
(2015) 01 CAL CK 0081
In the Calcutta High Court
Case No : Writ Petition No. 34144(W) of 2014

Kakan Dutta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 2 CHN 303

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Barnali Saha, for the Appellant; Joytosh Majumder and Sulagna Bhattacharya, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanjib Banerjee, J—The grievance of the petitioner is that though the petitioner was successful in the 2010 process of recruitment of Anganwadi workers, the petitioner has not yet been given an appointment. The further case of the petitioner is that the respondent authorities have found the petitioner's educational qualification of graduation to be a bar to the petitioner's appointment, though a memorandum of January 4, 2013 has altered the guidelines applicable to Anganwadi workers and a superior educational qualification can no longer be considered as a bar to a person being engaged as an Anganwadi worker. The petitioner says that in view of the Full Bench opinion rendered in the judgment reported at Rina Dutta and Others Vs. Anjali Mahato and Others, (2010) 3 CALLT 232 : (2010) 126 FLR 892 , the petitioner is entitled to an appointment. The petitioner also relies on a Division Bench judgment reported at Madhuri Roy and Others Vs. State of West Bengal and Others, (2013) LabIC 3079 : (2013) 3 WBLR 560 I where Rina Dutta was interpreted by the Division Bench to simply imply that if a candidate possessed higher qualification than the prescribed norms, there was no bar to such candidate being appointed as an Anganwadi worker.

2. The interpretation of Rina Dutta as rendered in Madhuri Roy appears to be

plainly contrary to what Rina Dutta lays down. However, notwithstanding an erroneous interpretation of a judgment by a superior Bench or forum, it is the interpretation which is binding on a co-ordinate or inferior Bench or forum, unless there is a contrary view of a superior forum available. Thankfully, there is an unreported decision of another Division Bench in MAT 932 of 2012 passed on September 1, 2014 (Shampa Dey v. State of West Bengal) where Rina Dutta has been understood in the appropriate perspective.

3. In Rina Dutta, the reference to the larger Bench was as to whether candidates possessing qualifications higher than the prescribed qualifications could be considered for appointment to the post. The facts in such case were that the three appellants and another applied in response to an advertisement and were selected and given appointments as Anganwadi workers in 1998. In 1999, two unsuccessful applicants instituted a petition, questioning the appointments given to the appellants as the appellants were graduates and, as such, barred from applying for the post.

4. The Full Bench observed that the scheme under which the relevant advertisement was issued provided that the appointment could be terminated at any stage for suppression of relevant information or furnishing false information; but the advertisement did not categorically state that graduate women were not eligible for the post. Paragraph 19 of the Full Bench judgment brings out the essence of the same and the consideration that weighed with the Full Bench while delivering the judgment in 2010 relating to appointments made in the year 1998 :

"It is, however, not necessary to pursue this discussion any further because we have already held that the advertisement did not specifically debar or disqualify graduate women from applying for the post of Anganwadi Workers and, therefore, the engagement of the appellants and the other private respondents in the writ petition as Anganwadi Workers could not be said to be illegal on the touchstone of the advertisement. It is true that if the provisions of the scheme were to be applied, the appellants and the 4th private respondent would be in difficulty. However, having regard to the fact that the appellants and others were appointed way back in 1998 and they have continued in employment for the last 12 years and the advertisement specifically did not disqualify or debar graduate women, we are not inclined to disturb their appointment. To that extent the appeal will have to be allowed and the order of the learned Single Judge quashing and setting aside the appointment of respondent Nos. 6 to 9 in the writ petition including the three appellants herein is set aside. The writ petition will accordingly have to be dismissed."

5. What is evident is that Rina Dutta is certainly not an authority for the proposition that an overqualified candidate, who was aware that over-qualification would be a ground for rejection of the candidature, would be entitled to the appointment because the guidelines applicable at the time of the issuance of the relevant advertisement had subsequently been modified.

6. Indeed, the other Division Bench judgment in Shampa Dey clearly stipulates that a candidate who was not eligible for appointment in terms of a particular advertisement could not seek to be appointed because of the revised guidelines issued subsequent to the date of the advertisement under which the candidate applied.

7. It is elementary that the change of guidelines have prospective effect and are scarcely permitted by Courts to be given retrospective effect. When the advertisement in the present case specifically indicated that graduate candidates were ineligible for the post, it appears that the State had become wiser and had corrected the position that was noticed in Rina Dutta and provided a stipulation in the advertisement that an overqualified candidate would be ineligible for appointment.

8. A judgment is an authority for the legal position that it specifically decides and not anything else which is deemed to have been considered or decided. The view taken in Rina Dutta was that since the relevant advertisement did not stipulate that a candidate with additional educational qualifications would not be eligible for appointment, the appointments given to the overqualified candidates could not be cancelled on such ground alone. The secondary ground on which the impugned appointments were not annulled was that the overqualified appointees had continued in their posts for 12 years.

9. In Madhuri Roy, the appellants possessed higher educational qualifications than what was required for the posts. Paragraph 5 of the report expressly indicates that the notification issued for engagement and the letters of appointment contained "specific condition prohibiting higher educational qualifications of the candidates..." In such circumstances, if the dictum in Rina Dutta were to be applied to the facts in Madhuri Roy, the erroneous appointments ought to have been annulled as the relevant notification and the letters of appointment contained express provisions of overqualified candidates being ineligible for the post.

10. In Shampa Dey, the appellants applied in pursuance of a memorandum of July 5, 2006. The second paragraph of the unreported judgment indicates "that as per the notification a specific bar was imposed so far as the candidates who were graduates indicating that they were not be eligible for the posts..." The judgment noticed that the appellants had concealed their educational qualifications and their appointments were terminated. The Appellate Court agreed with the Trial Judge and, on the basis of the Full Bench dictum in Rina Dutta, found that the appellants were ineligible to be appointed,

11. It cannot, thus, be said that the petitioner has any right to be appointed as an Anganwadi worker in course of the process initiated by the relevant advertisement issued in the year 2010, when the petitioner was clearly ineligible therefor. However, with the publication of the memorandum of January 4, 2013, the criteria for selection have been changed. Accordingly, the only relief that the

petitioner is entitled to is that the future application by the petitioner for appointment as an Anganwadi worker cannot be disregarded on the ground of the petitioner's educational qualification of being a graduate.

12. WP 34144(W) of 2014 is disposed of without making the appointment available to the petitioner as sought, but with the observation that the petitioner's future application for the post of Anganwadi worker will be considered in accordance with the present guidelines and uninfluenced by the petitioner's application in the year 2010.

13. There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.