

16.01.2025
Court No.23
ML/Item No.-26
[Milan, A.R. (Ct.)]

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

WPA 25138 of 2024

**Lily Jasmin Ara Abedin
versus
The State of West Bengal & Ors.**

Mr. Ekramul Bar,
Mr. Sk. Imtiaj Uddin

....for the petitioner

Mr. Biswabrata Basu Mallick,
Mr. Biman Halder

....for the State

Mr. Ratul Biswas,
Ms. Soumyadipa Kanu

....for Rabindra Open Schooling

The West Bengal Health and Family Welfare Department for appointment of Auxiliary Nurse and Mid-wife (in short, "ANM") on contractual basis under the National Rural Mission published an advertisement on 6th September, 2006. The educational qualification prescribed under the said advertisement was Madhyamik or equivalent qualification. The respondent no.11 was selected as the first candidate in the empanelled list while the petitioner was the second candidate. In the event, an appointment is granted to the respondent no.11, the petitioner will have no chance of getting the appointment.

The petitioner questioned the inclusion of the name of the respondent no.11 in the empanelled list, on

the ground the respondent no.11 produced a fake certificate and showed that she had passed Class-VIII from a Madrasah and thereby got admitted to the Paschim Banga Rabindra Mukta Vidyalaya (in short, “PBRMV”) now known as Rabindra Open Schooling (in short, “ROS”) and acquired the Madhyamik or equivalent qualification being the bench mark to participate in the said selection process. The petitioner, therefor, prayed for removing the name of the respondent no.11 from the panel.

The matter appears to have a checkered history as several rounds of litigation has taken place between 2006 till date, most of which were in writ jurisdiction before this Court. As of now, there exists an order of the District Magistrate, Dakshin Dinajpur being Order No.220 dated 22nd July, 2024 passed in terms of the direction given by this Court vide order dated 28th November, 2023 passed in WPA 20177 of 2023. The operative portion of the said order which appears at pages 42 to 45 is set out hereunder:-

“4. Now since the questions of eligibility of the petitioner for the selected post has been settled, the further course of action can be taken up by the appropriate authority as per the recruitment guidelines. CMOH Dakshin Dinajpur is directed to take up further measure in this regard, as per the recruitment guidelines. Should there be any uncertainty with regard to the validity of the panel, on the basis of the Order of the National Health

Mission dated 19th May, 2015, the CMOH may consult the higher authorities in the Health and Family Welfare Department and act as per their concurrence and approval”.

No appointment has been given to the respondent no.11 as yet by the Chief Medical Officer of Health (in short, “CMOH”), Dakshin Dinajpur in terms of the direction given by the Learned District Magistrate in his order dated 22nd July, 2024.

The petitioner has challenged the said order in this writ petition and has also prayed for certain other orders. The Learned District Magistrate, Dakshin Dinajpur in his order dated 22nd July, 2024 has observed that the selection of respondent no.11 has been held valid by the Court and as such the said issue cannot be further gone into without considering the criminal case pending in connection with the alleged fake certificate of the respondent no.11. It is at the same time correct that unless the certificate issued to the respondent no.11 by PBRMV, no decision can be taken conclusively to hold that the respondent no.11 has become disentitled to be considered as an empanelled candidate.

Although, the Hon’ble Supreme Court has depicted the filing of successive writ petitions by a litigant in order to obtain a favourable decision in his/her favour to achieve the ultimate goal is an abuse

of the process as in **2006 (3) SCC 674 [A.P. SRTC & Ors. vs. G. Srinivas Reddy & Ors.]** but the facts of the case, as it stands with the relief sought for, does not persuade me to dismiss the writ petition on that ground.

The Learned District Magistrate directed the CMOH to take up further measure as per recruitment guidelines. The fact remains that the Learned District Magistrate did not take into account that on the basis of a criminal complaint lodged against the respondent no.11 for deriving the benefit by producing and/or relying upon a fake educational qualification, a criminal case has been initiated which is now pending before the Court of the Learned A.C.J.M., Gangarampur Sub-Division at Buniadpur District-Dakshin Dinajpur being GR. Case No.831/08 wherein the charge sheet has been framed against the respondent no.11.

Since the petitioner has made two sets of prayer; the first prayer is to set aside the order of the Learned District Magistrate, Dakshin Dinajpur dated 22nd July, 2024 and the second prayer is to direct PBRMV to cancel the certificate of the respondent no.11 for the time being, the following order is passed; The Director of Health Service, Government of West Bengal (the respondent no.2) shall consider the direction given by the Learned District Magistrate, Dakshin Dinajpur vide order dated 22nd July, 2024 to the CMOH, Dakshin Dinajpur to take up fresh measure, in the light of the

criminal case being GR 831/08 now pending before the Court of the Learned A.C.J.M., Gangarampur Sub-Division at Buniadpur District-Dakshin Dinajpur against the respondent no.11 wherein the charge-sheet has been filed and trial has commenced.

The respondent no.2 will give an opportunity to the writ petitioner and the respondent no.11 to place the relevant materials before him and if necessary give them a personal hearing. The entire exercise should be completed within a period of 12 weeks from the date of communication of this order.

So far as the direction sought for by the PBRMV concerned, I am not inclined to pass any order at this stage as the same may have an impact or influence the pending criminal proceedings.

I, therefor, disposed of the writ petition by passing the aforesaid direction upon the respondent no.2.

So far as the prayer for cancellation of the educational certificate by PBRMV concerned, it will be open to the petitioner to file a separate proceedings on the basis of the outcome of the criminal case now pending before the Court of the Learned A.C.J.M. against the respondent no.11.

The writ petition is accordingly disposed of.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

(Arindam Mukherjee, J.)