

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 14585 of 2024

Laila Arjuman Banu

Versus

The State of West Bengal & Ors.

For the petitioner	:	Mr. Kamalesh Bhattacharjee Md. Yusuf Ali
For the respondent no.2		Md. Sarwar Jahan Ms. Mousumi Mitra

Heard on : 29.01.2025

Judgment on : 29.01.2025

JAY SENGUPTA, J:

This is an application praying for direction upon the respondent authorities to cancel, withdraw and rescind from the order bearing Memo No. 02/32/CAN 01/Laila Arjuman Banu/ PBRSSM/2022 dated 02.01.2024 passed by the respondent no.2, the Mission Director, Paschim Banga Rajya Sishu Siksha Mission and praying for direction upon the respondent authorities to approve the engagement of the petitioner to the post of 4th Shiksha Sahayika of Benadaha Paschimpara Shishu Shiksha Kendra, Post Office- Madda, Police Station- Beldanga, District- Murshidabad.

Report filed on behalf of the Mission Director is taken on record.

Learned senior counsel representing the petitioner submits as follows. The Managing Committee of Benadaha Paschimpara Shishu Shiksha Kendra decided to engage two sahayikas in the said SSK and accordingly, vide notice dated 30.06.2009, applications were invited for the said post. The Managing Committee conducted interview in which six candidates participated. After the interview, the name of one Samima Khatun was recommended as 3rd Sahayika and the name of the petitioner was recommended as 4th Sahayika. In the meeting dated 25.11.2009 of the Benadaha Paschimpara Shishu Shiksha Kendra, the proposal for engagement of the petitioner and Samima Khatun was approved and the BDO was requested to forward the same to the District Authorities for approval by the concerned Sthayee Samity. Thereafter, the petitioner came to know that the District Authority did not approve the engagement of the petitioner as a Sahayika. The petitioner challenged this in a writ petition being WPA 11253 of 2012. On 09.12.2021, a Co-ordinate Bench of this Court dismissed the writ petition. The petitioner preferred an appeal being FMA 323 of 2022. On 11.12.2023, the Division Bench recorded as under:

“2. The conflicting reports filed by the two Government agencies, namely, the report of the District Nodal Officer, Sishu Siksha Karmasuchi, Murshidabad, dated 4th May, 2011, are the cause of denial of appointment to the appellant. The eligibility criteria of the appellant to be considered for appointment as fourth Sahayika is not in dispute. The problem arose with regard to the strength of learners. The District Nodal Officer observed that at the time of his inspection the strength of the learners was 105, out of which 72 were present. The Block Development Officer in his report stated that the total strength of learners was 125.

3. We feel that the appellant cannot be suffered due to conflicting reports submitted by above two Government agencies although the school report card, appearing at page 74 of the stay application, supports the finding of the Block Development Officer dated 4th May, 2011.

4. We have been informed that the private respondent has been transferred to a different place and the said post is now vacant.

5. Under such circumstances, we direct the respondent no.2 to consider the application of the appellant for engagement as fourth Sahayika within four weeks from the date of communication of the order.

6. The appeal being FMA 323 of 2022 is accordingly disposed of. The impugned order is set aside.”

The respondent no.2 thereafter passed an order on 02.01.2024 and rejected the petitioner's prayer again. One of the grounds was that the petitioner was under age and there was no age relaxation sanctioned from the P & RD Department in this regard and the other ground was that at the material point of time of engagement, the learner strength of the SSK was not 120. Therefore, the engagement of fourth Sahayika was not required.

Learned counsel appearing on behalf of the respondent no.2 denies the allegations and submits as follows. The order passed by the Mission Director was well-reasoned. However, pursuant to a direction passed by this Court, a report has been obtained and as per the report of the Mission Director dated 22.01.2025, presently the learner strength of Benadaha Paschimpara Shishu Shiksha Kendra was 81 and there was only two Sahayikas engaged. If the strength is above 80, a third Sahayika can be engaged. It is also true that in the order of the District Nodal Officer dated 26.04.2010, another candidate Samima Khatun was approved as fourth Sahayika in another SSK without taking into consideration the requirement for age relaxation.

It appears that there was an approval of the Sthayee Panchayat Samiti in respect of the present petitioner. It is debatable whether a further

sanction is to be taken regarding age relaxation. Moreover, there is no need for age relaxation as on date.

The litigation has remained pending since 2012. It appears that since 2012, no fresh engagement was to be made as Sahayika at a SSK. But, the present list pertains to an engagement process of 2009.

As the petitioner seems to be otherwise entitled to the post of Sahayika and by the same order dated 26.04.2010, the District Authorities had permitted to another candidate to be selected as a Sahayika for another SSK without going into the question of age relaxation and at present there is no question of age relaxation, let the petitioner be engaged as a Sahayika at the concerned SSK as there is a vacancy there, there being only two Sahayikas for 81 learners. The same be done as expeditiously as possible, preferably within four weeks from the date of communication of this order.

With these observations, the writ petition is disposed of.

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

(Jay Sengupta, J)