
(2019) 09 CAL CK 0237

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9680, 9681, 9682 (W) Of 2019

Aparna Giri & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

West Bengal Services (Classification, Control And Appeal) Rules, 1972 — Rule 3(b)

Citation : (2019) 09 CAL CK 0237

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Chittopriya Ghosh, Goutam Acharya, Samir Kumar Adhikary, Susanta Pal, Jahar Lal De, Shamim Ul Bari, Raja Saha, Bipin Ghosh??Mr. Samir Kumar Adhi

Final Decision : Dismissed

Judgement

Protik Prakash Banerjee, J

Affidavit of service is taken on record.

Item nos. 8, 9 and 10 in the supplementary list today, being W.P. No.9682 (W) of 2019, W.P. No.9680 (W) of 2019 and W.P. No.9681 (W) of 2019, raise similar questions of law and fact and therefore, I have consolidated their hearing and heard them analogously with the consent of the parties today. I must admit that initially, since the respondents had not used any affidavit in opposition, I was inclined to allow the prayer for extension of time to file affidavits; this was opposed by Mr. Chittapriyo Ghosh, learned Advocate for the petitioners, who submitted that since his clients were suffering, the same interim order as passed in a similar case and not interfered with even after final hearing of an appeal, passed by a Hon'ble Division Bench ought to be passed, pending the hearing of the writ petitions. This was opposed by Mr. Jahar Lal De who is appearing in item no. 9 as also the learned advocate for the State in item no. 8. That is why I took up the matters for hearing even though they were appearing under the heading

"To Be Mentioned" with the consent of the parties appearing. Mr. Ghosh represents the petitioners in all three matters.

The petitioners admittedly are working in Non-Governmental Organization-run Integrated Child Development Scheme (in short ICDS) centres. It is the case of the petitioners that by and under the Rules of February 25, 2019 a process of selection was initiated where Rule 3(b) provides as follows:

"3. Method of recruitment:-

a) By Direct Recruitment :- 50% of the Posts of Supervisors will be filled up by direct recruitment, through a competitive Examination conducted by the Public Service Commission, West Bengal; and

b) Promotion by Selection:- Out of remaining 50% of the Posts of Supervisors, 45% of the Posts of Supervisors will be filled up from the Anganwadi Workers of Integrate Child Development Services Scheme and rest 5% of the Posts of Superviros will be filled up from case Workers under the Controller of Vagrancy, West Bengal, through separate selection test conducted by the Public Service Commission, West Bengal." Clause 4: The educational qualification for promotion by selection was given in clause (iv) (c)(3)

ii) For Promotion by Selection:

a) In the case of Anganwadi Workers under ICDS as indicated in rule 3(b):-

i) Graduate in any discipline with 3 years experience as Anganwadi Worker, She should have 3 years experience after acquiring the Graduate degree form a recognized University; or

ii) Passed Madhyamik or equivalent Examination from West Bengal

Board of Secondary Education or any other equivalent recognized Board with 10 years experience as Anganwadi Workers;

b) In case of Case workers under the Controller of Vagrancy as indicated in rule 3(b):-

i) Graduate in any discipline with 3 years experience as case worker, she should have 3 year experience after acquiring the graduate degree from recognized University; or

ii) Passed Madhyamik or equivalent Examination from West Bengal Board of Secondary Education or any other equivalent recognized Board with 10 years experience as Anganwadi Workers;

Mr. Chittapriyo Ghosh learned advocate for the petitioners submits that there is no distinction between his clients being Anganwari workers engaged by non-governmental organisations operating ICDS centers and other Anganwari workers directly appointed by the Government of West Bengal under the ICDS who are also contractual employees. Because his clients were not allowed to

participate in the process of the promotional selection process, as alleged in the writ petitions, they have come to Court. He has relied upon a judgment passed by the Hon'ble Division Bench in CAN 4820 of 2019 in MAT 676 of 2019 arising out of W.P. No. 9327 (W) of 2019 which has upheld the interim order passed in the earlier stage of stay application, in support of his contention. By that order, the Hon'ble Division Bench on August 20, 2019 was pleased to uphold an order dated May 21, 2019 passed by the Hon'ble Division Bench which had held, prima-facie, that no express bar was imposed by the Recruitment Rules of Anganwari Workers working in non-governmental organisations run institution to apply for promotion by selection and so the respondents may not have been justified in refusing to accept the applications sought to be tendered by the appellants before that Court being similarly situated as the petitioners herein. The Hon'ble Division Bench had, by its final order, held that since the writ petition had been filed being aggrieved with the refusal of the respondent authorities to allow them to participate in the selection process and by the interim order they had got the relief of participation, their grievances had been redressed adequately and it only remained for the respondents to consider and decide upon the fate of the applications filed by the appellants/petitioners pursuant to the interim order dated May 14, 2019 in accordance with law. By the order dated May 14, 2019 the Hon'ble Division Bench had passed an interim order, that too ex parte, to approach the respective child development project officers of the ICDS scheme, but the direction was that the said officers shall process the same if any or all the appellants were found to be eligible to participate in the process of selection for promotion and only then to forward their names along with the applications to the Public Service Commission, West Bengal for further action.

