
(2013) 02 CAL CK 0065
In the Calcutta High Court
Case No : Writ Petition 18720 (W) of 2012

Chhaya Garain

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) LabIC 1198

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Siddhartha Ruj, for the Appellant; Manowar Ali, Advocate For the State, for the Respondent

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.—By the present writ petition the petitioner, inter alia, has prayed for a writ in the nature of Mandamus commanding the respondents, particularly the respondent no. 4, to issue an appointment letter forthwith in her favour for the post of Anganwadi Worker and a writ in the nature of Mandamus to consider the case of the petitioner afresh. The case of the petitioner, inter alia, is that she passed the B.A. examination in the year 2005 from the University of Burdwan. The Child Development Project Officer, Dubrajpur, ICDS Project (hereinafter referred to as the respondent no. 4) had issued a notification on November 13, 2009 inviting applications from eligible candidates for recruitment for the said project. It was stipulated in the advertisement that candidates between 18 and 45 years would be eligible having qualification of Madhyamik or its equivalent for general category and Class VIII for Scheduled Casts and Scheduled Tribes candidates. Graduate women were not meant for the posts. The petitioner applied for the said post in the general category. She was issued an admit card for the examination in which she appeared and subsequently the respondent no. 4 called her for an oral examination. The petitioner appeared before the oral examination as well.

2. On or about April 30, 2010 the respondent no. 4 published the final result in

the notice board and the name of the petitioner appeared at the top of the list. When the petitioner came to know that some candidates had already been issued appointment letters she made a representation to the respondent no. 4 who issued a show-cause dated June 11, 2010 asking the petitioner to explain the suppression of her higher educational qualification for the said post. The petitioner states that some other candidates had similarly suppressed her higher qualification and her service was terminated. That candidate had challenged the order of termination and the High Court had set aside that order and she had been reinstated. On the strength of this she made a representation on August 1, 2012 requesting the respondent no. 4 for issuing appointment letter for the post for which she applied. The petitioner's further case is that Anganwadi Worker is a feeder post for the post of Anganwadi Supervisor which requires a graduate qualification. So by necessary implication graduate candidates cannot be debarred from applying from the post of Anganwadi Worker.

3. The petitioner has challenged the inaction on the part of the respondents, particularly respondent no. 4, in not issuing appointment letter on the ground that there was no whisper in the notification dated November 13, 2009 that candidates having higher qualification would not be entitled to offer candidature and to get an appointment in the post.

4. I have heard the learned Advocates for the petitioner as well as for the State. It is not wholly correct that the advertisement only stipulated that graduate women were not meant for the post. What was very specifically mentioned was that graduate candidates were ineligible for the post and that if the form contained any error or was not complete the same would be cancelled without showing any cause. The instruction which accompanied the notification also specifically mentioned that attested copies of the highest academic qualification must be submitted along with the form.

5. When the petitioner made a representation for issuing the appointment letter the respondent no. 4 had asked for an explanation from the petitioner why her candidature should not be cancelled as she had deliberately suppressed her higher qualification.

6. It does not appear that she replied to the letter. In paragraph 11 of the petition she mentioned that on August 1, 2012 she made a representation to the respondent no. 4 for issuing an appointment letter. A copy of the representation was said to have been annexed to the writ petition as Annexure P-8. Annexure P-8 is a letter written by the petitioner which is dated April 30, 2010, although served on the respondents on August 1, 2012, wherein the petitioner surprisingly mentioned that this Court had passed an order for her recruitment to the concerned post and a photocopy of the order was annexed to the said representation.

7. It is not clear when the High Court passed an order for the recruitment of the writ petitioner. If at all any such order was passed then why is she filing a

separate writ petition for the self-same relief is also not clear. That apart the petition nowhere mentions that the High Court ever passed any order in her favour in any earlier writ petition filed by her.

8. Contrary to what the petitioner had asserted the notification made it very clear that candidates possessing graduate degree were not eligible for the post. Lest a candidate might suppress her higher qualification it was also clearly indicated that a candidate must disclose the highest educational qualification. Obviously she did not do so and as such the question of suppression of material information comes in.

9. On the top of everything when the respondent no. 4 by a letter dated June 11, 2010 had asked for an explanation from the petitioner she did not give any reply. Obviously she had nothing to reply. Then after about two years she submitted a representation, although dated April 30, 2010, claiming an order in her favour without any backup document. The petitioner's assertion that a graduate candidate is also eligible for the post and she cannot be disqualified on the ground of over-qualification does not merit any consideration whatsoever. When the specific stipulation in the concerned notification clearly says that a graduate candidate will be ineligible for the concerned post an over-qualified candidate is certainly not eligible for the said post.

10. In the case of Manoj Kumar Vs. Govt. of NCT of Delhi and Others, the Supreme Court has held that a candidate furnishing false or incomplete information or withholding or concealing any material information in his application can be debarred from securing employment. Even if such a candidate is appointed his service will be liable to be terminated for furnishing false information. Applying the said principle it cannot be gainsaid that the petitioner's service was rightly terminated by the respondents.

11. The next case to consider is Rina Dutta and others -Vs.- Anjali Mahato and others, reported in 2010 (2) CLJ (Cal) 321. That was also a case on the candidates possessing higher qualification for the post of Anganwadi Workers.

12. In that case the Scheme under which the advertisement was issued inviting applications for the Anganwadi Workers provided that the advertisement should state that should a candidate suppresses any relevant information or furnishes false information particularly regarding her age, residence and educational status, her appointment might be terminated at any time. However, this was not mentioned in the advertisement itself. What was mentioned was that the matriculates were eligible to apply and graduate women were not meant for that post. The Special Bench of this Court held that this sentence in the advertisement could hardly be considered as a prohibition against graduate women from applying for the post nor could it be treated as a ground to disqualify or penalize a graduate woman for not having mentioned her graduate qualification in the application. It was in this context that the judgment decided that the advertisement did not specifically debarred or disqualified graduate

women from applying for the post of Anganwadi Workers and as such engagement of the appellants could not be said to be illegal on the touch-stone of the advertisement. The Bench while reiterating the well settled principle that candidates possessing higher qualifications than that advertised cannot ordinarily be debarred or disqualified also laid down that it was open to the employer to make a rule providing for disqualification of candidates possessing higher qualification than the prescribed one. This Court further gave liberty that in future the employer might specify in the rule and in the advertisement that persons with higher qualifications would not be considered eligible.

13. On this very major and vital factual aspects the case of Rina Dutta (Supra) is distinguishable from the facts of the present one. It has already been noted that in the present case the advertisement contained a stipulation to the effect that any erroneous declaration would make the application of a candidate liable to be terminated forthwith. It has been found earlier that the petitioner had made false declaration of her educational qualification. In the case of Rina Dutta (Supra) the advertisement was silent on this point and the omission to mention any disqualifying clause was held to be the real cause for not debarring a candidate from applying for the concerned post. But in the present case the petitioner cannot take the advantage of the judgment of Rina Dutta (Supra) for a proposition that higher qualification is no disqualification. In the given set of facts the petitioner had definitely suppressed the higher qualification and has come up with a state defence. As such the case of Rina Dutta (Supra) has no application to the facts of the present case.

14. The petitioner has no case, either in law or in equity. The petition is devoid of any merit and is hereby dismissed.

15. There shall, however, no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.