
(2011) 06 CAL CK 0040
In the Calcutta High Court
Case No : Writ Petition No. 4191 (W) of 2009

Smt. Mousumi Ghosal (Adhikary)

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-06-2011

Acts Referred:

Citation : (2011) 06 CAL CK 0040

Hon'ble Judges : Patherya, J

Bench : Single Bench

Advocate : Subir Sanyal and Santosh Kr. Das, for the Appellant; Subal Maitra and Gopa Roy. Advs. for the State and Sk Md. Galib, for the Respondent

Judgement

Patherya, J.—By this writ petition the Petitioner seeks to challenge the appointment of the private Respondent as 2nd ANM in the Jibantala Sub-Centre.

2. The case of the Petitioner is that for the post of 2nd ANM advertisement was published. Initially the last date for filing applications was 20th October, 2006. Subsequently, the date for submitting application was extended till 30th November, 2006 and the Petitioner filed her application on 30th November 2006 i.e. within the extended period. All necessary documents were annexed with the application as required. A photostat copy of the EPIC card was also enclosed wherefrom the residential status of the Petitioner was evident. On 28th March, 2007 the Petitioner was directed to appear before the selection committee with all original documents for verification. The same was done and thereafter the Petitioner was selected and placed at serial No. 1 of the panel prepared. Subsequently, by communication dated 24th March, 2008 the Petitioner's selection has been cancelled on the ground of failure to produce sufficient proof of residential status and she was replaced by the private Respondent. It has been submitted by counsel for the Petitioner that all documents submitted with the application were also produced in original on 28th March, 2007. The case of the Petitioner not being married which the statutory authorities are now seeking to make out was not a ground for canceling her selection. The complaint was filed

by the private Respondent on 21st March, 2007 and the same was directed to be enquired into. No opportunity was given to the Petitioner to meet the said complaint. The marriage invitation card relied on by the private Respondent is of 5th March 2007, whereas from the certificate of marriage issued by the Registrar, it will be appear that the Petitioner was married on 27th November, 2006. As the marriage certificate has been issued u/s 8(1) of the 1955 Act unless the same is set aside a statutory presumption exists with regard to the validity of such certificate. The marital status of the Petitioner is not a reason for canceling her selection and cannot be supplanted in the affidavit filed as held in *Indu Bhusan Jana Vs. The Union of India (UOI) and Others*, . There has also been violation of the principles of Natural Justice as no hearing was given to the Petitioner and as all requisites have been complied with the authorities could not have set aside her selection. Reliance is placed on *Collector (L.A.) Vs. Jagatha*, . For all the said reasons the appointment of the private Respondent be set aside.

3. Counsel for the State Respondent submits that it is true that no notice was given to the Petitioner while considering the complaint of the private Respondent. The reason for setting aside the selection is insufficient proof of residence produced by the Petitioner. In the voter's list of 2007 the Petitioner has been shown as the daughter of Ramprasad Adhikari which will also appear from the EPIC card produced. It will be evident that although married the Petitioner's address was not correctly stated in the EPIC Card and therefore, the Respondent was justified in canceling her selection and appointing the private Respondent as 2nd ANM.

4. Counsel for the private Respondent submits that the last date for submitting the application was 20th October, 2006 and on that date the Petitioner was not married therefore, she could not have applied for the said post. Although the application filed by her was within the extended period but all conditions of the advertisement were to apply. A complaint was lodged by the private Respondent and the marriage invitation card of the Petitioner was forwarded to the authorities, wherefrom it will be evident that the Petitioner was married on 5th March, 2007 i.e. long after submission of the application. As the Petitioner was not married on 30th November, 2006 she was not entitled to apply. In fact the private Respondent was sent for training and has completed the same and joined the post of 2nd ANM in Jibantala Sub-Centre. Therefore no order need be passed.

5. Having considered the submissions of the parties, on the date of application that is 30th November, 2006 the Petitioner was eligible to file an application as one of the eligible criteria was that the candidate should be a married woman. The Petitioner was married on the date when she applied. This will appear from the certificate issued by the marriage registrar. This is not the reason for cancellation of the Petitioner's selection. The only reason for cancellation of her selection is insufficient proof of residential status. On the direction of this Court the original records were produced by the State Respondent and from a reading of the application filed by the Petitioner it appears that the permanent address

given in such application was as follows:-

(iv) permanent address Gram Jibantala P.O.J.S. bad Canning South 24 Parganas Pin 743376.

6. On 28th March, 2007 the Petitioner was directed to produce the original documents in support of her residential status besides other documents for verification and although the Petitioner produced her original documents those relating to her residential status was insufficient according to the Respondent authorities. The only original documents that could have been produced by the Petitioner were those enclosed with her application form one of which was the EPIC card and on perusal thereof there appears no difference in the address given in the application form and in the EPIC Card. Therefore, the reasoning of the Respondent No. 3 that sufficient proof was not produced cannot be sustained as the Petitioner had produced the original of the documents already submitted by her with her application and no further documents could have been produced by her.

7. The issue of her marital status need not be addressed as in the application the Petitioner has given the name of her husband. In any event this was not a ground for cancellation of her selection. In the event the cancellation was based on the complaint as no opportunity was given to the Petitioner to deal with such complaint the said ground could not have formed the basis of cancellation.

8. In view of the aforesaid the cancellation of the Petitioner's selection cannot be sustained, so also the approval granted to the private Respondent and the same are set aside. This application is accordingly disposed off.

Later:

9. As a consequence of the order that has been passed this day steps be taken by the Respondent No. 3 to grant appointment to the Petitioner as she was placed at serial No. 1 of the panel in accordance with law.

10. The records placed before this Court are referred to learned Counsel for the State-Respondents.