It is therefore, clear that the Hon'ble Division Bench had initially only recorded a prima-facie view as to the eligibility of the petitioners; even the interim order left it to the decision of the respondent authorities as to whether the petitioners were eligible or not. In the present case the petitioners have relied upon a document which is annexed in at page 129 of W.P. no. 9680 (W) of 2019 which supersedes all earlier orders or notifications pertaining to the constitution of monitoring committee towards implementation of ICDS projects run by the non-governmental organisations and cancels them. Even though it is described to be only a guideline this memo dated July 8, 1999 clearly indicates that all the concerned authorities are bound to follow the same. Mr. Ghosh has relied upon, inter alia, clauses 1,3,7 and 10.

The said clauses may profitably be noted, as extracted hereinbelow: -

1. "ADMINISTRATIVE CONTROL

The N.G.O. run ICDS Projects will be under the control and supervision of the Social Welfare Department.

3. ALLOTMENT OF FUND

All allotments will be made by the Director of Social welfare to the President/

Secretary/General Secretary/ Hony General Secretary of the NGO (Herein after called the representative of the NGO). Diversion of fund from one head/sub-head to another head/sub-head is not permissible. The NGO should submit to the Director of Social Welfare through the District programme Officer of the concerned district quarterly item-wise expenditure statement with a copy to the concerned District Magistrate. Before sending any proposal to the Director of Social Welfare for further allotment of fund a consolidated expenditure statement upto that period must be submitted.

7. ANNUAL INSPECTION

District Magistrate will authorize a competent Officer to conduct annual inspection of the project. Director of Social Welfare, West Bengal may also arrange inspection of the NGO-run-ICDS Project as per norms for the Government ICDS Project.

10. CONTROL OF OFFICERS AND STAFF

The West Bengal Service Rules Part-I & Part-II and the CCA Rule may be adopted by the NGO and made applicable to the staff of the NGO run ICDS Project."

In addition, he relies upon a document at page 72 of WP no. 9682 (W) of 2019 being dated December 3, 2010. It starts with the following paragraphs:

"It has been brought to the notice of this Department that the Anganwadi Workers of the NGO run ICDS Projects, at present, are not eligibel to apply for the post of Supervisors as and when sanctioned or falls vacant.

Now, after careful consideration of the matter the Govt. in the Deptt. Of Women & Child Dev. And Social Welfare has decided to extend the benefit to the eligible Anganwadi Workers to apply for the post of Supervisor subject to fulfillment of the following terms and conditions."

It is clarified by the said memo as below Clarification.

It is clarified that eligible Anganwadi workers of Nalhati-I NGO run ICDS Project can apply only for the post of Supervisor of Nalhati-I NGO run ICDS Project and likewise provided they are eligible as per conditions laid down at 'A', 'B', and 'C' above."

Mr. Ghosh initially wanted me to hold that, in itself, the Memo dated December 3, 2010, shows that his clients who are employees of non-governmental organisations run ICDS centers must be held to be eligible be considered for promotion to the post of supervisors. When I pointed out to him that this was only in respect of Anganwari workers who are eligible in Nalhati - I non-governmental organisations (in short NGO) run ICDS and that too only to the post of supervisors Nalhati - I NGO run ICDS Projects, Mr. Ghosh changed his stand and submitted that this might have been true in 2010, but he now relies upon the rules of 25th February, 2019 where he submits that there is no bar to Anganwari Workers of NGO run ICDS centers from participating in the process of

selection by promotion to the post of supervisors. He categorically submitted that the rules to this extent are silent and cannot be so read as to exclude him in view of the decision of the Hon'ble Division Bench as referred to above.

Since till today there has been no adjudication in any writ petition as to whether under the Rules of February 25, 2019, those like the petitioners who are engaged by NGO run ICDS centers were eligible to participate for forty-five per cent quota reserved for Anganwari workers for promotion to supervisors, I proceeded to test his submission on the basis of the documents relied upon by his clients.

