

05.08.2024
Sl. No.2(ML)
srm

W.P.A. No. 25941 of 2022

Sk. Md. Yusuf Ali

Versus

The State of West Bengal & Ors.

Sk. Rejaul Alam

...for the Petitioner.

Mr. Sk. Md. Galib,
Mr. Gourav Das

...for the State-respondents.

Ms. Afreen Begum

...for the Respondent No.9.

1. Affidavit-of-service is taken record.
2. The writ petition has been filed challenging a reasoned order passed by the Inspector General of Registration and Commission of Stamp Revenue, West Bengal. The order was passed pursuant to a direction of this Court in a writ petition filed by the petitioner. The petitioner challenged the appointment of the respondent No.9 as a temporary Muslim Marriage Registrar (MMR) against a vacancy within the jurisdiction of Panskura Police Station.
3. The petitioner contends that he is better qualified and has knowledge in Mohammedan Laws of Marriage and Divorce. It is further contended that the petitioner is a local person. It is

further contended by the petitioner that sufficient acquaintance with the Arabic language and the Mohammedan Laws of Marriage and Divorce, were the basic qualifications for any person to be appointed either as a temporary or permanent MMR. In the instant case, although the respondent No.9 had better educational qualifications and better results, the certificate issued by the concerned madrasah indicating that he had experience in Arabic language and Mohammedan Laws of Marriage and Divorce was fake. The madrasah does not have any existence. Thus the respondent No.9 did not have adequate knowledge in Arabic and Muslim laws of marriage and divorce.

4. On an earlier round of litigation, similar challenges were made by the petitioner when the writ petition was disposed of by a learned coordinate Bench, directing the Inspector General of Registration and Commissioner of Stamp Revenue, Government of West Bengal to consider the representation of the petitioner and decide the matter in accordance with law. The said matter has been decided by the concerned authority, *inter alia*, holding that :

(a) Although, the petitioner claimed to be serving as an assistant 'Nayeb Kazi', the appointment letter produced by the petitioner did not bare any seal and signature of the

appointing authority and as such the petitioner's first contention that he was engaged as a 'Nayeb Kazi' and had experience was disbelieved.

- (b) The other issues raised by the petitioner were not accepted by the authority, especially with regard to challenge to the qualification of the respondent No.9. According to the authority, the respondent No.9 had the better educational qualification in the sense that he had better results in the higher secondary, graduation, B.Ed. and Masters degree. He had secured first divisions and first class. He also had a degree of MA in Arabic, which was an additional Masters degree. He had a knowledge of Arabic, Urdu and he was proficient in Hafez, Islamic Law and Farayez.
5. The educational qualification of the petitioner was Alim, Fazil, Kamil and the petitioner secured second division, third division and third class respectively. The petitioner also had knowledge in Arabic, Urdu and was proficient in Hafez, Islamic Law and Farayez.
 6. A comparison of the educational qualifications indicated that the respondent No.9 was a better candidate as his qualification were higher and results were better. Both had adequate knowledge in Arabic, Urdu and were proficiency in Hafez, Islamic Law and Fareyez. In case of appointment of a

temporary MMR, a nomination of the District Registrar is sufficient. Thereafter, the approval is to be taken from the Government through the Inspector General of Registration and Commissioner of Stamp Revenue. Such procedure had been complied with.

7. It appears that the eligibility criteria for the candidates as per the rules indicate that preference would be given to claims of local men of respectable character and suitable attainments. It appears from the order impugned as also from the affidavit to the writ petition that the petitioner is a resident of Bhawanipur Police Station, District Purba Medinipur, whereas the respondent No.9 is a resident near Panskura. Secondly, the qualifications provide that the MMR should possess sufficient acquaintance with Arabic language and Mohammedan Laws of Marriage and Divorce. Sufficient acquaintance would not mean that a person who is being chosen as an MMR would require to have a postgraduate degree or honours degree in Mohammedan Laws of Marriage and Divorce. Definitely, the authority has the independence to select the candidate who according to their requirement fit the role.
8. The tabular statement of the qualifications of each of the persons was attached to the first reasoned order passed by the authority concerned. A perusal of the same would indicate

that the respondent No.9 had a first class degree all through and also had a Masters Degree in Arabic. Whether the syllabus of the respondent No.9 included a subject called 'Fiqh' or not, is not relevant because that was not one of the eligibility criteria. The qualification requires adequate knowledge in Arabic and Mohammedan Laws of Marriage and Divorce. Both the petitioner and the respondent No.9, as reflected from the records, have such qualification. The respondent No.9 was preferred as he had higher qualification with better marks. When both the candidates are equally placed with regard to the knowledge of Arabic and Mohammedan Laws of Marriage and Divorce, it was within the jurisdiction of the authority to choose the candidate with higher marks and better qualifications. Such choice or selection cannot be held to be either unreasonable or arbitrary or *mala fide*.

9. The competent authority who either selects or nominates a temporary MMR, has expert knowledge in the field and also has an understanding of the requirements of the functions of an MMR. The decision of such expert authority cannot be a subject matter of judicial review, unless blatant illegality is displayed either in the procedure followed or in the exercise of power while selecting a candidate.

10. As the petitioner has raised a question about the certificate issued by the concerned madrasah to be fake, the petitioner may approach the police authorities for investigation and any other authority including the education department for an enquiry as to whether the said madrasah ever existed or whether the document was fake. If such issue is answered in favour of the petitioner, the petitioner may raise the point before the concerned authority once again and the authority shall decide the matter accordingly, if the qualification attained by the respondent No.9 at the Madrasah is relevant for his appointment.
11. Till such time, the respondent No.9 will continue.
12. The writ petition is, thus, disposed of.
13. There shall be no order as to costs.
14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)