
(2013) 03 CAL CK 0046
In the Calcutta High Court
Case No : Writ Petition No. 7554 (W) of 2012

Etilata Kaibarta

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 2 CALLT 303 : (2013) 1 LLN 650

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : S. Ghosh and Falguni Majhi, for the Appellant; Md. Manowar Ali, for the Respondent

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.—By this Writ Petition the Petitioner prays inter alia for a Writ of Mandamus commanding the respondents to act in accordance with law and to forthwith cancel or revoke or rescind the Memorandum dated October 26, 2010 terminating the service of the Petitioner, a Writ of Mandamus commanding the Respondents to forthwith reinstate the Petitioner in her service as an Anganwari Helper, a Writ of Prohibition forbidding the Respondents from taking any action pursuant to the termination of the Petitioner's service and for other reliefs. The case of the Petitioner inter alia is that in the year 2009 she applied for the post of Anganwari Helper under the Ausgram Integrated Child Development Scheme (hereinafter referred to as the "Scheme"). The Child Development Project Officer, i.e., the Respondent No. 7 herein, directed the Petitioner to appear in the Block Development Office on January 3, 2010 which the Petitioner did and she was appointed by the said Respondent. The Petitioner joined the post of Anganwari Helper on April 22, 2010.

2. By a Memorandum, dated October 26, 2010 the Respondent No. 7 informed the Petitioner that the Petitioner had suppressed her educational qualification and had violated the Government Rules and her appointment was thus, cancelled. The Petitioner made a Representation, dated November 18, 2010, alleging that

although her service had been terminated other persons possessing identical qualifications have been allowed to continue to work in the said post. About nine months thereafter the Petitioner made a further representation on the line similar to the earlier one drawing attention of the concerned Respondent to the fact that other Anganwari Helpers possessing identical qualification as that of the Petitioner were still working in their respective posts. As the Petitioner did not get any reply on January 3, 2012 yet another representation was made inter alia praying for reinstating the Petitioner to the post of Anganwari Helper.

3. The Petitioner alleges the act on the part of the Respondents is without any jurisdiction inasmuch as the law is well settled that a candidate cannot be denied consideration or declared ineligible for a job because he or she possesses higher qualification. The Petitioner has also described the act on the part of the Respondents as discriminatory and collusive. She has further taken a point that terminating her service without giving her a reasonable opportunity of being heard is contrary to the well established principles of law and, therefore, with the reliefs as mentioned earlier, the Petitioner has filed the instant Application.

4. At the hearing of the Petition the learned Advocate for the State appeared and produced the Application filed by the Petitioner for the concerned post. The Respondents were directed to file an Affidavit bringing on record the advertisement pursuant to which the Application was filed and a copy of her Application. The learned Advocate for the State has filed an Affidavit-in-opposition to the Petition. Since no such direction for Affidavit was given by this Court the statements made therein denying the case of the Petitioner were not accepted; but the Affidavit was kept with the record for the documents annexed thereto. Accordingly, the Advertisement and the Application of the Petitioner are taken on record.

5. It appears from the advertisement that for the post of Anganwari Helper amongst others the minimum educational qualification was that the candidate must have passed Class IV. But Candidates possessing Madhyamik or higher qualification would be considered ineligible for the post. It was also specifically provided that if any candidate suppressed any information regarding her educational qualification and was appointed or selected to the said post she would be removed from the post without assigning any reason.

6. Pursuant to this Advertisement, the Petitioner filed her Application and it appears that she disclosed her educational qualification as having passed Class VIII examination. The Petitioner signed the undertaking that the information furnished in the Application were complete and true to her knowledge; the obligation of furnishing any incorrect information was entirely that of the Petitioner and if for that her Application was cancelled or her appointment was withdrawn or if any other action was taken against her according to the Rules she would have no objection. Over and above this there was a further undertaking given by her that her highest educational qualification was that she had passed Class VIII and that she had not given any false information about her

educational qualification.

7. The only reason assigned by the concerned authority while cancelling the appointment of the Petitioner was that she had suppressed her educational qualification and had thereby subverted the Government Rules. The learned advocate for the State had submitted that the Petitioner had passed the Madhyamik examination which the authorities came to know subsequently. That the Petitioner possessed higher qualification than one prescribed for the post has not been disputed by the Petitioner either. In the Petition she has nowhere stated that she has not suppressed her higher qualification. On the other hand the main contention of the Petitioner is that higher qualification is no disqualification and a candidate cannot be declared ineligible merely because of higher qualification. This is an indirect admission of the fact that the Petitioner had qualification higher than that prescribed.

