
(2009) 08 CAL CK 0010

In the Calcutta High Court

Case No : Writ Petition No. 30189 (W) of 2008 with W.P. No. 12807 (W) of 2009 with C.A.N. 6513 of 2009

Sadhana Barman (Roy)

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Citation : (2009) 08 CAL CK 0010

Hon'ble Judges : Pranab Kumar Deb, J

Bench : Single Bench

Advocate : Ashim Halder and Ms. Rina Banerjee, for the Appellant; P.S. Bhattacharyya, B.B. Das and Mr. Raju Bhattacharyya for the Respondent No. 8, Mr. Swarup Pal for the State in W.P. 30189 (W) of 2008, Mr. Debasish Saha and Mr. Moniruzzaman for the State in W.P. 12807 (W) of 2009, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Deb, J.—The writ petitioner has filed two writ petitions, (i) W.P. 30189 (W) of 2008 with a prayer for direction upon the District Magistrate, Dakshin Dinajpur to recall the order issued by him whereby selection in favour of the private respondent No.8. Dipannita Deb Sinha (Sen) for the post of 2nd Auxiliary Nurse and Midwife for Rajapur Health Sub-centre was accorded and (ii) W.P. 12807 (W) of 2009 with a prayer for direction upon the respondent Nos. 2 to 7 to issue appointment letter in favour of the writ petitioner in trialing the candidature of the private respondent No.8 as cancelled and the application, being CAN 6513 of 2009, has been filed by the private respondent No.8 for a direction upon the concerned authorities to permit private respondent No.8. Dinannita Deb Sinha (Sen) to join duties for the post of 2nd Auxiliary Nurse and Midwife for Rajapur Health Sub-centre.

2. Alleging that the private respondent No.8. Dipannita Deb Sinha (Sen) was not a permanent resident of Rajapur Health Sub-centre, the writ petitioner namely, Sadhana Barman (Roy) earlier filed a writ petition being W.P. No.7418 (W) of

2007. In disposing of the aforesaid writ petition the Writ Court directed the District Magistrate, Balurghat, Dakshin Dinajpur to look into the matter and take a decision in accordance with law after giving an opportunity of hearing to both the petitioner as well as to the respondent No.8.

3. Acting on the direction of the Writ Court the District Magistrate, Balurghat, Dakshin Dinajpur initially directed the Screening Committee to conduct an inquiry. Thereafter in modification of the earlier order, direction was given to the Sub-Divisional Officer, Gangarampur at Buniadpur to cause an enquiry to ascertain as to whether the private respondent No.8 was actually a resident of Rajapur even after her marriage. The enquiry was conducted in terms of the direction of the District Magistrate, Balurghat, Dakshin Dinajpur by the Sub-Divisional Officer, Gangarampur after affording opportunity to both the parties to vindicate their respective stands. In his report, the Sub-Divisional Officer, Gangarampur has confirmed that the private respondent No.8. Dipannita Deb Sinha (Sen) is still a resident of Saraihat Baie Denor under the area of Rajapur Health Sub-Centre. Accepting such report the appointment letter has been issued in favour of the private respondent No.8. Dipannita Deb Sinha (Sen).

4. Challenging the said order issued by the District Magistrate, Dakshin Dinajpur, Mr. Halder representing the writ petitioner has submitted that in taking a decision as to whether the private respondent No.8 is a resident of Rajapur Health Sub-Centre, the concerned authority did not take into consideration that the private respondent No.8 started residing with her husband at Balurghat after her marriage. It is argued that a married lady is expected to live with her husband after her marriage. It is submitted that there is hardly any earthly reason for her to reside in her father's house even after solemnisation of her marriage.

5. Referring to the certificate issued by Pradhan of Akcha Gram Panchayat, Kushmandi, Dakshin Dinajpur placed at annexure "P-2" and the certificate issued by the Councilor, Balurghat Municipality placed at annexure "P-4" as well as the mass representation placed at annexure "P-3", Mr. Halder has submitted that all the documents will reveal that the private respondent No.8 started permanently residing in Balurghat, these documents it is contended belie her stand that she is still a resident of Saraihat. It is argued that had these documents been considered by the Enquiry Officer and the District Magistrate that they would have taken an altogether different view, dismissing her claim of being a permanent resident of Saraihat Baje Denor under the area of Rajapur Health Sub-Centre.

