
(2015) 07 OHC CK 0045
In the Orissa High Court
Case No : Writ Petition (C) No. 15217 of 2012

Bhagyabati Badi

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Citation : (2015) 07 OHC CK 0045

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Prasad, J—In this writ petition, petitioner being aggrieved with the order dated 30.7.2013 as contained in Order No. 1541 and subsequent order dated 14.8.2012 as contained in order No. 463 issued by the Child Development Project Officer, Tarbha, has approached this Court.

2. Facts of the case is that the petitioner was working as Anganwadi Worker in Menda-3 Anganwadi Centre having been engaged on 2.2.1993. Government has taken decision to select Anganwadi Worker as Lady Supervisor having matriculation qualification with 10 years experience on regular post and graduate with 5 years experience for contractual post, petitioner being eligible has appeared before the selection committee which was held on 27.4.2012 and thereafter she was found fit for selection of Lady Supervisor, her name finds place in the list containing names of 21 Anganwadi Workers to be engaged as Lady Supervisor on contractual basis.

3. The petitioner thereafter has been posted as Lady Supervisor on vide order No. 1442 dated 24.7.2012 (Annexure-4) discharged her duty but by virtue of order passed on 30.7.2012 as contained in order No. 1541 appointment as Lady Supervisor has been cancelled on the ground that the petitioner was not possessing experience of 5 years after passing graduation in the year 2011.

4. C.D.P.O., Tarbha vide his letter No. 463 dated 14.8.2012 directed the

petitioner to continue as Anganwadi Worker at Menda-3 Anganwadi Centre. Both these orders have been impugned in this writ petition on the ground that order dated 30.7.2012 has been passed without issuing notice to the petitioner, sole contention of the learned counsel for the petitioner is that if show cause notice would have been issued to the petitioner, the petitioner would have challenged clarification dated 9.2.2009. He further submits that order dated 30.7.2012 has not been passed without issuing show cause notice and the same is in violation of principle of natural justice.

5. Learned counsel appearing for the opposite party-State has submitted that no notice is required to be issued as the conditions prescribed in the guideline suggests for engagement/appointment of candidates for the said post. Clarification has been issued on 9.2.2009 wherein it has been provided that 5 years experience after graduation will be the eligibility criteria for promotion, i.e. a person would have worked as Anganwadi Worker at least five years after graduation.

It has been further submitted that clarification issued on 9.2.2009 which has been communicated to all the Collectors as would be evident from the communication dated 29.7.2009.

6. Further submission has been made in every case there is no requirement to issue notice and it cannot be said that if notice had not been issued there will be violation of principle of natural justice. Principle of natural justice is to be followed where there is any disputed question, but here the petitioner has not disputed the fact he has completed 5 years experience as Anganwadi Worker after graduation, hence remitting the matter before authority will be of no purpose.

7. Heard learned counsel for the parties and perused the materials on record.

8. Undisputed question in this case is that the petitioner has been working as Anganwadi Worker in the Anganwadi Centre in question since 1983. Petitioner has been permitted to participate before the selection committee for consideration of her candidature to be engaged as Lady Supervisor. The petitioner had appeared along with others and she was found fit by the selection committee to be engaged as Lady Supervisor as would be evident from the list containing names of Lady Supervisors to be engaged on contract basis. The authorities thereafter have issued order on 30.7.2012 cancelling engagement of the petitioner as Lady Supervisor on the pretext that the petitioner was not fulfilling the eligibility criteria as provided under the guideline which provides that Anganwadi Worker if worked for 5 years after graduation will be allowed to be posted as Lady Supervisor, to that effect guideline was issued on 4.10.2008 and subsequently it has been clarified on 9.2.2009. The Commissioner-cum-Secretary to the Government, Women & Child Development Department has communicated the guideline to all the Collectors as would be evident from the communication dated 29.7.2009.

9. It is a fact that the selection committee has selected the petitioner as Lady Supervisor and she has been engaged, started her duty, but the moment it came to the notice that the petitioner was not fulfilling eligibility criteria of having 5 years experience as Anganwadi Worker after graduation, order dated 30.7.2012 has been passed, in consequence to the said order the C.D.P.O. has issued letter dated 14.8.2012 to the petitioner regarding cancellation of post of Lady Supervisor and permitted the petitioner to discharge duty as Anganwadi Worker in question.

10. The question which has been argued by learned counsel for the petitioner that the order having been passed on 30.7.2012 without issuing notice to the petitioner which is in violation of principle of natural justice and as such the same is not sustainable in the eye of law.

Purpose of issuance of notice upon the parties and violation of principle of natural justice is to provide sufficient opportunity to the aggrieved party who is going to be affected by the decision which is to be taken by the authority. The authority may pass order but after providing opportunity of being heard in respect to the disputed question of fact and not in respect of the question of fact which is not in dispute. This is due to the reason that if nothing is stated in the impugned order, if the petitioner disputes the same, then necessity to provide opportunity of hearing will be said to be important aspect in coming to the conclusion by the department and in that case opportunity is required to be given so that order may be passed after hearing the aggrieved party.

But when there is no dispute then merely for the purpose of following the principle of natural justice, if the matter is sent before the authority for taking decision after hearing the petitioner, no fruitful purpose will be served in view of the admitted position that the petitioner has not possessed 5 years experience after graduation of working as Anganwadi Worker, save and except this no other facts has been taken for non-consideration of claim of the petitioner for engagement as Lady Supervisor in the impugned order or the petitioner has also not raised any factual dispute.

Following the principle of useless formalities, no purpose will be served if matter would be remitted before the authority to take decision afresh after hearing the petitioner because the petitioner would not be able to bring anything new in view of admission on the part of the petitioner regarding the ground taken in the impugned order.

11. Rule is well settled regarding possessing of eligibility condition that a candidate or the employee is not entitled to hold public post if he is not possessing eligibility condition. It is settled proposition of law that when specific qualification has been fixed for holding the post it is to be followed in letter and spirit as been settled even by Hon"ble Apex Court in the case of R. Prabha Devi and Others Vs. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others, AIR 1988 SC 902 : (1988) 1 JT

488 : (1988) 2 LLJ 56 : (1988) 1 SCALE 453 : (1988) 2 SCC 233 : (1988) 3 SCR 147 : (1988) 3 SLJ 140 : (1988) 1 UJ 602 wherein their Lordship have been pleased to hold which has been extracted from para-15 below:

"The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment.

xx xx xx xx xx

A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion."

The petitioner has been selected as Lady Supervisor, which has been contrary to the eligibility condition and as such the authority has rectified the decision vide order dated 30.7.2012.

12. In view of the aforesaid reason, I do not find any reason to interfere with the impugned order.

Accordingly, the writ petition is dismissed being devoid of merit.