
(2015) 05 CAL CK 0009
In the Calcutta High Court
Case No : Writ Petition 19421 (W) of 2006

Kakali Roy and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2015) 05 CAL CK 0009

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Milan Bhattacharjee, Tapas Kumar Bhattacharya and Sulagna Bhattacharya, Learned Advocates, for the Appellant

Final Decision : Allowed

Judgement

Samapti Chatterjee, J.—Assailing the impugned circular being Memo No. 146/2-8/2006 dated 25th July, 2006 issued by the Child Development Project Officer, Mekliganj, ICDS Project, District-Cooch Behar and also for absorption of the petitioners to the post of Anganwari workers the petitioners filed the instant writ petition whereby inviting application from the existing Anganwari Sahayikas who have completed five years of service in the job of Anganwari Sahayika for promotion to the post of Anganwari workers from the post of Anganwari Sahayika. Since the petitioners had been possessing requisite qualifications therefore, the petitioners were appointed by the Child Development Officer, Mekliganj, District-Cooch Behar to the post of Anganwari workers in the year 2000 after being selected in the interview for the said post. Since then they have been discharging their duties to the said post.

Suddenly by the impugned order the respondent invited application from the existing Anganwari Sahayikas who have completed five years of service in the job of Anganwari Sahayikas for promotion to the post of Anganwari workers from the post Anganwari Sahayikas with the intention to give a goodbye to the service of the petitioners from the existing post of Anganwari workers so that those

posts could be filled up by the Anganwari Sahayikas pursuant to the impugned notice dated 25th July 2006.

Initially on 13th September, 2006 after considering the plight of the petitioners this Hon'ble Court directed the concerned authority to maintain status quo with regard to the selection process and/or holding of interview of the concerned post. The respondents were also directed to file their affidavit-in-opposition within three weeks. But unfortunately till today no affidavit-in-opposition has been filed by the respondents. Since the respondent authority violated the order dated 13th September, 2006 therefore, an application for contempt of Court was filed by the petitioners. Despite the interim order dated 13th September, 2006 the respondent authority all on a sudden on 16th November, 2009 issued further notice for appointment to the post of Anganwari workers. Against that notice dated 16th November, 2009 the petitioner took out an application for contempt of Court.

2. Mr. Milan Bhattacharjee, learned senior Counsel appearing for the petitioner contended that the concerned respondent has no authority to issue the impugned notice dated 25th July, 2006 thereby inviting applications from the post of Anganwari Sahayikas for promotion to the post of Anganwari worker, knowing fully well that the petitioners have been working as Anganwari workers in the said post.

3. Mr. Bhattacharjee, also vehemently urged that without taking any step to absolve/regularise the petitioners who have been working as Anganwari workers since the year 2000 after being duly appointed to the said post by the authority, the authority issued the impugned notice.

4. Mr. Bhattacharjee also vehemently urged that such act on the part of the concerned authority is totally contrary to natural justice and very much against the Articles 14, 16, 21 of the Constitution of India.

5. Mr. Bhattacharjee also strongly argued that the State Authority should not act unfairly, unjustly and whimsically to accommodate their favourite persons to the post and thereby deprive the petitioners of their legitimate expectations for being absorbed to the said post of Anganwari workers where they were appointed in the year 2000 after being selected by the authority and discharging their duties as such.

6. Mr. Bhattacharjee, also vehemently urged that Anganwadi Sahayikas post is the feeder post of the Anganwadi workers where petitioners were appointed. Mr. Bhattacharjee also contended that the post of Anganwadi workers is the higher post to the post of Sahayika. Therefore, the Anganwadi Sahayikas who are in the lower post than the Anganwadi worker's post could not be asked to be promoted to the post of Anganwadi Workers by the impugned notice dated 25th July, 2006.

7. Mr. Bhattacharjee also strongly argued that the impugned notice dated 25th July, 2006 was unfairly, unjustly issued by the authority thus depriving the

petitioners" claim, to be absorbed to the post of Anganwadi workers.

8. Mr. Bhattacharjee further contended that before making any attempt to promote the existing Anganwadi Sahayikas to the post of Anganwadi workers (where the petitioners are working) it was obligatory on the part of the authority to approve the petitioner's service to the post of Anganwadi workers instead of taking steps for promoting existing ad hoc Sahayikas to the post of Anganwadi workers. Therefore, Mr. Bhattacharjee contended that this act on the part of the respondent authority is wholly illegal, unjust, unfair and very much contrary to Articles 14, 16 and 21 of the Constitution of India. In support of his contention Mr. Bhattacharjee relied on a Supreme Court decision reported in State of Haryana and others Vs. Piara Singh and others etc. etc., AIR 1992 SC 2130 : (1992) 5 JT 179 : (1993) 2 LLJ 937 : (1992) 102 PLR 547 : (1992) 2 SCALE 384 : (1992) 4 SCC 118 : (1992) 3 SCR 826 : (1992) 3 SLJ 34 : (1992) 2 UJ 692 which is quoted below:

"Para-25-Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes."

