
(2012) 01 OHC CK 0028

In the Orissa High Court

Case No : Writ Petition (C) No. 16088 of 2011

Manorama Muduli and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Orissa Childrens and Womens Welfare Service Rules, 1989 — Rule 7

Citation : (2012) 01 OHC CK 0028

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

Advocate : Amit Prasad Bose, for the Appellant; S. Das, Addl. Govt. Advocate for O.P. No. 1 to 6, Dr. Prasant Ku. Mishra, for O.P. 8 to 16, 20 and 22, Mr. M. Basu, for O.P. No. 17 and Mr. B. Bhoi for O.P. 19, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—Petitioners are working as Anganwadi Workers. A circular was issued by the Department of Women and Child Development Department, Government of Orissa bearing No. 532/SWCD/IV-ICDS-II-128/2008(Pt.) dated 4th October, 2008 informing all the Collectors that the Department had decided to create 237 posts of Supervisors to be filled up through direct recruitment on contractual basis and specifying the qualification for Anganwadi Workers to be eligible for appointment as Supervisors. Letter dated 4th October, 2008 was further clarified by the Department vide letter dated 29.7.2009. Accordingly, a list of 313 Anganwadi Workers for Balasore District was prepared for appointment as ICDS Supervisors. Some of the petitioners assailed the gradation list in W.P.(C) No. 15292 of 2009 alleging that there were irregularities in the list so prepared. The said petition was disposed of by this Court with a direction to the Collector, Balasore to hear and dispose of the representation of the petitioners as expeditiously as possible preferably within a period of six weeks from the date of receipt of the order. It was clarified that till the representations were decided, there would not be any appointment to the post of lady

Supervisors without leave of the Collector. The irregularities in the list were accordingly clarified and fresh list prepared under Annexure-3 was accepted by the petitioners. Another letter was issued by the Department on 13.5.2011 clarifying that para 3, 4 and 5 of letter dated 29.7.2009 would be taken into consideration at the time of engagement. Another gradation list (Annexure-5 series) was prepared and published by the Department where respondent nos.7 to 23, who had completed graduation later than the petitioners, were put senior to the petitioners. The Department issued a letter dated 19.05.2011 inviting objections to the said list. Petitioners accordingly submitted their representations objecting to the seniority given to respondent nos.7 to 23. Apprehending that the Department was going to finalize the gradation list without deciding the objections of the petitioners, this petition has been filed. Respondents have contested the claim of the petitioners. The Department in the counter affidavit filed by Pramila Mohanty, District Social Welfare Officer, Balasore has disputed the claim of the petitioners and has averred that the list was prepared in accordance with the Government order dated 4.10.2008 and 29.10.2009 which laid down the guidelines to be followed while filling up of the vacancies to the post of Supervisor after preparing the gradation list as per the seniority of the Anganwadi Workers. Doubts expressed by some of the Collectors were clarified by the Department vide order dated 29.7.2009 clarifying that 237 posts would be filled in from amongst the graduate Anganwadi Workers having experience of more than five years and those who had given their option for such appointment. The names of the petitioners find place in both the lists. It is also alleged that the Department now prepared fresh gradation lists dated 20.12.2010 and 19.5.2011 respectively in terms of the seniority criteria laid down in the order dated 13.5.2011 and the names of all the petitioners appear in the said gradation list. Hence, the petition being without merit should be rejected.

2. Respondent nos.7 to 16 and 20 to 22 have also contested the petition with similar defence taken by the Department. The only question to be considered is whether the gradation list dated 19.5.2011 (Annexure-5 series) prepared by the Department is violative of the decision of Women and Child Development Department communicated to the Collectors vide letter dated 4.10.2008 and further clarified vide letter dated 29.7.2009. For convenience sake, the relevant paragraph of the communication dated 4.10.2008 is hereby reproduced as below:

"xx xx xx xx

It has been decided that only Graduate Anganwadi Workers who have rendered minimum five years service as AWW could be eligible for appointment as Supervisor against the vacancy to be filled up through direct recruitment. However, since the appointment is on contractual basis and could be terminated any time all Graduate AWW with five years service should be asked to give option for such appointment. On the basis of their seniority, the AWWs should be considered and appointed. Though ORV Act and Rules need not be followed in filling up posts on contract basis, yet principles of reservation should be followed

up to ensure that eligible AWWs of different categories get appointment as per the reservation principle.

To appreciate the directions as issued in the aforesaid letter, it is also necessary to consider the clarification issued on 29.7.2009. The relevant paragraphs of the letter read:

"xx xx xx xx xx

2. It is clarified that the filling up of posts by contract basis is not covered under Orissa Children's and Women's Welfare Service Rules, 1989 or their amendment of 2007. The provision of contract appointment is being done purely by way of Government order issued with the concurrence of Finance Department. This will be strictly limited for such Anganwadi Worker, who are giving their option to work as ICDS Supervisors on contract basis. Therefore, there is no requirement to issue open advertisement/ notification to the employment exchange/ news paper advertisement etc. as would have been required under Rule 7 of 1989 Recruitment Rules.

