

D/L
Item No. 09
01.05.2024
KOLE

**MAT 2177 of 2023
With
IA CAN 1 of 2024
With
IA CAN 2 of 2024**

**Dr. Onkar Nath Roy
-Vs.-
The State of West Bengal & Ors.**

*Mr. Moniruzzaman,
Mr. Jahangir Badsha,*

...for the appellants.

*Mr. Pinaki Dhole,
Mr. Subhendu Sengupta,*

...for the State.

In Re: CAN 2 of 2024:-

This is an application for condonation of delay of 6 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

The application for condonation of delay is, thus, allowed.

IA CAN No. 2 of 2024 is disposed of.

In Re: MAT 2177 of 2023 with CAN 1 of 2024:-

Affidavit of service filed in court today be kept with the records. In spite of service, the concerned Gram Panchayat and Murshidabad Zilla Parishad are not represented.

Under challenge in this appeal is a judgment and order dated July 18, 2023, whereby the appellant's writ

petition being WPA 25829 of 2019 was dismissed by a learned Judge of this Court.

The appellant approached the learned Single Judge challenging the communications dated March 13, 2014 and November 2, 2016 issued by the Additional Executive Officer, Murshidabad Zilla Parishad intimating to the appellant/writ petitioner that the Department of Panchayat and Rural Development Department, Government of West Bengal, has not approved Indrani Gram Panchayat for establishment of Homeopathy Charitable Dispensary under State Budget or West Bengal State Rural Development Agency. On behalf of the writ petitioner, it was submitted that Indrani Gram Panchayat had recommended the appointment of the writ petitioner as homeopathy doctor. Had the competent authority approved Indrani Gram Panchayat, the writ petitioner would have drawn a monthly remuneration of Rs. 2,000/-. The communications dated March 13, 2014 and November 2, 2016 should be set aside.

The learned Judge observed that even proceeding on the basis that the writ petitioner was selected by Indrani Gram Panchayat to function as homeopathic doctor, such selection is required to be approved by the competent authority in Murshidabad Zilla Parishad for release of monthly remuneration. The learned Judge dismissed the writ petition with the following observations:-

“From the communications dated 13th March, 2014 and 2nd November, 2016 it appears that the Zilla Parishad authority found that Indrani Gram Panchayat was not an approved gram panchayat for engagement of Homeopathic Doctor

resulting in non acceptance of the recommendation made by the Indrani Gram Panchayat dated 10th September, 2009 for engagement of the petitioner.

It is settled proposition of law that mere recommendation for being engaged to discharge particular function under scheme does not confer right upon the candidate who has been recommended unless and until the same is approved by the higher authority. Here the Zilla Parishad found that the concerned gram panchayat was not an approved gram panchayat for engagement of Homeopathic Doctor”.

Being aggrieved, the writ petitioner is before us by way of this appeal.

We do not find any apparent infirmity in the order under appeal. The learned Judge rightly held that without Indrani Gram Panchayat being approved by the relevant authority, mere selection by that Gram Panchayat of the writ petitioner to function as a Homeopathic Doctor is neither here nor there. The Zilla Parishad in the two communications issued by it has recorded that the Panchayat and Rural Development Department of the Government of West Bengal has not approved Indrani Gram Panchayat as one of the Panchayats where Homeopathic Clinic may be set up under the relevant scheme. Hence, the Zilla Parishad was not in a position to grant any approval also.

We find no reason to interfere with the order under appeal, which accordingly, fails and is dismissed along with the connected application.

However, the appellant is granted liberty to make a comprehensive representation to the Principal Secretary,

Panchayat and Rural Development Department, Government of West Bengal within four weeks from date. If such representation is made within the prescribed time period, the Principal Secretary, Panchayat and Rural Development Department, Government of West Bengal, being the respondent no. 4, shall take a reasoned decision therein, in accordance with law, within a period of eight weeks from the date of receipt of the representation after granting an opportunity of hearing to the appellant or his authorized representative. The decision so taken by the respondent no. 4 shall be communicated to the appellant within a week from the date of the decision.

We make it clear that we have not gone into the merits of the claim of the appellant that he should be appointed as a Homeopathic Doctor in Indrani Gram Panchayat. The respondent no. 4 shall take an independent decision in the matter in accordance with law.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)