
(2013) 04 CAL CK 0040
In the Calcutta High Court
Case No : A.S.T. No. 285 of 2012

Smt. Subhra Halder (Dubey)

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 3 CHN 217 : (2013) LabIC 2337 : (2013) 3 WBLR 621

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Murari Prasad Shrivastava, J

Bench : Division Bench

Advocate : Ashok De, Kalimuddin Mondal and Sankar Biswas, for the Appellant; Amal Baran Chatterjee, Sankar Prasad Dalapati, Chandi Charan De and Soumitra Bandhopadhyay, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred assailing the judgment and order dated 17th September, 2012 passed by a Learned Judge of this Court whereby and whereunder the said Learned Judge disposed of the writ petition upon holding that the selection of the respondent No. 6 for the post in question is bad in law and also held that the entire selection process for the post in question was vitiated by gross irregularities committed by the Block Level Selection Committee. From the records, we find that on an earlier occasion a writ petition was filed at the instance of the respondent No. 6 herein being W.P. 6354(W) of 2007 which was finally disposed of by the order dated 20th September, 2007 passed by a Learned Judge of this Court whereby the said Learned Judge directed the District Magistrate, Murshidabad to pass a reasoned order upon considering the grievances of the writ petitioner viz. the respondent No. 6 herein. Pursuant to the said order, the District Magistrate, Murshidabad passed a reasoned order in the matter on 29th September, 2011.

2. The relevant extracts from the said order of the District Magistrate, Murshidabad are set out hereunder:

Now all the documentary papers are examined and verified with their originals and the following findings are derived:

- (1) The petitioner, Tajmira Khatun filed application on 1.11.2006 following the advertisement. No proof of residential status is found tagged with the application form, though she has claimed that she submitted a copy of her Voter Identity card as stood on 1.1.2006 with her application along with other requisite papers.
- (2) The private respondent, Subhra Dubey (Haider) Submitted her application on 31.10.2006. The application contains a copy of her Voter Identity card as stood on 1.1.2006 along with other requisite papers.
- (3) The register of application reveals that 13 Nos. of candidates submitted applications for the post of 2nd ANM for Gholla S.S. It appears that Subhra Dubey (Haider) was kept in 1st position with 42.33% of Score and one Sahanara Khatun was placed as 2nd with 39.44% of Score in order of merit. The entries in the register is unsigned and unauthenticated and it is found that all other candidates were not considered for selection for one or other reason though eight candidates Scored higher marks than the private respondent, Subhra Dubey (Haider). The reasons of non-consideration of the candidature of higher Scoring candidates in four cases were mainly for non-submission of residential proof. The petitioner, Tajmira Khatun was not empanelled on grounds of non-submission of residential proof though she was the highest Scorer with 53.5% marks in order of merit.
- (4) The then Block Level Selection Committee Selected Subhra Dubey (Haider) as the topper but there is no proof that proper scrutiny of the applications was done by the Block Level Selection Committee and they took no resolution to complete the process of selection.
- (5) The appointment issued in favour of Subhra Dubey (Haider) is a wrongful act as it violates the very operative direction of the Hon"ble High Court given through order dated 20.9.07 in W.P. No. 6354 (W) of 2007.

Hence, the wrong done in any state of the process of Selection cannot be allowed to continue. Under the above stated facts and circumstances I am constrained to state that the Selection process in selecting Subhra Dubey (Haider) for the post of 2nd ANM for Gholla S.C. under Beldanga-II Block was not fair and not done according to norms and guidelines issued by the Health and Family Welfare. Department, Govt. of West Bengal. The Block Level Selection Committee failed to discharge their duty properly, and it was not beyond doubt that there was a manipulation in selecting the candidate for 2nd ANM.

Hence, it is ordered that the selection of Subhra Dubey (Haider) for the post of 2nd ANM for Gholla Health Sub-centre is null and void.

The Block Medical Officer of Health, Beldanga-II is directed to terminate the provisional appointment on contractual basis issued in favour of Subhra Dubey (Haider) and take her back from duty.

