

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***F.M.A. 954 of 2019
(CAN 3 of 2020)
(CAN 4 of 2020)***

***Soma Rani Bhattacharyya (Chatterjee)
-Vs-
The State of West Bengal &Ors.***

W I T H

M.A.T. 1328 of 2019

***Pranata Guchhait
-Vs-
The State of West Bengal &Ors.***

For the Appellant [in both appeals]	:	Mr. Kamalesh Bhattacharya, Adv. Mr. Saibal Kumar Acharyya, Adv. Mr. Pradip Paul, Adv. Ms. Renesa Dey, Adv.
For the State [in MAT 1328/2019]	:	Mr. Swapan Kumar Datta, ld. AGP. Mr. Tapas Kumar Dey, Adv.
For the State [in FMA 954/2019]	:	Mr. Supriyo Chattopadhyay, Adv. Mrs. Tapati Samanta, Adv.
For respondent no.8 [in MAT 1328/2019]	:	Mr. Atanu Chakraborty, Adv. Mr. Kinkar Ch. Basu, Adv.
Heard on	:	16.07.2024 & 23.07.2024
Judgment on	:	23.07.2024

JoymalyaBagchi, J. :-

1. Both the appeals deal with similar questions of fact and law. Accordingly, they are disposed of by a common judgment and order.

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2. Appellant had applied for the post of *Anganwadi* worker-cum-helper in Kharagpur-II ICDS Project. She qualified in the written test and was placed 60th in the merit list. But she was not called for the personality test. Upon query she was informed that the process of appointment of *Anganwadi* worker is not complete. Subsequently she came to know various candidates viz. Atasi Roy, Krishna Sur (Chakraborty), Piyali Maity, Banalata Manna and Sumitra Raj Bose who were ineligible for appointment have been illegally selected for appointment.

3. Under such circumstances, she made a representation before the respondent authorities. As the representation went unheeded, she approached this court in W.P. No. 25040(W) of 2017 and the Hon'ble Single Judge directed respondent no.2 i.e. District Magistrate, Paschim Medinipur to consider her representation along with supporting documents and pass a reasoned order thereon.

4. Pursuant thereto respondent no.2 passed the following reasoned order. Relevant portion of the order is set out hereinbelow :-

“Heard the petitioner, Soma Rani Bhattacharyya (Chatterjee) expressed her opinion regarding completion of the selection process of Anganwadi Workers (AWWs) and Anganwadi Helpers (AWHs) as early as possible and she did not mention any other point regarding the matter.

Considering all the aspects I do hereby consider the representation dt. 11.07.2018 by directing the Representative of the Member Convenor of the N.G.O. run Kharagpur-II ICDS Project to take a date from the Chairman, Dr. Soumen Kumar Mahapatra, Hon’ble M.I.C. Irrigation & Waterways Department for a meeting with the selection committee of AWWs and AWHs for N.G.O. run Kharagpur-II project and to complete the recruitment process as per direction of the Hon’ble High Court at Calcutta.”

5. Being aggrieved by non-consideration of the grievances expressed in her representation, appellant again approached this court in the present proceeding. Hon’ble Single Judge by impugned order dated 13.12.2018 dismissed the writ petition, inter alia, holding no specific challenge to the recruitment process had been raised before the District Magistrate concerned.

6. Mr. Kamalesh Bhattacharyya for the appellant contends Hon’ble Single Bench failed to consider the illegalities set out in the numerous representations including the representation dated 11.07.2018 made by the appellant. In all these representations appellant had indicated that ineligible candidates were selected by ignoring her candidature.

7. In response, learned Advocate for the State-respondents contend during oral hearing the appellant merely did not raise any grievance with regard to the recruitment process and merely prayed that the process be concluded at the earliest.

8. Nobody appears for the private respondents.

9. We have considered the materials on record in the light of the submissions made by the parties.

10. By order dated 19.06.2018 in W.P. No. 25040(W) of 2017 an Hon'ble Single Judge of this court had directed respondent no.2 i.e. District Magistrate, Paschim Medinipur to consider the representation of the appellant along with supporting documents. Even the impugned order shows representation dated 11.07.2018 was before the District Magistrate concerned. Perusal of the said representation shows serious insinuations against the selection process namely, incorporation of the names of ineligible candidates in the panel in preference to the appellant.

11. In the light of these materials it was incumbent on the District Magistrate concerned to address the alleged irregularities canvassed in the said representation and not shirk away from such responsibility under the plea that the appellant had merely restricted her oral submission to prompt conclusion of the selection process. In doing so, respondent no.2 had glossed over serious irregularities touching the selection process.

12. Appointment to public posts must be done in a fair, transparent and impartial manner. It is the duty of every public functionary to ensure purity of the appointment process is maintained and in the event any irregularity is noted, to enquire and remedy the same at the earliest. This public duty cannot be forsaken on the plea that oral submissions did not address this issue. Hon'ble Single Bench failed to notice the serious

grievances expressed by the appellant in preparation of the panel. It is contended the appointments may have been made in the meantime. It is trite that appointments made on the strength of a fraudulent selection process and/or of ineligible candidate does not create a vested right in them.

13. Accordingly, we are of the opinion the impugned order dated 13.12.2018 confirming the order of the District Magistrate, Paschim Medinipur is liable to be set aside.

14. Respondent no.2 i.e. District Magistrate, Paschim Medinipur is directed to consider the representation of the appellant dated 11.06.2018 highlighting irregularities in the preparation of the panel and pass a reasoned order thereon after giving opportunity of hearing to the appellant as well as the private respondents. The entire exercise shall be completed within four weeks from the date of communication of this order.

15. The appeal is thus allowed.

16. In view of disposal of the appeal, connected applications being CAN 3 of 2020 and CAN 4 of 2020 are also disposed of.

17. There shall be no order as to costs.

Re : M. A. T. 1328 of 2019

18. Appellant had applied for the post of *Anganwadi* worker-cum-helper in Kharagpur-II ICDS Project. She qualified in the written test and was placed 39th in the merit list. But she was not called for the

personality test. Upon query she was informed that the process of appointment of *Anganwadi* worker is not complete. Subsequently she came to know various ineligible candidates had been illegally selected for appointment.

19. Alleging favouritism and irregularities in the recruitment process and indicating that the relations of Panchayat functionaries had been illegally selected to her prejudice, she made a representation before the respondent authorities. As the representation went unheeded, she approached this court in W.P. No. 20602(W) of 2018 and the Hon'ble Single Judge relying on the order passed in W.P. No. 20605(W) of 2018, dismissed the writ petition.

20. Order dated 13.12.2018 passed in W.P. No. 20605(W) of 2018 has been set aside today in FMA 954 of 2019 and the matter has been remanded for fresh consideration before respondent no.2 i.e. District Magistrate, Paschim Medinipur.

21. Appellant has also raised similar grievances with regard to alleged favouritism and illegal appointments to the post concerned.

22. Under such circumstances, we set aside the order of the Hon'ble Single Judge dated 13.12.2018 and direct respondent no.2 i.e. District Magistrate, Paschim Medinipur to consider the representation of the appellant dated 27.09.2018 highlighting irregularities in the preparation of the panel and pass a reasoned order thereon after giving opportunity of hearing to the appellant as well as the private respondents. The entire

exercise shall be completed within four weeks from the date of communication of this order.

23. The appeal is thus allowed.

24. There shall be no order as to costs.

25. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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