
(2015) 07 UK CK 0034

In the Uttarakhand High Court

Case No : Special Appeal Nos. 462 of 2013 and 184, 442 of 2014

Manju Kanwal and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Citation : (2015) 112 ALR 541 : (2015) 147 FLR 903

Hon'ble Judges : K.M. Joseph, C.J. and V.K. Bist, J.

Bench : Division Bench

Advocate : Bhagwat Mehra, for the Appellant; B.S. Negi, Deputy Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, C.J.

1. Leave to Appeal is granted. Application (CLMA No. 4718 of 2014) for Leave to Appeal filed in Special Appeal No. 184 of 2014 stands allowed. Appellants were not parties before the learned Single Judge. The writ petitions, from which the Appeals, three in numbers, were filed by the members of the reserved categories, i.e., belonging to Scheduled Caste (writ petitioner Nos. 1 to 6) and one, i.e., petitioner No. 7 belonging to OBC. They were selected and appointed as Mini Anganbadi Karyakatri in the year 2007. They approached the Court seeking the following reliefs:

"(i) A writ, order or direction in the nature of writ of certiorari quashing the approval passed by committee headed by the respondent No. 3 and -- order dated 3.12.2011 passed by the respondent No. 4 in consequence thereof and the advertisement dated 22.2.2012 issued by the respondent No. 4 to the extent of advertising the vacancies for the posts of anganwadi worker in upgraded anganwadi centres of the petitioners, whereby the petitioners are being reduced/demoted to the post of assistant from the post of mini anganwadi worker in the same Anganwadi centre.

(ii) A writ, order or direction in the nature of writ mandamus directing the respondents to give joining in the post of anganwadi worker in upgraded anganwadi centres on the basis of qualification of 8th class (Junior High School)."

2. It is their case that the order dated 3.12.2011 was passed, by which Mini Anganbadi came to be upgraded as Anganbadi Centres. There are three categories of Anganbadi Karyakatri and the honorarium also is different. The difference in Mini Anganbadi Karyakatri and Anganbadi Karyakatri is based apparently on considerations of population. That is to say, in smaller centres, a Mini Anganbadi Centre functions; whereas Anganbadi Centre caters to a larger population. As far as honorarium goes, Mini Anganbadi Karyakatri gets Rs. 2250/- as honorarium. Anganbadi Karyakatri, on the other hand, is paid Rs. 4,500/- as honorarium. In between, there is another category called Assistant; the honorarium paid is Rs. 2250/-. Writ petitioners were not given the benefit of the order dated 3.12.2011 and they were not given posting as Anganbadi worker in the upgraded Anganbadi Centres. It is common case that the writ petitioners have got the qualification of 8th Class (Junior High School) and they do not possess the qualification of High School passed. Apparently, it was on the basis of the order dated 3.8.2007, which provided that while the qualification for the post of Mini Anganbadi Karyakatri and Anganbadi Karyakatri is High school, in respect of the reserved category, it was relaxed as passed 8th standard. It is apparently on the basis of the said order dated 3.8.2007 that the writ petitioners were appointed as Mini Anganbadi Karyakatri. A perusal of the prayer would show that they seek to challenge the order dated 3.12.2011. Translation of the same reads as follows:

"All Child Development Project Officers,

District - Almora,

In continuance of the Government Order No. 2325/XVII(4)/2011/05(6)/11 TC dated 31.10.2011 and according to the approval of the District Magistrate, Almora dated 3.12.2011, the adjustment of working Mini Anganbadi Karyakatri, mentioned in the attached list, is made, on the basis of their educational qualification, on the post of Assistants in the same Centre as a result of upgradation of Mini Anganbadi Centre. Therefore, you ensure the adjustment of Mini Anganbadi Karyakatri on the post of Assistants as per the attached list."

3. Therefore, the writ petitioners sought to challenge the said order. Also, they sought to challenge, as is noticed from the prayer, the advertisement dated 22.2.2012, which was issued by the 4th respondent, which purported to advertise the post of Anganbadi Workers in the upgraded Anganbadi Centres, of the writ petitioners. As already noticed, again, this is on the basis that as against the advertised vacancies of the Anganbadi workers in the upgraded Centres, the writ petitioners were entitled to be appointed in terms of the order dated 3.12.2011. The learned Single Judge allowed the writ petitions. The reasoning of the learned Single Judge is to be found in Paragraphs 3 and 4 of the judgment,

which we extract:

"3. The crucial fact to be noted is that as per Government Order dated 3.8.2007, the qualification for a scheduled caste candidate for appointment even on a post of "Angan Bari Karyakatri" was Class 8. During the course of time all the "Mini Angan Bari Centres" in which the petitioners have been working have been upgraded to an "Angan Bari Centre" and as per Government Order dated 31.10.2011 in case a "Mini Angan Bari Centre" is upgraded into an "Angan Bari Centre" the existing "Mini Angan Bari Karyakatries" shall become "Angan Bari Karyakatries" automatically. However, this upgradation has been denied to the petitioners and they have not been upgraded to the post of "Angan Bari Karyakatries" but only to "Assistant Angan Bari Karyakatries" on the ground that presently the minimum qualification of an "Angan Bari Karyakatri" is high school and there is no relaxation in this minimum qualification even for scheduled caste candidate.

4. This stand of the respondent authority is totally arbitrary and illegal, as the qualification of the petitioners would be treated to be as it existed at the relevant time when they were inducted as "Angan Bari Karyakatries" or "Mini Angan Bari Karyakatries", as at the relevant time the petitioners were qualified not only for the post of "Mini Angan Bari Karyakatri" but also for the post of "Angan Bari Karyakatri". Now since these posts have been upgraded, they will be treated to be working as "Angan Bari Karyakatries" unless there is anything other than their qualification against them."