6. Mr. Halder has cited the case of *Diptimayee Parida v. State of Orissa & Ors.*, reported in (2009)2 WBLR (SC)59 to vindicate his stand that intervention of the Writ Court would be justified if there are apparent irregularities and illegalities in the selection process.

7. Challenging the contention of the writ petitioner that the private respondent No.8 is not a permanent resident of Saraihat Baje Denor under the area of

Rajapur Health Sub-Centre. Mr. Bhattacharyya representing the private respondent No.8, has submitted that since on consideration of all the documents the authorities were convinced that she was a permanent resident of Saraihat Baje Denor under the area of Rajapur Health sub-centre, the factual aspects should not be reassessed in entertaining a writ petition.

8. Refuting the claim of the writ petitioner that a married lady is expected to stay with her husband in his residence after her marriage; Mr. Bhattacharyya has submitted that various reasons may compel a married lady to stay in her father's house even after her marriage. Reasons having assigned for her staying in her father's house even after the marriage, there was no earthly reason for the authority to disbelieve her contention.

9. Challenging the maintainability of the writ petition; Mr. Bhattacharyya has submitted that the writ petitioner having participated in the selection process, she would be debarred from raising this issue at this stage. Reliance has been placed on the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, to underline the proposition that an unsuccessful candidate should not be permitted to challenge the selection process.

10. Mr. Bhattacharyya has further contended that as the private respondent No.8 has already completed her, training programme, no order should be issued at this stage regarding discontinuance of her training.

11. It is on record that acting on the direction of the Writ Court, an enquiry was conducted. To have a specific impression about the claim of the writ petitioner as well as the private respondent, the District Magistrate directed the Sub-Divisional Officer, Gangarampur at Balurghat to cause an enquiry to ascertain as to whether the private respondent was actually residing at Rajapur even after her marriage.

12. It appears from the record that reasonable opportunity was extended to the writ petitioner as well as to the private respondent to vindicate their respective stands. In the ration card, voter identity card, certificate issued by Savapati Kushmandi Panchayat Samity, caste certificate as well as the certificate issued by the local MLA there are fair indication that the private respondent continues to reside in Saraihat Baje Denor under Kushmandi Block which falls under the jurisdiction of Rajapur Health Sub-centre. On perusal of the documents and placing reliance on the report of the Enquiry Officer, the District Magistrate, Dakshin Dinajpur accepted the contention of the private respondent that she is a permanent resident of Saraihat Baje Denor under Kushmandi Block.

13. The order was passed by the District Magistrate, Dakshin Dinajpur after affording opportunity to both the parties to explain their position by producing the relevant documents. The principle of natural justice was well maintained. The order was issued on the basis of series of documents placed by the private respondent No.8, Dipannita Deb Sinha (Sen) in support of her contention that she is a permanent resident of Saraihat Baje Denor under the area of Rajapur Health Sub-centre. The papers submitted by the writ petitioner were duly

considered. The documents on which the writ petitioner now wants to rely were not placed and forwarded at the time of hearing. The order is supported by reason. I do not find any irregularity or illegality in the aforesaid order passed by the District Magistrate, Dakshin Dinajpur. There is hardly any scope for issuing direction upon the concerned respondents to issue appointment letter in favour of the writ petitioner by setting aside the appointment letter which has already been issued in favour of the private respondent No.8, Dipannita Deb Sinha (Sen).

14. Accordingly, the application, being CAN 6513 of 2009, filed by the private respondent No.8 is allowed, whereas the writ petitions, being W.P. 30189 (W) of 2008 and W.P. 12807 (W) of 2009 filed by the writ petitioner stand dismissed. The authorities are hereby directed to allow the private respondent No.8, Dipannita Deb Sinha (Sen) to join her duties to the post of 2nd auxiliary Nurse and Midwife at Rajapur Health Sub-centre.

15. There will be no order as to costs.

16. After passing the order, learned counsel representing the writ petitioner prays for stay of the order. Prayer is considered and rejected.

Urgent xerox certified copy of this order, if applied for, be given to the parties.

Writ petition dismissed