

05.08.2024
Ct. 23
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 23027 of 2022

Sorifa Yeasmin

-Vs-

The State of West Bengal & Ors.

Mr. Tapodip Gupta,
Mr. Shamik Chatterjee,
Mr. Aditya Bikram Mahata,
Mr. Suman Bhanja,
Mr. Sahil Kabir

... for the petitioner

Mr. Rezaul Hossain

... for the State

The exception to the report of the respondent no. 5 filed on behalf of the petitioner is taken on record.

The petitioner participated in a selection process for engagement of Accredited Social Health Activist (ASHA Karmee) in terms of a notification dated 3rd January, 2022. The petitioner appeared before the selection committee and obtained the 2nd position in respect of the list published for engagement of ASHA Karmee against the Shyampur RCH Sub-Center within ASHA area, Hasanpur Dakshinpara in Laxmipur Gram Panchayat. The petitioner on being successful was called for an interview. The petitioner says that the private respondent (respondent no. 8) was the selected

candidate and the petitioner was the only waitlist candidate. The petitioner says that the private respondent has been given appointment/engagement in the concerned Sub-Center though the private respondent is not a resident of the place from which applications were invited for the selection of ASHA Karmee. The petitioner also says that the private respondent cannot have competed for appointment/engagement against Shyampur RCH Sub-Center under the area Hasanpur Dakshinpara in Laxmipur Gram Panchayat as she does not fulfill a mandatory requirement prescribed in the advertisement. The petitioner also says that the appointment/engagement of the respondent no. 8 should be cancelled and/or set aside. Once such exercise is undertaken, the petitioner as the only waitlist candidate will be appointed for the said Sub-Center.

The State has filed a report in the form of an affidavit through the respondent no. 5 to which the petitioner has taken an exception.

On a perusal of the report filed by the respondent no. 5, a handmade sketch map has been prepared to indicate the area from which the applications for ASHA Karmee could have been made for being considered against Shyampur RCH Sub-Center under the area of Hasanpur Dakshinpara in Laxmipur Gram Panchayat

as per the subject advertised. The petitioner has filed an exception to such report and is now contending that the sketch map and the statements made in the report by the respondents are incorrect. The petitioner also says that her engagement has been wrongfully refused and/or denied.

On behalf of the State, it is submitted that the appointment/engagement of the respondent no. 8 has already taken place in September, 2022 in apropos manner observing the requisite parameters and as such, there is no scope for removal of the respondent no. 8 from her position and to implant the petitioner therein. The petitioner has disputed the handmade sketch map and says that the same does not depict the correct and clear picture.

After hearing the parties and considering the materials on record, I find that there is severe dispute as to the area in question wherefrom one could have applied in terms of the advertisement. The area shown by the respondents in their report in the form of an affidavit is disputed by the petitioner alleging to be incorrect. It has now, therefore, converged into a purely factual matter. In writ jurisdiction, the statements on oath by the petitioner is confronted with by the statements on oath by the respondents since the affidavits have been filed in writ jurisdiction. The facts, which are disputed, cannot be adjudicated in the form

and manner as prayed for by the petitioner. Moreover only on the cancellation of the engagement of the respondent no. 8 will have the opportunity to claim engagement. In the aforesaid situation, the Writ Court should be cautious in entering the arena of disputed facts which continues even after exchange of affidavits.

The writ petition is, therefore, cannot be adjudicated any further and is accordingly dismissed without any order as to costs.

(Arindam Mukherjee, J.)