

08.07.2024.
Court No.13
Item No.272
pk

**W.P.A. No. 18278 of 2011
CAN 1 of 2024**

**Smt. Anupoma Mandal
Versus
State of West Bengal and others**

Mr. Ekramul Bari,
Mr. Sk. Imtiaz Uddin

... for the petitioner

Mr. Pinaki Dhole,
Ms. Tapati Samanta

... for the State.

Mr. Robiul Islam
Mr. Raju Mondal,

... for the private respondent 9.

1. The subject matter of the instant writ petition is an impugned order dated 23rd September, 2011 passed by the BDO and the Chairman, Block Level Selection Committee, Manikchak, Malda. The said order was passed upon directions issued by a Single Bench of this Court in order dated 27th July, 2011 passed in WP 11196(w) of 2011. The subject matter of the impugned order was selection to the post of 2nd ANM and Bhutni SHC under Manikchak PHC.
2. The dispute between the petitioner and the private respondent no. 9 relating to the post of 2nd ANM has resulted in the third petition being the instant case.
3. The first writ petition being WP 27173(W) of 2007 that was disposed of by order dated 15th June, 2009 and order dated 13 the September, 2007

- passed by the D.M., Malda was questioned by the private respondent no. 9. The D. M. had excluded the private respondent no. 9 from the zone of consideration on the basis that she was not a resident of the village concerned, Jogitola Atsaiya.
4. The Court found that the two candidates belonged to the same village and that the exclusion of the private respondent was illegal. The order of the District Magistrate was set aside and the matter was remanded back to the BDO and the Chairman, Block Level Selection Committee, Manikchak, Malda for consideration afresh.
 5. The said consideration afresh was effected by order dated 30th May, 2011 by the BDO. The Private respondent was found with more marks than the writ petitioner. The writ petitioner and the private respondent no. 9 were equally qualified for the post otherwise.
 6. It would be necessary at this stage to note that the writ petitioner was already working since the year 2007 on a contractual basis in the post of 2nd ANM until the selection process was formally initiated. The attachment of the petitioner to the post even in the year 2011 is natural.
 7. The order of the BDO dated 30th May, 2011 came to be challenged now by the writ petitioner in a second proceeding being WP 11196(W) of 2011. The

said writ petition was disposed of on 27th July, 2011 setting aside the order of the BDO dated 30th May, 2011. Consideration afresh was directed to be made between the petitioner and the private respondent no. 9.

8. The impugned order dated 23 September, 2011 came to be passed thereafter. The BDO and the Selection Committee has consistently maintained that the private respondent no. 9, Bhubaneswari Mondal was the candidate to be selected as she secured one mark more on academic qualification than the writ petitioner.
9. Mr. Bari, learned counsel for the writ petitioner would vehemently argue that while it is true that the private respondent no. 9 may have secured more marks than the writ petitioner, one must note that the writ petitioner passed the Madhyamik Examination in one shot whereas the private respondent no. 9 had to make three attempts. It is next submitted that the writ petitioner has undergone formal training in the year 2007 which the private respondent did not have.
10. Mr. Dhole, learned counsel for the State, would argue that since after 2015 the post of 2nd ANM has been abolished in implementation of the recommendation of the WHO. It is submitted that

as on date there is no post of 2nd ANM. There is no new recruitment of 2nd ANM.

11. Mr. Dhole would, however, in support of the impugned order, argue that the Selection Committee had come to a conclusion that the private respondent no. 9 was eligible for recruitment in the recruitment process.
12. This Court notes with sadness that the writ petitioner was able to obtain interim order when the writ petition came to be admitted on 08.11.2011 that “the petitioner shall not be disturbed if she is still serving in the post in question”.
13. It is not understood as to why the State or the private respondent have not sought for vacating the interim order or challenge the same before the higher forum. Paucity of funds could have been a reason.
14. The writ petitioner was working on a contractual/temporary engagement since 2007. In a formal recruitment process, 2011 the writ petitioner may have found out that the private respondent no. 9 secured more marks than her, albeit only one. The private respondent no. 9 therefore succeeded in a fair competition and selection process.

15. When interim order was passed on 18.11.2011, it might not have been informed to the Court that a decision was already taken in selection process. Once such a decision is taken, the temporary engagement of the writ petitioner ought to have come to an end. The writ petitioner appears to have twisted interim order dated 23rd September, 2011, to continue in her post.
16. Insofar as the submissions of the learned counsel for the State are concerned that recruitment to the post of 2nd ANM, 2015 has since been stopped, the same should not stand in the way of a legitimate right to the private respondent no. 9, who has succeeded in a fair competition even after three rounds of litigation.
17. The entitlement of the private respondent no. 9 accrued in the year 2011 when the restriction on recruitment of 2nd ANM did not exist. Such right continued with the pendency of the litigation.
18. In view of the above, this Court is of the view that the impugned order calls for absolutely no interference. The said interim order dated 23rd September, 2011 shall stand vacated. The respondents shall proceed to engage the private respondent no. 9. In the peculiar facts and circumstances of the case narrated herein above, any training required to be undergone by the

- private respondent no. 9 may be made available to her by the BDO and the office of the D.M., Malda.
19. Having regard to the facts of the case it is undisputed that in rural areas, the role of an auxiliary nurse and midwife can never be overstated and they are the people of first choice even before approaching the local PHC. The demand for ANMS amongst the local womenfolk is high. This Court permits the BDO and the D.M., Malda, as a special case without precedent, that both the writ petitioner may also be engaged as 2nd ANM.
20. This Court passed the aforesaid order in exercise of an extraordinary power under Article 226 of the Constitution of India, only given the fact that the writ petitioner has experience of working for about 17 years since 2007.
21. The engagement of the private respondent no. 9 shall however be mandatory.
22. The writ petition is disposed of with the directions.
23. In view of the dismissal of the writ petition, connected application, if any, is also dismissed.
24. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)