC card and the ration card. The Prodhan of the Rajendrapur Gram Panchayat in his certificate has declared that the private respondent happened to be resident of village Mominpur and the selection committee acted on basis of such documents. Since the private respondent, who happens to be the resident of the village for which vacancy was notified, emerged to be the 1st empanelled candidate, she was appointed in the post and her appointment has been duly approved by the competent authority. In the conspectus, the learned Single Judge has rightly refused to exercise discretion in favour of the appellant.

Accordingly, the present appeal and the connected application are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)

