
(2012) 08 CAL CK 0071
In the Calcutta High Court
Case No : FMA 508 of 2012 (Assigned)

Lakshi Chandra (Dutta)

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 08 CAL CK 0071

Hon'ble Judges : Shukla Kabir (Sinha), J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : P.C. Das, for the Appellant; L.K. Gupta and Mr. M.K. Sanyal, For the Respondent no. 8 and Mr. Ashok Chakraborty For the State, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—The Sub Divisional Officer, Health and Family Welfare Department, National Rural Development Health Mission, Government of West Bengal, Berhampore, in the district of Murshidabad, published an advertisement, appearing at page 39 of the paper book, inter alia, asking for application from the eligible candidates for the post of "Auxillary Nurse and Midwife (Revised)". The application would be supported by residential certificate certifying that the candidate must be from the particular locality. The nature of certificate was also spelt out in the advertisement which would include Voter Identity Card and/or Ration Card or any Caste certificate issued by the Appropriate Authority. The appellant as well as respondent no. 8 applied for the post. They were both eligible for the post otherwise. They were short-listed by placing respondent no. 8 at the top of the panel and the appellant in the second position.

2. The appellant approached the learned Single Judge challenging the inclusion of the respondent no. 8 in the panel. According to her, respondent no. 8 was not a resident of Daulatabad, at least she could not submit any supporting document in support of her residence before the cut off date. Pertinent to note, the last date of making the application was August 29, 2008.

3. The dispute arose. The Block Development Officer heard both the parties and adopted a peculiar method, as we find from their affidavit-in-opposition. From the affidavit of the State, we find that the respondent no. 8 got her Voter Identity Card and Ration Card transferred to Daulatabad from Berhampore, long after publication of such advertisement as well as submission of her application for the post. The Sub Divisional Magistrate made discreet enquiry and observed as follows:-

It appears from the report that Smt Arpita Sen, W/O- Chandan Sen off and on resides in her fathers in law's house and they are the inhabitant since long but they have also a residential house at Berhampore town where she also resides there occasionally. It also appears from the report that the villagers have no objection about their resident in the village Daulatabad Chhutipur under Daulatabad P.S. Smt Arpita Sen, W/O- Chandan Sen was also present during visit.

So it tantamount from the report that:

1. Smt Arpita Sen, W/O-Chandan Sen was present during surprise visit in her residence at Daulatabad.
2. Smt Arpita Sen, W/O-Chandan Sen is the house wife of the said village.
3. The Father in Law and his husband are the native villagers of the said village and they are residing at their house since long and it is their forefather's house.

It appears from the above that she will be able to discharge her duties in residing the village under the said sub centre.

4. On such basis, they rejected the representation of the appellant and proceeded to appoint the respondent no. 8. We are told that she has already undertaken eighteen months training period and is now working. Learned Single Judge dismissed the writ petition vide judgment and order dated April 12, 2011, appearing at pages 104 - 108 of the paper book. We find from the judgment that His Lordship was of the view that the State was able to explain the status of the respondent no. 8. Learned Judge observed that she came to her in-law's house in Daulatabad after her marriage in 2000. Hence, the claim of the appellant that she was not a resident of Daulatabad, as on the date of advertisement was "totally misconceived". His Lordship observed that the Electoral Office recording the name in the Electoral roll was a procedural rule that could not take away right of a Hindu woman on performing Saptapadi to stay in her matrimonial home. Hence, this appeal.

5. We have heard Mr. P.C. Das, learned counsel, appearing for the appellant, Mr. L.K. Gupta, learned senior counsel, appearing for the respondent no. 8 and Mr. Ashok Chakraborty, learned senior counsel, for the State.

6. We are not impressed with the second contention of the appellant, unless the documents would be submitted before the cut off date the application would be rejected, even if the respondent was a resident of the said area. To construe a

particular clause, one has to read the document as a whole. If we read the advertisement carefully, we would find, intention of the State was to appoint local person for the post so that she could extend her support to the ailing villagers. To find out whether some one was within the village or not the advertisement would prescribe submission of Voter Identity Card or a Ration Card, as this would be admitted as public document. The advertisement would also provide the submission of School Leaving Certificate in that regard. In the instant case, admittedly the respondent no. 8 submitted Voter Identity Card and the Ration Card. Both the documents were obtained much after the application being made and much after the last date of making the application. From the records, it appears that she was having Voter Identity Card as a resident of Maharaja Nanda Road, Berhampore and not Daulatabad. Same was the case in respect of Ration Card. She got those transferred much after making of the application.

7. Mr. Gupta strenuously contends, Ration Card or Voter Identity Card would deal with a particular address that would not take away the right of a resident to reside permanently in a particular village other than what was mentioned in those documents. We fully agree. However, the Authority decided a yardstick to decide on the issue of residence. Hence all applicants should follow the same, if they wanted to compete for the same post. In the advertisement, it was clear that they would have to produce Voter Identity Card and/or Ration Card or School Leaving Certificate to prove their place of residence. Admittedly, she was not a resident of Daulatabad either on the date of making of the application or on the last date of making of the application, so far as Ration Card or Voter Identity Card is concerned.

8. With deepest regard we have for His Lordship, we are unable to find out any relevance of the marital status of the lady in this regard. Admittedly, she got married in 2000. It was not her claim that during 2000 - 2008 she was resident of Daulatabad at any point of time having Ration Card or Voter Identity Card in the said address which got subsequently transferred to Berhampore. It was not her case that Berhampore was her paternal house, she omitted to transfer the Voter Identity Card or Ration Card after change of marital status. In our view, learned Judge overlooked this aspect.

9. The appeal succeeds and is allowed.

10. The judgment and order impugned herein is set aside. The writ petition is allowed. The appointment given to the private respondent is set aside. Appellant be given consequential relief.

11. This order would, however, not preclude the State from considering private respondent in future vacancy, if they so like.

12. There would be an order of stay of operation of this judgment and order for a period of two months from date.

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

Ashim Kumar Banerjee, J.

I agree,