

(2013) 03 CAL CK 0080
In the Calcutta High Court
Case No : F.M.A. 1510 of 2011

Madhuri Roy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Citation : (2013) LabIC 3079 : (2013) 3 WBLR 560

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Murari Prasad Shrivastava, J

Bench : Division Bench

Advocate : Tapobrata Chakraborty and Mukundalal Sarkar, for the Appellant; Robiul Islam, Partha Sarathi Bhattacharyya, Raju Bhattacharyya and Arunava Maiti, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred challenging the validity and/or legality of the judgment and order dated 18th July, 2011 whereby and whereunder a learned Judge of this Court disposed of the writ petition upon issuing certain directions. The appellants herein were selected and appointed to the post of Anganwadi Karmee pursuant to the advertisement dated 10th February, 2006 issued by the respondent No. 5.

2. The respondents/writ petitioners herein have challenged the aforesaid appointment of the appellants on the ground that the said appellants are possessing higher qualifications.

3. Learned advocate representing the State respondents submits that in the appointment letter issued to the successful candidates it was specifically mentioned that even after joining the service if it appears that the concerned candidate is possessing higher qualification then the said appointment will be cancelled without any notice.

4. It is true that in the notification issued for engagement of Anganwadi Karmee dated 10th February, 2006 and also in the appointment letter issued to the respective candidates specific condition prohibiting higher educational

qualification of the candidates have been mentioned. Now it is to be decided whether the appellants herein should be removed from service for having higher educational qualification. It is not in dispute that the appellants were selected as Anganwadi Karmee on the basis of their Madhyamik qualifications and no extra weightage and/or preference was granted for their higher qualification since the appellants did not mention about their higher qualification.

5. Mr. Tapobrata Chakraborty, learned advocate representing the appellants submits that the higher qualification of the appellants in the present case cannot be a ground for taking any penal action against them.

6. Mr. Chakraborty relies on a Special Bench judgment of this Court in the case of Rina Dutta and Others Vs. Anjali Mahato and Others, wherein the Hon"ble Special Bench held:--

When a particular qualification is laid down in an advertisement relating to a distinct class of candidates, the candidates possessing a qualification higher than that advertised can ordinarily not be debarred or disqualified, but it is open to the employer to make a rule providing for disqualification of candidates possessing qualification higher than the prescribed qualification, but the burden would be on the employer to justify such a rule.

7. Mr. Chakraborty further submits that in the present case there was no valid reason to impose any restriction on the candidates for acquiring the higher qualification. It is also submitted on behalf of the appellants that no reason has been prescribed in the guidelines and/or notification as to why the higher qualification will not be accepted.

8. Mr. Partha Sarathi Bhattacharya, learned advocate representing the respondents/writ petitioners submits that the appellants herein cannot be given any extra credit for the higher qualifications and relies on the following decisions of the Hon"ble Supreme Court:--

- 1) Dilip Kumar Ghosh and Others Vs. Chairman and Others,
- 2) Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others,
- 3) P.M. Latha and Another Vs. State of Kerala and Others,

9. In the present case, admittedly the appellants were not given any extra credit for the higher qualifications as we have already mentioned and therefore, the aforesaid decisions have no manner of application in the facts of the present case.

10. The State Government being the employer can make a rule providing disqualification of candidates possessing higher qualification than the prescribed qualification. In the present case, said provision as specifically mentioned in the guidelines, has been challenged by the appellants on the ground of reasonableness. Therefore, the State Government being the employer should justify why the aforesaid restriction mentioned in the advertisement and the appointment letter should be regarded as a valid restriction. As a matter of fact,

the State Government subsequently modified its earlier guidelines relating to the qualification of Anganwadi Karmee. In the modified guidelines it has been made clear that all graduate and higher qualified candidates would be eligible for a post of Anganwadi Karmee. It has also been specifically mentioned that there will be no bar on educational qualification for a candidate applied for a post of Anganwadi Worker.

11. The aforesaid modified guidelines came into effect on and from 1st April, 2012. The State Government has modified the aforesaid earlier guidelines regarding imposition of restriction on the qualification of the Anganwadi Workers upon realising that the aforesaid restrictions were not proper. The restriction on educational qualification of a candidate applying for the post of Anganwadi Worker was withdrawn by the State Government by the subsequent modification of the earlier guidelines as a result whereof all graduate and higher I qualified candidates became eligible for the said "post.

12. In view of the aforesaid Special Bench Judgment of this Court in the case of Rina Dutta & others (supra) and specially due to the subsequent modification of the guidelines by the State Government withdrawing the restrictions on the qualification of the Anganwadi Workers, it has now become really difficult for the State Government to justify that the restrictions imposed earlier on the higher qualifications as mentioned in the earlier guidelines, were valid and proper.

13. For the reasons discussed hereinabove, we are of the opinion that the higher qualifications of the appellants cannot be the ground for denying appointment to the post of Anganwadi Worker since the State Government subsequently realised that the aforesaid restrictions should not continue any longer.

14. In the aforesaid circumstances and specially in view of the clear pronouncement of the Special Bench judgment of this Court in the case of Rina Dutta & others (supra), we are of the opinion that no penal action should be taken against the appellants herein for possessing higher qualifications and also for nondisclosure of the same in the application forms which were submitted by the said appellants for the post in question.

15. For the afore-mentioned reasons, we set aside the impugned judgment and order under appeal passed by the learned single Judge and allow the appeal without awarding any cost. Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Murari Prasad Shrivastava, J.

I agree.