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Bharati Ghorai Vs The State of West Bengal

Writ Petition No. 12270 (W) of 2003

Court: Calcutta High Court

Date of Decision: April 4, 2014

Citation: (2014) 4 WBLR 157

Hon'ble Judges: Tapabrata Chakraborty, J

Bench: Single Bench

Advocate: Gourav Das, Advocate for the Appellant; Mintu Kumar Goswami, Advocate for the Respondent

Judgement

Tapabrata Chakraborty, J.
This writ application had been preferred by the petitioners challenging a memorandum dated 24th of June,

2003 by which the respondent No. 6 terminated the services of the petitioners who were working as ""Anganwadi Workers"" (hereinafter referred

to as AWW) under Sabong Integrated Child Development Scheme (hereinafter referred to as ICDS). The facts, in a nutshell, are that the

petitioners applied for participation in the selection process initiated vide memorandum dated 23rd of July, 2001 at page 42 of the writ application.

The petitioners emerged to be successful in the selection process and the petitioner Nos. 1, 2 and 3 were appointed to the post of AWW under

the Sabong ICDS. The petitioner No. 1 was posted at Hariharpur Prathamik Vidyalaya, the petitioner No. 2 was posted at Kharpara Prathamik

Vidyalaya and the petitioner No. 3 was posted at Raichak Dayaram Prathamik Vidyalaya.

2. Upon availing such appointment, the petitioners discharged their duties in the said post and their appointments were approved and they were

disbursed the monthly salaries. Suddenly, the petitioners were intimated by a memorandum dated 24th of June, 2003 issued by the respondent No.

6 that their services are being terminated with immediate effect, since after official investigation, it had been ascertained that the petitioners were

disqualified for the post of AWW. The petitioners were not granted any opportunity of hearing and as their services were abruptly terminated, the

petitioners made a representation on 7th of July, 2003 to the respondent No. 6 protesting such illegal termination.

3. Mr. Das, learned Advocate appearing for the petitioners, submits that the issue involved in this writ application had already been finally decided

by a judgment delivered by a Hon''ble Division Bench of this Court in the case of Sonali Dolui v. State of West Bengal and others. Mr. Das further

submits that they were not granted any opportunity of hearing in the alleged official investigation on the basis of which the petitioners'' services had

been terminated and that the reason towards such termination had also not been disclosed save and except a rider to the effect that the petitioners

are disqualified ""according to the existing government norms"".

4. Mr. Das submits that all the petitioners were terminated by a single order dated 24th of June, 2003 and that as such there is no bar towards

preference of this writ application jointly by the petitioners.

5. Mr. Goswami, learned Advocate appearing for the State respondents, - submits that the petitioners were all graduates at the time of

participating in the selection process and they have suppressed their qualifications knowing fully well that under the then guidelines, higher

qualification (graduation) was a bar towards appointment to the post of AWW.

6. Mr. Goswami had also submitted that the petitioners could not have jointly preferred this writ application and the petition is liable to be

dismissed on the said count itself.

7. The objection as raised by Mr. Goswami is not sustainable inasmuch as all the petitioners had challenged the memorandum dated 24th of June,

2003 by which the service of all the petitioners had been terminated. It cannot be said that the single writ petition presented by the petitioners is hit

by the rule of multifariousness, a rule of convenience only. Since all the petitioners had questioned a single memorandum, they are entitled to join in

one writ, petition.

8. Mr. Das further submits that the bar towards higher education qualification towards appointment to the post of AWW was considered by a

Special Bench of this Court in the case of Rina Dutta and Others Vs. Anjali Mahato and Others, wherein the Hon''ble Special Bench held:-

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"".

9. In view of the Special Bench judgment in the case of Rina Dutta (supra) and subsequent modification of the earlier guidelines withdrawing the

restrictions on the educational qualification for the post of AWW, I am of the opinion that the respondents had failed to justify the restrictions

imposed earlier on higher qualification and mentioned in the previous guidelines, were just and proper.

10. Mr. Das had further placed reliance upon the judgment delivered in the case of Madhuri Roy and Others Vs. State of West Bengal and

Others, and draws the attention of the Court to paragraph 12 of the said judgment, which runs as follows:--

The aforesaid modified guidelines came into effect on and from 1st April, 2012. The State Government has modified the aforesaid earlier

guidelines regarding imposition of restriction on the qualification of the Anganwari Workers upon realising that the aforesaid restrictions were not

proper. The restriction on educational qualification of a candidate applying for the post of Anganwari Worker was withdrawn by the State

Government by the subsequent modification of the earlier guidelines as a result whereof all graduate and higher qualified candidates became eligible

for the said post"".

11. Mr. Goswami submits that the vacancy in which the petitioners were rendering their services had already been filled up and that as such the

petitioners cannot be directed to be reinstated in the said post, more so when, the persons working in the said post had not been made parties to

the instant writ application.

12. However, Mr. Goswami, in his usual fairness, submits that seven vacancies had occasioned. However, no steps have been taken to fill up the

same due to the ensuing election. A written instruction communicated to Mr. Goswami by the respondent No. 6 be kept on record.

13. I have heard the submissions made by the learned Advocates appearing for the respective parties and upon consideration of the materials on

record, I am of the opinion that the termination of the appointment of the petitioners as AWW cannot be sustained in the eye of law and, therefore,

the said impugned order dated 24th of June, 2003 issued by the respondent No. 6 pertaining to the termination of the petitioners herein, is set

aside and quashed.

14. The writ application is, accordingly, disposed of directing the respondents particularly the respondent No. 6 to place the petitioners in the post

of AWW under Sabong ICDS and to allow the petitioners to resume their duties immediately when steps would be taken for filling up the

vacancies in the post of AWW in Sabong ICDS alter the ensuing election, preferably within 31st of May, 2014.

15. It is needless to mention that petitioners will be entitled to receive all admissible salaries and allowances regularly for discharging the duties as

AWW in Sabong ICDS project from the date of joining the duties in terms of this order. There shall, however, be no order as to costs.