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Ct-08

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MAT 1931 of 2023

with

IA No. CAN 2 of 2023

Sri Kishore Halder & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Amar Nath Sen
Mr. Malay Dhar
Mr. Shouvik Naskar
Mr. Amit Bikram Mahata
... For the Appellants

Mr. Rajarshi Basu
Mr. Ananda Dulal Sarkar
... For the State Respondents

Mr. Kamal Mishra
... For the Respondent no. 7

1. We have heard the learned counsel appearing for the parties.

2. The appellants are aggrieved by the order passed by the learned Single Judge whereby the writ petition filed by Smt. Kabita Roy Bera challenging the recruitment, of members of CWC, initiated in terms of notice for recruitment dated 28th January, 2021 was set aside and the respondent authorities were directed to consider the application filed by the writ petitioner, namely, Smt. Kabita Roy Bera in accordance with the recruitment Notification dated 28th January, 2021.

3. Assailing the said judgment, the present appellants have contended that the learned Single Judge has completely misconstrued the

jurisdiction clause and thereby in effect nullified/ set aside the appointment of the present appellants null and void.

4. In the notice for recruitment there is a residence clause which reads as follows:-

“Residence: the candidate must be a resident of the district/Region for which he/she is an applicant.”

5. The writ petition claims to be a candidate belonging to Sunderban region and therefore eligible to be considered for appointment. The allegation of the writ petitioner appears to be that some of the private respondents who have been appointed do not belong to the Sunderban region, as stipulated in the jurisdiction clause. The jurisdiction clause relating to “Sunderban Region” in the said recruitment Notification is stated below:-

*“Jurisdiction of CWC Sundarban Region: Part Areas under Diomond Harbour, Kakdwip and Canning Subdivision under South 24 Parganas comprising of areas under 17 police stations namely **Kulpi PS, Mandirbazar PS, Mathurapur PS, Raidighi PS, Dholahat PS, Kakdwip PS, Sargar PS, Namkhana PS, Patharpratima PS, Frezerganj PS (Coastal), Ganga Sagar PS (Coastal), Gobardhan PS (Coastal), Harwood Point PS (Coastal), Canning PS (Coastal), Jibantala PS, Basanti PS and Gosaba PS under South 24***

Parganas.”

6. The writ petitioner claimed that the recruitment was in violation of the conditions stipulated in the recruitment notice. All the four candidates who have been appointed were added as party respondents in the said writ proceeding.

7. The contention of the State appears to be that there is no violation of the recruitment notice dated 28th January, 2021. The only condition for eligibility was that the candidate had to reside within the district/region for which he or she was entitled to apply. The jurisdiction clause only refers to the operational area where the selected candidates would be expected to perform their duties. The jurisdiction of the CWC, ‘Sunderban Region’ has no nexus with the clause relating to the residence of the candidates.

8. Learned counsel for the State during hearing has filed an affidavit disclosing the number of CWCs sanctioned by the Government in different districts where there is more than one CWC and the notice of recruitments in respect of all districts where more than one CWC is operational irrespective of the size of the district. Learned counsel for the State has submitted that the residential clause as mentioned in the earlier

recruitment notice, which was considered by the learned Single Judge, has been withdrawn in view of Section 27 of the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Rule 15 of the said Act.

9. Mr. Amar Nath Sen the learned Counsel for the appellants has submitted that the resident clause clearly indicates that the candidate must be a residence of district/region and any candidate belong to the district cannot be held to be ineligible even if the candidate is not a resident of the 17 police stations mentioned in the jurisdictional clause of CWC for the Sunderban Region. It is submitted that the jurisdiction of CWC for the Sunderban Region cannot be confused with the eligibility of a candidate who is a resident of a district.

10. It is further submitted that if the said recruitment notice is construed to mean that the candidate must be resident of the region then it is contrary to Section 27 the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Rule 15 of the said Act.

11. The learned counsel has further submitted that the location of the police stations is far away from the location of CWC for the

Sunderban Region and therefore, there cannot be any nexus between the residential clause and the jurisdictional clause mentioned in the recruitment notification.

12. The learned counsel appearing for the writ petitioner however, supports the judgment and submitted that in view of the specific jurisdictional clause a candidate must be a resident of the region of 17 police stations.

13. If we accept the submission of the appellants then the jurisdictional clause becomes osios and meaningless. There cannot be any doubt that the residence clause has to be read with the jurisdictional clause. The CWC would be operational only in respect of the areas covered by 17 police stations. The Ward Region mentioned in the residence clause in the recruitment notice is clarified by the jurisdictional clause when it refers specifically to the jurisdiction of CWC of Sunderban Region. The aforesaid two clauses are not exclusive but inextricably connected. In order to find out the eligibility of a candidate one cannot disregard the jurisdictional clause as the CWC in the said district would be operational in respect of the police stations covered by the said jurisdictional clause which has specifically used

the word “region”, which is also clearly mentioned in the residential clause. The Ward Region in the Residence clause also finds place in the jurisdictional clause thereby making the residence of the candidates in the region covered by the jurisdictional clause obligatory and specific. A person should be a resident of the region, namely, Sunderban Region comprising of all 17 police stations and then only he would be eligible for the said post. It is not an answer at this stage that the said advertisement was contrary to Section 27 the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Rule 15 of the said Act. It appears later on the State has removed the said residential clause in all subsequent advertisements. However, the fact remains that the State was required to select candidates based on the eligibility criteria stipulated in the said advertisement and any departure from the said clause cannot be countenanced.

14. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge. Moreover, the learned Single Judge has only directed the State to consider the application of the petitioner in accordance with the recruitment notification.

15. In view of the aforesaid order, the interim order stands vacated. The appellants shall be at liberty to participate in any future vacancy.

16. In the event the earlier notification issued during the pendency of the appeal is revived, the appellants shall not be debarred from participating in the said recruitment process subject to the fulfillment of all criteria.

17. We also direct the State to take immediate steps to fill up vacancies in all CWCs within a time frame.

18. In view of the aforesaid, the appeal being MAT 1931 of 2023 stands dismissed along with CAN 2 of 2023.

19. However, there shall be no order as to costs.

20. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)

