(2012) 03 CAL CK 0008

Calcutta High Court

Case No: Writ Petition No. 13960 (W) of 2011

Monalisa Mohanty (Roy)		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: March 6, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2012) 4 CALLT 19 : (2012) 5 CHN 779

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Susanta Kumar Mukherjee and Ms. Sonali Bhar, for the Appellant; Srijib Chakraborty for the State, for the Respondent

Final Decision: Dismissed

Judgement

Biswanath Somadder, J.

The writ petitioner applied for the post of Anganwadi Karmee/Worker having a university degree of Bachelor of Arts. Her application was not considered by the Child Development Project Officer, Balarampur, Purulia, which has prompted her to file the instant writ petition. It is the specific contention of the writ petitioner that since she had not suppressed her qualification of being a graduate, her candidature ought to have been considered for the post-in-question.

2. The learned advocate appearing on behalf of the petitioner relies on a judgment of the Hon''ble Supreme Court rendered in the case of Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others, and submits that any criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than the prescribed cannot be held to be rational. He further submits that the observations

made by the Hon''ble Supreme Court in the above judgment would be applicable in the facts of the case and the petitioner''s application for the post-in-question ought to be considered by the concerned respondent authorities.

3. On the other hand, learned advocate representing the State respondents submits that the judgment relied on by the petitioner was considered by a Special Bench of this Court in Rina Dutta and Others Vs. Anjali Mahato and Others, . He further submits that the Special Bench also took into consideration another judgment of the Hon''ble Supreme Court, which was rendered in the case of State of Karnataka and Others Vs. Ameerbi and Others, and it was held that the reasoning given in Mohd. Riazul Usman Gani (supra) would not be available in a case relating to engagement of Anganwadi workers. In such circumstances, learned advocate for the State respondents submits that the judgment rendered by the Hon''ble Supreme Court in Mohd. Riazul Usman Gani (supra) would have no manner of application at all in the facts of the instant case.

4. After considering the respective submissions made by the learned advocates for the parties and upon considering the judgments relied on, it appears that the Special Bench of this Court in Rina Dutta & Ors. (supra) has categorically held that the reasoning given by the Hon''ble Supreme Court in Mohd. Riazul Usman Gani & Ors. (supra) would not be available in the facts of a case relating to engagement of an Anganwadi worker because the very scheme of Anganwadi workers and the nature of their engagements had been considered by the Hon''ble Supreme Court in State of Karnataka & Ors. (supra) and in paragraph 20 of that judgment it was held that Anganwadi workers did not carry on any function of the State and did not hold any post under a statute. As such, the State was not required to comply with the Constitutional scheme as enumerated in Articles 14, and 16 of the Constitution of India.

5. In such circumstances, this Court is unable to accept the submission of the learned advocate for the petition that notwithstanding having a higher qualification, the petitioner can be considered for the post of an Anganwadi worker.

6. At this juncture, one may also take notice of the observations made by the Special Bench of this Court in paragraphs 21 and 22 of its judgment rendered in Rina Dutta & Ors. (supra), which reads as follows:

21. When a particular qualification is laid down in an advertisement relating to a distinct class of candidates, the candidates possessing a qualification higher than that advertised can ordinarily not be debarred or disqualified, but it is open to the employer to make a rule providing for disqualification of candidates possessing qualification higher than the prescribed qualification, but the burden would be on the employer to justify such a rule.

22. We make it clear that in view of the fact that the answer to the question was not free from doubt till now, the appointment of persons with higher qualification than

that mentioned in the advertisement will not be disturbed on the basis of this judgment, but in disturbed the employer may be able to specify in the rule and in the advertisement that persons with qualification higher than the minimum qualification would not be considered eligible. It would of course be for the employer to give justification for such a rule.

7. Since it is specifically submitted by the learned advocate for the State that following the above observations made by the Special Bench, the advertisement for the post of Anganwadi workers has specifically excluded university graduates from applying, there was no wrong action on the part of the concerned authorities of not considering the writ petitioner''s application, since she was not even an eligible candidate to apply for the post-in-question. Having regard to the facts and circumstances as stated above, this Court does not find any reason to favour the writ petitioner with such relief, as prayed for. The writ petition is, thus, 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.