

18.07.2024
Sl. No.20.
D/L.
Mithun
Ct.No.551.

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**WPA 17221 of 2010
With
IA No: CAN/1/2011 (Old No: CAN/3511/2011)**

**Maksura Khatun
Vs.
The State of West Bengal & Ors.**

Ms. Shabana Hasin,
Mr. M. Hossain,
Ms. Neha Roy

...for the petitioner.

Mr. Debabrata Mondal,
Ms. Sreetama Neogi

... for respondent no.7.

1. The receipted notice dated 16.07.2024 as filed by the learned Advocate for the writ petitioner is taken on record. The affidavit-in-opposition on behalf of the respondent no.7 and the supplementary affidavit as filed by the respondent no.7 are also taken on record. Despite service, none appears on behalf of the State as well as its officials i.e. respondent nos.1 to 6.

2. In this writ petition the writ petitioner has prayed for issuance of writ of mandamus for quashing the letters dated July 06, 2010 and July 23, 2010 both issued by respondent no.3, i.e. the Block Medical Officer of Health-cum-Member Secretary, Hariharpara

Block Health & Family Welfare Samity, Hariharpara Block, Murshidabad.

3. In support of the instant writ petition, learned Advocate for the writ petitioner at the very outset draws attention of this Court to the page 20 of the writ petition being annexure P-1. It is submitted that from the said document it would reveal that on November 24, 2008, the writ petitioner was selected for engagement as ASHA. Attention of this Court is also drawn to annexure P-2 and P-3 of the writ petition. It is submitted that from the aforesaid two documents it would reveal that the Pradhan of Dharampur Gram Panchayat as well as Savadhipati of the said Gram Panchayat Samity had certified that after her selection, the writ petitioner was discharging her duty at Sundalpur Village while the private respondent no.7, Shyamali Sarkar, was discharging her duty as ASHA in Kaludiar village.

4. It is submitted further that all on a sudden, the writ petitioner was served with a show-cause notice dated July 6, 2010 alleging certain delinquency on account of non-performing of her duty at Kaludiar Village. It is submitted that immediately after receipt of such show-cause due reply was given by the writ petitioner wherein it has been stated, *inter alia*, that

since the writ petitioner stood first, she was discharging her duty as ASHA in Sundalpur village as per instruction of her superior authorities and, thus, there cannot be any delinquency on the part of the writ petitioner. On behalf of the writ petitioner, it is submitted further that the respondent no.3, Authority, however, did not adhere to such reply and, on the contrary, issued the impugned letter dated July 23, 2010 directing the writ petitioner to intimate the respondent no.3 as to whether she was at all interested to discharge her duty at Kaludiar village as ASHA.

5. It is submitted further that from annexure P-9 at page 33 of the writ petition, it would reveal that the respondent no.3 is not the appropriate authority for the posting of the ASHA and, therefore, by no stretch of imagination it can be held that the writ petitioner being a ASHA discharged her duties at a wrong place as claimed by the respondent no.3.

6. Per contra, learned Advocate for the private respondent no.7 draws attention of this Court to the page 8 to annexure A-2 the affidavit-in-opposition, more specifically from Page 8 to Page 16 of the said affidavit-in-opposition. It is submitted that after selection of the writ petitioner as well as the private

respondent no.7 as ASHA, the Selection Committee took a resolution and from the said resolution, it would reveal that the writ petitioner was posted at village Kaludiar while the present private respondent no.7 Shyamali Sarkar was given posting at village Sundalpur. It is submitted further that from the Annexure C, i.e. Page 21 of the affidavit-in-opposition, it would reveal that pursuant to the letter dated July 23, 2010, the writ petitioner had consented to work at village Kaludiar as ASHA by issuing a letter to the respondent no.3.

7. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties, it appears to this Court that it is nobody's case that the respondent no.3, that is the concerned BMOH is not the appointing authority of the writ petitioner as well as the private respondent no.7. From the affidavit-in-opposition it reveals that after selection of the writ petitioner and the private respondent no.7, the Selection Committee took a resolution to the effect that the present writ petitioner would be posted at village Kaludiar as ASHA while the private respondent would be posted at village Sundalpur also as ASHA.

8. Though on behalf of the writ petitioner it has been strenuously argued that as per direction of the Panchayat Authority, more specifically the Sabhadipati and the Pradhan of the relevant Gram Panchayat, the writ petitioner was posted and worked at Village Sundalpur but in considered view of this Court such argument is not at all convincing in view of the fact that the writ petitioner has failed to produce any cogent document that either the Sabhadhipati or the Pradhan of the Dharampur Gram Panchayat are the Controlling Authority either of the writ petitioner or of the private respondent no.7. On the contrary, sufficient materials have been placed that the respondent no.3 is the appointing authority of the writ petitioner as well as the private respondent no.7 and in exercise of its administrative power, both the writ petitioner and the private respondent no.7 have been given place of posting at village Kaludiar and Sundalpur respectively.

9. Further materials have been placed before this Court that pursuant to the letter dated July 23, 2010, the writ petitioner had consented in writing to act as an ASHA in village Kaludiar instead of village Sundalpur.

10. In view of the facts and circumstances as discussed, this Court finds no reasons to interfere with the finding of the respondent no.3 authority with regard to the posting of the present writ petitioner as well as the private respondent no.7 in absence of any material to show that the said respondent no.3 authority had acted beyond the guideline for posting of the ASHA.

11. The instant writ petition is, thus, devoid of any merit and, is, thus, dismissed.

12. There shall be no order as to costs.

13. It is reported that at present the writ petitioner is not even permitted to work as ASHA at village Kaludiar. In view of such and before parting with, it is directed that in the event, the writ petitioner made a prayer before the respondent no.3 Authority to act as an ASHA in village Kaludiar, such prayer shall have to be considered in accordance with law positively within two months from the date of communication of this order after giving a right of hearing to the writ petitioner or to her learned Advocate and the decision in this regard shall have to be communicated by the respondent no.3 to the writ petitioner within two weeks thereafter.

14 Urgent photostat copy of this order if applied for be supplied for the parties subject to compliance with all requisite formalities.

(Partha Sarathi Sen, J.)