

25
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pg.

WP 8911 (W) of 2015

Sumita Kumari
Vs.
The State of West Bengal & Ors.

Mr. D.K. Chatterjee
Mr. M. Bhattacharyya
... For the petitioner

Mr. Jahar Lal De
Mr. Moloy Roy
... For the State

The petitioner is a member of the transgender community of the human species and has approached this Court complaining of the prejudice suffered for not being considered for appointment or engagement as an ASHA Karmee (worker) due to the petitioner's inherent inability to indicate which of the two predominant sexes the petitioner belongs to. This Court had earlier passed an order on 13th May, 2015, wherein the State Mission Director's thoughts in such regard were required to be penned by the time the matter appeared next.

Today, when the matter is taken up for consideration, the learned advocate appearing on behalf of the State handover a copy of a memo dated 26th May, 2015, which may be taken on

record. This memo appears to have been addressed by the Mission Director, National Health Mission, to the Sub-Divisional Officer, Purulia Sadar (West). A bare glance at the said memo reveals that the eligibility criteria for being an ASHA Karmee (worker) are quite gender specific in nature. In other words, only female members of the human species are entitled to apply for being engaged as ASHA Karmees (workers). However, even that eligibility criteria is qualified; only a married or divorced or widowed woman is eligible to apply, provided of course, the other criteria are fulfilled. Male members of the human species are not at all eligible for being considered as eligible for being engaged as ASHA Karmees (workers).

Now, the question comes for consideration is whether there has been any discrimination insofar as the writ petitioner is concerned, being a member of the transgender community. The answer is a clear, 'no'. The reason is – as observed hereinbefore – that engagement of an ASHA Karmee (worker) is gender specific. A male member of the human species is not at all eligible to be considered for engagement as an ASHA Karmee (worker). Similarly, a member of the transgender community of the human species is also not eligible for being considered for engagement as an ASHA Karmee (worker). However, it would

have been discriminatory if two out of the three genders of the human species were considered eligible to apply for engagement in respect of the posts-in-question to the exclusion of the transgender community members of the human species. However, that is not so in the facts of the instant case.

In such circumstances, this Court is unable to grant any relief, as prayed for. The writ petition is liable to be dismissed and is accordingly dismissed.

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

(Biswanath Somadder, J.)