The Block Development Officer, Beldanga-II who is the Chairman of the B.L.S.C. is directed to select the Writ Petitioner, Tajmira Khatun for the post of 2nd ANM for Gholla S.C. and send her name for sending training through the process of selection as per norms within 30 days of receipt of order.

The matter is thus disposed of.

Let a plain copy of this order be served upon all concerned.

Sd/-

District Magistrate & Collector,

Murshidabad.

3. On examination of the aforesaid findings of the District Magistrate & Collector, Murshidabad, it appears that the respondent No. 6 viz. Tajmira Khatun was not empanelled due to the non-submission of the residential proof although she was the highest scorer with 53.5% marks. The District Magistrate & Collector, Murshidabad ignoring the aforesaid fact directed the Block Development Officer, Beldanga-II to select the said Tahmira Khatun for the post of 2nd ANM for Gholla S. C. and sent her name for training through the process of selection as per norms.

4. The Learned single Judge did not approve the aforesaid decision of the District Magistrate & Collector, Murshidabad and specifically held that the said direction of the District Magistrate & Collector, Murshidabad upon the concerned Block Development Officer, Beldanga-II to select the respondent No. 6 herein for the post in question is bad in law.

5. We do not find any error and/or infirmity in the aforesaid decision of the Learned single Judge since the respondent No. 6 herein could not be considered for the post in question as her application form was not complete in every respect in view of the non-submission of the residential proof with the application form which was a mandatory requirement.

6. The respondent No. 6 also accepted the aforesaid decision of the Learned single Judge and did not file any appeal challenging the decision of the Learned single Judge in this regard.

7. The appellant herein, however, challenged the decision of the District Magistrate & Collector, Murshidabad which was approved subsequently by the Learned single Judge by preferring the instant appeal.

8. Mr. De, learned senior Advocate representing the appellant submits that the appellant herein has been rightly selected being the topper amongst the eligible candidates. The District Magistrate & Collector, Murshidabad in his findings held that there is no proof that the proper screening of the applications was done by the Block Level Selection Committee.

9. From the records, we find that the panel was prepared after screening the

applications for each sub-centre by the Block Level Selection Committee and the Chairman of the Block Level Selection Committee in the written communication dated 15.12.2006 informed the District Magistrate & Collector, Murshidabad that the panel was prepared after screening the applications of each sub-centre by the Block Level Selection Committee and the said panel was signed by all the members of the Block Level Selection Committee.

10. The Block Development Officer, Beldanga-II being the Chairman of the Block Level Selection Committee forwarded the panel to the District Magistrate by enclosing the same with the forwarding letter dated 15th December, 2006.

11. The said forwarding letter of the Block Development Officer, Beldanga-II is set out hereunder:

Government of West Bengal Office of the

Block Development Officer

Beldanga - II Development Block

Village & Post Office-Shaktipur, District-Murshidabad, PIN- 742163, Telephone & Fax-(03482)-242234 E-mail-beldanga2.nic.in

No. 2415/EN/Bel-II

Dated: 15-12-2006

To,

The District Magistrate

Murshidabad & Executive Chairman of the District,

Health and Family Welfare Samity, Murshidabad.

Subject: Submission of a panel of suitable candidates on the basis of merit for the recruitment of second ANMS in all sub-centre under Beldanga-II Block.

Sir,

With reference to the above subject this is to inform you that after screening the applications for each sub-centre by the Block Level Committee, a panel, which is enclosed herewith, has been drawn accordingly mentioning 1st and 2nd candidates for each sub-centre.

The said panel is being sent herewith for your kind approval.

Yours faithfully,

Sd/-

Chairman of Block Level Committee

Block Development Officer

Beldanga-II Development Block

Shaktipur, Murshidabad

12. Mr. Chandi Charan De, learned Additional Government Pleader upon placing reliance on the aforesaid forwarding letter of the Chairman of the Block Level Committee submits that District Magistrate failed to take note of the fact that the panel in question was prepared after screening the applications of each sub-centre. The other objection raised by the District Magistrate & Collector, Murshidabad with regard to the selection of the appellant herein is that the appointment was made in favour of the said appellant in violation of the operative direction of this Court mentioned in the order dated 20th September, 2007 in W.P. No. 6354 (W) of 2007.