Mr. Jahar Lal De and the other learned advocates for the State relied upon clause 10 at page 132 of W.P no. 9680 (W) of 2019 being part of the said memo dated July 8, 1999 which had been relied upon by Mr. Ghosh. They submitted that this was AN enabling provision by which only if it was shown that a given non-governmental organization had adopted part I and II of the West Bengal Services (Classification, Control and Appeal) Rules, 1972 and that these were made applicable to the staff of NGO run ICDS project could it be said that there was no distinction between the administration, financial control and functioning of NGO run ICDS centers and those which were directly controlled by the District Project Officer. This is not the same as being under the control and supervision of the social welfare department since the control in case of Non-Governmental Organizations, is remote and not direct. At any rate unless the petitioners show that there is a resolution by the managing committee of a given NGO it cannot be said that the writ petitioners have made out a case for which the writ court should intervene.

I asked Mr. Ghosh about whether any resolution from any managing committee of any NGO which had engaged his clients as Anganwari workers were available and he very honestly and fairly submits that the no such resolution has been annexed to the present writ petition, but that according to him the said memo of 1999 ought not to be read as enabling but it should be read as a method by which the government was taking over management of such ICDS units which were being run by NGOs.

Had that been the case and there was no distinction between the NGO run ICDS and the ICDS centers run by the District Project Officers the memo of 2010 referred to earlier at page 72 of W.P. no. 9682 (W) of 2019 would not have been issued making it clear only in that given case. Anganwari workers of Nalhati - I NGO run ICDS project would apply for the post of supervisor of Nalhati I NGO run ICDS project. Therefore, I am afraid that I cannot accept the contention of Mr. Ghosh that his clients have made out a present case for being allowed to participate in the process of selection on a final hearing of the writ petition rather than at the prima-facie stage. No case has been made out that this distinction between a NGO run ICDS project centers and ICDS centers run by District Project Officer directly has been obliterated by any memo of the Government of West Bengal which is of general applicability or that because they do similar work, but in fact the pleading at paragraph 10 of W.P. no. 9628 (W) of 2019

militates against what has been alleged in the records disclosed thereby. I quote it hereinbelow: -

"10) That your petitioners state that initially there were no provisions for eligible Anganwadi Workers working under NGO run ICDS Projects to apply and participate in the promotional selection process for the post of Supervisors. However, the Department of Women, Child Development and Social Welfare, Government of West Bengal through its Joint Secretary vides Memo No.9530-SW/3E-234/10 dated 03.12.2010 extended the benefits to the eligible Anganwadi Workers working under NGO run ICDS Projects to apply and participate in the promotional selection process for the post of Supervisors. By the said Memo dated 03.12.2010 the Department of Women, Child Development and Social Welfare, Government of West Bengal also framed certain eligibility qualifications and terms and conditions.

A copy of the memo dated 03.12.2010 issued by the Joint Secretary, the Department of Women, Child Development and Social Welfare, Government of West Bengal is annexed hereto and is marked with Annexure P-2 to this Writ Petition."

In that view of the matter, I am afraid that the only orders I can pass in these writ petitions are those of dismissal on the ground that a clear case has not been made out about entitlement of the petitioners to participate in the selection process by promotion to the post of supervisors.

This order shall not prevent the petitioners from making an appropriate representation to the respondent authorities concerned for considering their prayer for being allowed to participate in the process of selection by promotion to the post of supervisors of ICDS project on the basis of their experience as Anganwari workers engaged by NGO run ICDS centers provided that the representation is accompanied by the resolution of their managing committee adopting Part I and II of the West Bengal Services (Classification, Control and Appeal) Rules, 1972 and making it them applicable to the staff of such NGOs. If such representation is made with such document, it is expected that the respondents shall hold that the petitioners are eligible and pass necessary orders within seven days from making such representation. If the representation is not accompanied by such a resolution the respondent authorities shall be under no obligation to allow the petitioners any liberty to participate. Such resolution shall not be on current date, but must be on a date prior to the filing of the writ petitions. The concerned authority in this regard would be the Child Development Project Officer in terms of this order as above, who shall upload the applications of the petitioners and shall forward to the Public Service Commission for further action in the case that he allows such representation in terms of the aforesaid directions. The Child Development Project Officer shall act on the communication of this order by the learned advocate on record of the petitioners without insisting on a certified or server copy. No order as to costs.

Let the server copy of this order and/or a photocopy hereof be retained in the records of each of W.P. No.9682 (W) of 2019, W.P. No.9680 (W) of 2019 and W.P. No.9681 (W) of 2019.