4. It is after noting that all the writ petitioners are Scheduled Caste candidates and the minimum qualification was Class-8 passed and they were appointed in terms of the order dated 3.8.2007.

5. We heard the learned Counsel for the appellants Sri Lokendra Dobhal and Sri Bhagwat Mehra, learned Counsel appearing on behalf of the writ petitioners Sri Amish Tiwari and also Sri B.S. Negi, learned Deputy Advocate General for the State.

6. Learned Counsel for the appellants Mr. Lokendra Dobhal would submit as follows:

Appellants were not made parties in the writ petition. They underwent a selection for being appointed as Anganbadi Karyakatri and they were selected on 15.3.2012. It is submitted that time of seven days was given for filing objection against the same. Thereafter, the Appellate Authority approved the selection of the appellants by proceedings dated 29.3.2012. It is pointed out that the writ petitions have been filed without impleading them.

7. In fact, Sri Bhagwat Mehra would also submit that one of the writ petitioners was working under the appellants as Assistant Anganbadi and still the appellants were not impleaded. It is his further case that the order dated 3.12.2011, which provided for upgradation, clearly mandated possession of qualification of High

School, which appellants, admittedly, do not possess and therefore, on that score, the judgment of the learned Single Judge cannot be sustained.

8. The learned Deputy Advocate General would draw our attention to Annexure-1 produced alongwith the counter-affidavit dated 3.2.2009. It is pointed out that by the said order, for being appointed as Anganbadi Karyakatri, candidates must possess qualification of High School passed and it applies across the board irrespective of the community to which the candidates belong and it is pointed out that the said order was not challenged by the writ petitioners and it is further submitted that the writ petitioners were, accordingly, adjusted as Assistant and they can continue as such in terms of the order dated 3.12.2011.

9. After hearing the learned Counsel for the parties, we are of the view that the Appeals deserve to be allowed. The writ petitioners were appointed as Mini Anganbadi Karyakatri in the year 2007. In the year, 2007, in terms of the order dated 3.8.2007, while for the general categories qualification fixed for Mini Anganbadi Karyakatri and also for Anganbadi Karyakatri was High School passed, but an exception was created in favour of the reserved category, i.e., qualification was relaxed to passing Junior High School, namely, 8th standard. According to the Sri Bhagwat Mehra, there was a condition that it is applicable only if the candidate possessing High School passed was not available. Thereafter, order dated 3.2.2009 was passed. The said order was passed in supersession of all earlier orders. As per the same, the qualification fixed for appointment as Anganbadi Karyakatri is pass in High School; no exception is made in favour for the members of the reserved category, it is pointed out. Therefore, the position is that after 2009, the qualification for being appointed as Anganbadi Karyakatri is pass in High School. It is, thereafter, that the order dated 31.10.2011 was passed. It, no doubt, provided for upgradation to Anganbadi Karyakatri from Mini Anganbadi Karyakatri. The learned Single Judge has proceeded on the basis that those, who were working as a Mini Anganbadi Karyakatri, will automatically become Anganbadi Karyakatri. We are afraid that this interpretation of the said G.O. is an erroneous one for the reason that it is subject to the condition that they must possess the qualification. In fact, this objection is also noted by the learned Single Judge, in a manner of speaking, but the learned Single Judge would, however, seek to overcome the objection by holding that at the time, namely, in 2007 when they were appointed as Mini Anganbadi Karyakatri, writ petitioners were qualified for the post of Mini Anganbadi Karyakatri and also the Anganbadi Karyakatri, but the fact that order dated 3.2.2009 brings about a change in the scenario with reference to the qualification is not given due weight by the learned Single Judge. In other words, while an exception was carved out in the matter of qualification in favour of the reserved category by the order dated 3.8.2007, the said order would appear to have been superseded by the order dated 3.2.2009. It is after the prescription of the higher qualification, that the order provided for upgradation was passed in the year 2011. Therefore, the question of upgradation must be decided with reference to the qualifications, which were prescribed by the later order which

was issued in supersession of the earlier orders. It is also noteworthy that the writ petitioners have not challenged the order dated 3.2.2009. Without having challenged the said order and without having any right to claim any exception from the general prescription of qualification, as was done in the earlier order, which stood superseded, we would think that the learned Single Judge was in error in proceeding on the basis that the writ petitioners were entitled to automatic absorption as Anganbadi Karyakatris. We also notice that, in fact, even the order dated 3.12.2011, which was challenged, is not quashed as such and yet the writ petitioners have been directed to be given the benefit of upgraded pay. We further notice that it is a case, where the writ petitions were filed without making the persons, who were, in fact, selected, parties; they would appear to be necessary parties as granting of relief to the writ petitioners would have the effect of displacing those, who were selected, though it is true that the learned Counsel for the writ petitioners would point out that actual appointment order was given only after the appeal was filed. But nonetheless the selections were made, according to the appellants, on 15.3.2012; the writ petitions were filed on 23.3.2012; and the approval was given by the Appellate Authority on 29.3.2012. But we need not rest our decision on the non-impleading of parties as we are on surer foundations as we have already held that the appellants are not entitled to the benefit of upgradation without reference to possession of the requisite qualification. Result would be that the Appeals will stand allowed. The judgment of the learned Single Judge will stand set aside and the writ petitions will stand dismissed. No order as to costs.