

11 07.05.2024
rkd Ct.15

W.P.A. 12194 of 2019

Pankoj Kumar Haldar

-vs-

The State of West Bengal & Ors.

Mr. Gobindar Chandra Baidya,
Mr. Gobinda Baidya

....for the petitioner.

Mr. Saikat Banerjee,
Mr. Juin Dutta Chakraborty

....for the respondent no.11.

In the writ petition the order of Block Development Officer, Basanti South 24 Parganas issued under memo dated 4th February, 2019 is under challenge.

The learned advocate representing the petitioner submits that the matter relates to engagement of AYUSH Doctor in gram panchayats. According to the petitioner, the guidelines for engagement of AYUSH Doctor is contained in memo dated 22nd February, 2010 based on which recruitment notification was made on 29th March, 2010.

Petitioner participated in the selection process for being engaged as part time AYUSH Doctor and ranked 6th in block-wise preparation of merit list whereas respondent no.11 ranked 7th. It has been contended on behalf of the petitioner since he ranked higher in the merit list than the

respondent no.11 he should have been selected instead of respondent no.11 for being engaged as part time AYUSH Doctor.

Since the petitioner was not selected for being engaged as part time AYUSH Doctor triggered the first writ petition being WPA 26774 of 2015 and the same was disposed of by a coordinate Bench vide order dated 22nd July, 2016 whereby the concerned Block Development Officer, Basanti Block was directed to take a decision on the representation of the petitioner.

Accordingly the decision has been taken by the concerned Block Development Officer vide memo dated 4th February, 2019 which has been questioned by presenting this writ petition chiefly on the ground that the petitioner ranked higher than the respondent no.11 which made him entitled to be considered for being engaged as part time AYUSH Doctor. In the writ petition prayer has been made for issuance of mandamus directing cancellation of selection of the respondent no.11.

No one is representing the State respondents as well as Panchayat Authorities.

However, respondent no.11 is represented by learned advocate who opposes the prayer of the petitioner and has made submissions to defend the

decision taken by the concerned Block Development Officer as emanates from memo dated 4th February, 2019.

In addition thereto, it has also been submitted that the petitioner has participated in the selection process which was initiated pursuant to the recruitment notification dated 29th March, 2010 knowing fully well that guidelines for engagement which was issued by the Chief Executive Officer, WBSRDA dated 22nd February, 2010 would be followed. Therefore, according to the respondent no.11 after participating in the selection process petitioner is estopped from challenging the selection method adopted by the Recruitment Authority.

Having considered the submissions made on behalf of the parties, this Court finds that in the guidelines for engagement of AYUSH Doctor in the Gram Panchayat level Dispensaries under NRHM dated 22nd February, 2010, it has been specifically provided under Clause-5 that application of the gram panchayat area will be considered first and if any candidate is available with the requisite qualification the said candidate will be selected.

It is also provided in Clause-6 of the said guidelines that if no candidate available from the

gram panchayat then the candidates from other Block area shall be considered and selection will be made observing procedure as stated in the preceding paragraph.

On perusal of the decision of the concerned Block Development Officer as contained in memo dated 4th February, 2019 it appears that the aforesaid relevant provisions as contained in the guidelines were followed while taking decision in order to appraise the eligibility of the petitioner to be selected for the post of part time AYUSH Doctor.

It is found that petitioner ranked 6th which is higher than the rank which was allotted to the respondent no.11 i.e. 7th. It is also found that the petitioner was not the resident of the concerned gram panchayat wherein respondent no.11 was selected for being engaged as part time AYUSH Doctor on the strength of Clauses 5 & 6 as contained in the relevant guidelines dated 22nd February, 2010. The respondent no.11 got selected in spite of the fact that in the block ranking name of the respondent no.11 featured after the petitioner.

Petitioner while submitting his candidature in terms of the recruitment notification dated 29th March, 2010 is presumed to have been aware of the

guidelines dated 22nd February, 2010 which was scheduled to be pressed into service for preparation of panel *vis-a-vis* selection of candidate for engagement of part time AYUSH Doctor.

After participating in the said selection process petitioner cannot turn around and challenge the selection process based on fact that the petitioner ranked higher than the respondent no.11 in the block ranking in the context that the respondent no.11 was selected in the gram panchayat where he was treated as the candidate of the said gram panchayat whereas petitioner was not the resident of that gram panchayat but he was the resident of block where the gram panchayat situates.

Before parting with it needs to be taken into consideration that the present age of the petitioner is approximately 65 years. In the event the case of the petitioner made out in the present writ petition is considered no relief can be extended in his favour by directing the concerned Recruitment Authority to engage him as part time AYUSH Doctor.

In above conspectus this Court does not find merit in this writ petition and the same stands disposed of.

However, there shall 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 on the usual undertakings.

(Saugata Bhattacharyya, J.)