Mr. Bhattacharjee also relied on a Supreme Court decision reported in State of

Karnataka and Others Vs. M.L. Kesari and Others, AIR 2010 SC 2587 : (2011) 111 CLT 209 : (2010) 127 FLR 12 : (2010) 8 JT 96 : (2010) 4 LLJ 583 : (2010) 9 SCC 247 which is quoted below:-

"Para-10 - The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one-time regularization exercise, to find out whether there are any daily wage casual/ad hoc employees serving the Zila Panchayat and if so whether such employee (including the respondents) fulfill the requirements mentioned in para 53 (Para 44 of AIR of Umadevi. If they fulfill them their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one-time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 (Para 44 of AIR) of Umadevi, their services need not be regularised. If the employees who have completed ten years' service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts. This appeal is disposed of accordingly."

Mr. Bhattacharjee also relied on a Division Bench Judgment of this Court reported in 2013 (2) CHN (CAL) Page - 714 Paras - 3, 5, 6, 7 and 9 which was delivered after considering Umadevi's case reported in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 and also considering M.L. Kesari's case reported in AIR 2010 (SC) Page - 2567 . Mr. Bhattacharjee also relied on a Supreme Court decision reported in Amarendra Kumar Mohapatra and Others Vs. State of Orissa and Others, AIR 2014 SC 1716 : (2014) AIRSCW 1894 : (2014) 3 JT 244 : (2014) LabIC 1655 : (2014) 2 SCALE 589 : (2014) 4 SCC 583 : (2014) 2 SCC(L&S) 54 .

9. Despite notice no one appeared on behalf of the respondents and no affidavit-in-opposition was filed as per direction passed by this Hon"ble Court.

10. Considering the submissions advanced by Mr. Bhattacharjee and after perusing the records it is an admitted position that the petitioners were recruited in the year 2000 by the Child Development Officer, Mekliganj, District-Cooch Behar after being duly selected in the interview process held by the concerned authority.

11. It is also evident from the records that the post of Anganwadi workers is a higher post than the post of the Anganwadi Sahayikas which is the feeder post to the Anganwadi worker's post. Therefore, unless the petitioners are absorbed or regularised in the post of Anganwadi workers the candidates working as existing

ad hoc Anganwadi Sahayikas which is the feeder post to the Anganwadi worker should not be allowed to be promoted by virtue of the impugned order dated 25th July, 2006 to the post of Anganwadi workers without regularising the service of the petitioners to the said post (Anganwadi workers).

12. I find some substance in the argument of Mr. Bhattacharjee that an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He could be replaced only by a regularly selected employee. Therefore, the purported action on the part of the respondent authority to promote the temporary existing Anganwadi Sahayikas to the post of temporary existing Anganwari workers by virtue of impugned notice dated 25th July, 2006 is patently arbitrary, illegal and at the same time contrary to the Articles 14 and 21 of the Constitution of India.

I am informed by Mr. Bhattacharjee that recently the petitioners were forced to leave their service under threat though the posts are still lying vacant. Therefore, the petitioners could be absorbed to the said vacant posts.

Without considering the petitioner's prayer for absorption in the post of Anganwadi workers step taken by the authority to promote the ad hoc/temporary Anganwadi Sahayikas to the post of Anganwadi workers which is the higher post than the Sahayika's post is patently illegal and at the same time unfair and unjust act on the part of the respondent authority.

13. It is a settled proposition of law that ad hoc employee cannot be promoted to the higher post without being regularised in the said post. Therefore, after considering the proposition of law as enumerated in State of Hariyana and Ors. (Supra) and Umadevi's case (Supra) and M.L. Kesari's case (Supra) I have no hesitation to hold that the impugned order dated 25th July, 2006 was issued in an arbitrary and illegal manner and therefore the impugned order should not be sustained.

14. Accordingly, the impugned order dated 25th July, 2006 passed by the Child Development Officer, Mikliganj, District-Cooch Behar is hereby set aside and quashed.

The respondent No. 4 shall reinstate the petitioners to the post of Anganwadi Sahayikas and thereafter the respondent shall regularise the petitioners' service to the vacant posts of Anganwadi workers within eight weeks from the date of communication of this order. The petitioners would not be entitled to any service benefit for the period when they were out of service. But all consequential benefits from the date the petitioners would be regularised in service shall be paid to them. The past service of the petitioners will be notionally counted only for the purpose of paying pension and all other retiral benefits.

15. With these observations and directions the writ petition is allowed without any order as to costs.

16. Urgent photostat certified copy of this Judgment, if applied for, be supplied to

the parties after fulfilling all formalities.