13. Going through the aforesaid order dated 20th September, 2007 passed in W.P. No. 6354 (W) of 2007, we find that the Learned single Judge specifically issued the following direction:

Pending disposal of the representation (Annexure-"P4" and "P-5") there will be an order of status quo in respect of the proposed panel as on date.

14. Mr. Chandi Dharan De, learned Additional Government Pleader submits that the appellant was sent for training on 16th April, 2007 whereas the aforesaid order of status quo was passed long thereafter i.e. on 20th September, 2007.

15. In the aforesaid circumstances, it cannot be said that the appellant herein was appointed in violation of any direction passed earlier by this Court.

16. The learned Additional Government Pleader very fairly admits before this Court that the District Magistrate & Collector, Murshidabad did not consider the entire aspects of the matter in an appropriate manner and the findings of the District Magistrate & Collector, Murshidabad, according to Mr. Dey are erroneous.

17. We are also of the opinion that the findings of the District Magistrate in respect of the appellant herein are factually incorrect and, therefore, the same are liable to be quashed.

18. The learned single Judge held against the appellant herein upon placing reliance on the findings of the District Magistrate & Collector, Murshidabad. The Learned single Judge failed to take note of the fact that the findings of the District Magistrate & Collector, Murshidabad in respect of the appellant herein are erroneous and the same cannot be relied upon under any circumstances.

19. Mr. Amal Baran Chatterjee, learned Advocate representing the respondent No. 6 sought to challenge the selection of the appellant herein upon placing reliance on the findings of the District Magistrate.

20. Mr. Chatterjee sought to challenge the selection of the appellant herein on the basis of the findings of the District Magistrate concerned which we do not accept since we have specifically held that the findings of the District Magistrate

in respect of the appellant herein are factually incorrect.

21. We, however, do not find any merit in the arguments of Mr. Chatterjee since the respondent No. 6 did not prefer any appeal challenging the order passed by the Learned single Judge although the Learned single Judge in the impugned judgment and order under appeal specifically held that the directions of the District Magistrate & Collector, Murshidabad upon the Block Level Officer concerned to select the respondent No. 6 for the post in question is bad in law.

22. The respondent No. 6 virtually accepted the decision of the Learned single Judge by not preferring any appeal challenging the said decision of the Learned single Judge.

23. It is true that the applications submitted by several other candidates were ultimately found incomplete on account of non-submission of relevant documents along with the application form which were mandatory requirements.

24. The District Magistrate & Collector concerned never found that the applications of those candidates were erroneously and/or wrongfully rejected by the authorities and as a matter of fact the candidates whose applications were declared invalid, did not challenge the decision of the authorities. The empanelment of the appellant herein by the Block Level Selection Committee was also not challenged by anybody including the respondent No. 6 herein.

25. Scrutinising the available records we also find that amongst the eligible candidates who participated in the selection process in respect of Gholla sub-centre, the appellant herein was adjudged best candidate and she was assigned 1st position in the panel prepared for the said Gholla sub-centre.

26. In the aforesaid circumstances, the appellant herein was rightly sent for training and subsequently after completion of training allowed to join in the aforesaid Gholla sub-centre in the post of 2nd A.N.M. We do not find any illegality in the aforesaid selection of the appellant herein for the post of 2nd ANM in the Gholla sub-centre.

27. For the aforesaid reasons discussed hereinabove, we quash the impugned order passed by the District Magistrate & Collector, Murshidabad dated 29th September, 2011 and also set aside the order passed by the Learned single Judge in respect of the appellant herein although we affirm the decision of the Learned single Judge in respect of the respondent No. 6.

28. With the aforesaid observations and directions, we allow the appeal without awarding any order as to costs.

29. We have been informed that due to the pendency of the present proceedings before this Court, monthly salary of the appellant has not been released by the respondent authorities.

30. We direct the respondent authorities to forthwith release the admissible current salary and allowances of the appellant herein including the admissible

arrear salary and allowances of the said appellant within a period of four weeks from the date of communication of this order. Let xerox certified copy of this order, if applied for, be supplied to the parties as early as possible.

Murari Prasad Shrivastava, J.

I agree.