8. The minimum qualification which was prescribed for the post was a pass certificate in Class IV from a School. But what was specifically forbidden was Madhyamik qualification or any qualification higher than that. It follows that Candidates reading up to Class X in a School are also eligible for consideration. But Madhyamik was a qualification, the possession of which was liable to make a candidate ineligible for the said post.

9. Since the advertisement made it very clear that a candidate would be considered ineligible if she possessed the qualification of Madhyamik examination, possessing the same made the Petitioner ineligible for the said post. The Petitioner also was keenly aware of this provision. If such be the contention of the Petitioner that higher qualification was no disqualification she might have challenged the eligibility criteria set by the Respondents before the appropriate forum before she applied for the post. Instead of doing it she unhesitatingly gave a wrong declaration about her educational qualification and specifically declared that her highest qualification was that of a Class VIII pass candidate. She further signed the Application Form very specifically declaring that she had not given any false declaration about her highest educational qualification.

10. Now the Petitioner cannot turn around and say that the qualification set in the advertisement was an improper one or that higher qualification is no disqualification. We cannot lose sight of the fact that the Petitioner very consciously had given this declaration and now she cannot be heard on the point of impropriety of fixing the highest educational qualification. The Petitioner must have been conscious that if she had declared her correct educational qualification she would have been debarred from the zone of consideration and that must have led her to give an incorrect declaration about her highest qualification. In any case giving a wrong declaration about the educational qualification is bad enough and this disentitles the Petitioner to hold the post.

11. 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.

12. We may also refer to the Special Bench judgment of this Court in the case of Rina Dutta and Others Vs. Anjali Mahato and Others, . That was also a case on the Candidates possessing higher qualification for the post of Anganwadi Workers.

13. 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 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.

14. It was in this context that the judgment decided that the Advertisement did not specifically debar or disqualify 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 touchstone 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.

15. On this very major and vital factual aspect the case of Rina Dutta and Others Vs. Anjali Mahato and Others, , is distinguishable from the facts of the present one. 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.

16. In support of her case the Petitioner has relied on the case of Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others, , for a proposition that a criteria which has the effect of denying a candidate his right

to be considered for a post on the principle that he is having higher qualification than prescribed cannot be rational. But the facts of that case revealed that for the recruitment to the concerned posts of Bailiffs and Peons the qualification was laid down as "not less than a pass in....." and in view of a large number of Applications which were filed the advisory committee laid down certain criteria and one such was that the Applications of those Candidates possessing minimum qualification only should be considered for the interview for the concerned posts. The Supreme Court held that as a result of this laying down of criteria a large number of Candidates had been completely shut out and it is in this context that the Supreme Court had observed "qualification prescribed is minimum. Higher qualification cannot be a disadvantage to the candidate." Thus, that case differs from the facts of the case in hand. Here Madhyamik qualification was specifically made ineligible by the Advertisement itself. It is the qualification prescribed in the Advertisement inviting Applications for a concerned post is all that matters. In other words, what was laid down was both the minimum and the highest qualification for the post. The minimum qualification was class IV pass and the highest qualification was less than Madhyamik. But in the case of Md. Riazul Usmal Gani and others (supra) the Supreme Court was concerned with the minimum qualification and not the highest qualification and it was in this context that it laid down the principle of law that a highest qualification should not be regarded as disadvantageous to a candidate.

17. The Petitioner has further relied on an unreported decision of a Single Judge of this Court in Manashi Ghosh v. The State of West Bengal and others, W.P. No. 12204(W) of 2011 dated August 24, 2011. That judgment was concerned with the appointment to the post of Anganwari Worker whose appointment was cancelled for suppression of her higher qualification. The learned Single Judge although referred to the Government Order of 2006 on the basis of which the Petitioner's academic qualification was based ultimately relied on the judgment of Rina Dutta and Others Vs. Anjali Mahato and Others, . Although paragraph 21 of the said judgment was quoted but there is no discussion whether the Advertisement inviting Applications for the said post contained any specific bar for the Candidates possessing higher qualification and relied on the Special Bench judgment of the Calcutta High Court. The Writ Petition was disposed of. Thus, there is no ratio decided in this case. But it had merely followed the principles decided in the judgment delivered by the Special Bench in the case of Rina Dutta and others (supra). I have already found that the facts of Rina Dutta and Others Vs. Anjali Mahato and Others, , are not applicable to the present case. I also hold that on the basis of the findings in Rina Dutta and others (supra) the Respondents had power to lay down the qualification in the advertisement and cancellation of appointment of a selected candidate possessing higher qualification is not barred. I find no merit in the Writ Petition and in view of what has been discussed above the Petition fails and is, thus, dismissed. There will be, 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.