3. The selection of the graduate Anganwadi Worker who have completed five years both as graduate as well as in capacity of Anganwadi Worker and who have given their option for consideration as Supervisors on contract basis will be strictly on seniority basis. In other words seniority as Anganwadi Worker will determine the matter conclusively. However, the eligibility condition will be that the person should have worked as anganwadi worker for at least five years after graduation.

Xx xx xx xx xx"

3. A conjoint reading of these two letters makes it clear that only graduate Anganwadi Workers, who have rendered minimum 5 years of service as Anganwadi Worker, are eligible for appointment as ICDS Supervisors against the vacancy to be filled up through direct recruitment. A candidate is required to fulfill the following eligibility criteria for consideration for appointment as Supervisor.

(i) She must be a graduate and has completed five years as Graduate as well as in the capacity of Anganwadi Worker;

(ii) She has given option for consideration as Supervisor on contract basis.

In case a candidate fulfills the aforesaid criteria, her selection has to be strictly on seniority basis.

4. Mr.A.P.Bose, learned counsel appearing for the petitioners has submitted that the candidates, who have completed five years both as Graduate as well as in the capacity of Anganwadi Workers, are to be considered for appointment and while preparing the gradation list, they should have been given seniority as per the year of their graduation irrespective of the length of their experience as Anganwadi Worker above those candidates, who had passed graduation during

the course of service at a much later stage, though they might have completed five years of graduation and experience as Anganwadi Worker on the date of preparation of the gradation list.

5. The submissions made by learned counsel for the petitioners are devoid of any merit. Para-3 of the letter dated 29.7.2009 in clear terms clarifies that seniority as Anganwadi Worker would determine the matter conclusively. In other words, seniority of a candidate has to be reckoned from the date she joined as Anganwadi Worker and not from the date she did her graduation. However, to be eligible for consideration for appointment as Supervisor, she is required to have worked as Anganwadi Worker for at least five years after graduation irrespective of the fact that she had been working as Anganwadi Worker for number of years to be eligible for appointment as Supervisor. The Department, therefore, was required to prepare a gradation list keeping in mind the date of joining of an Anganwadi Worker vis-?-vis other candidates and of course, keeping in mind that she was a graduate and after her graduation she had worked as Anganwadi Worker for five years.

6. Initially, gradation list dated 11.12.2009 (Annexure-3) was prepared by the Department. Perusal of the list reveals that the Government had given weightage to the year of passing of graduation instead of date of appointment as Anganwadi Worker. For example, candidate appearing at Sl.No.9 had joined as Anganwadi Worker on 26.11.1985. She had passed graduation in 1991. However, she has been placed below the candidate at Sl.No.8 who had joined after about five years of her joining i.e. 24.12.1990, but had passed her graduation in 1990, i.e., a year earlier than the candidate at Sl.No.9, who had done her graduation in 1991. Same is the position of other candidates appearing at Sl.Nos. 14, 17 and so on. Petitioners have accepted this list, may be because it has put them at advantageous position qua the respondents and other candidates whose names find place in the list. This list cannot be considered as proper gradation list as it was prepared dehors the instructions issued by the Department on 4.10.2008 and clarified on 29.8.2009.

7. Finding the gradation list dated 11.12.2009 being violative of the directives issued by the Department, fresh list was prepared on 19.5.2011 (Annexure-5). Perusal of this list clearly indicates that the concerned authorities have followed the guidelines and criteria for preparing the gradation list in its true sense and spirit. Resultantly, a candidate who had earlier joined in time was given seniority irrespective of the fact that other candidates who had joined later had passed graduation earlier in time. Since seniority of the petitioners has been altered by virtue of this list, they are aggrieved. They did file representations challenging the list, but their grievance is that before deciding their objections, Department decided to implement the gradation list and appoint the candidates as Supervisors as per the said list. However, their grievance is in-genuine and is not tenable.

8. One of the respondents, namely, respondent no.17, Susama Panda had filed a

writ petition challenging the seniority list dated 18.02.2009 alleging that her experience as Anganwadi Worker in Bahanaga ICDS Project for the period from 22.12.1990 to 3.5.1998 was not taken care of and counted by the District Social Welfare Officer while preparing the gradation list. As per the direction of this Court passed in her writ petition, she filed a representation before the Collector, Balasore. Considering her past experience as Anganwadi Worker at Bahanaga ICDS Project, her representation was allowed and it was directed that her experience as Anganwadi Worker for the period from 22.12.1990 to 3.5.1998 be taken into consideration while preparing the gradation list.

9. Accordingly, the new gradation list was prepared on 22.12.2010 (Annexure-A to the counter at page 20). The Department again committed same mistake in preparing this list as was committed while preparing Annexure-3 dated 18.2.2009. To demonstrate the irregularity committed in this list, reference is made to candidates appearing at Sl.No.19 to 22. The candidates appearing at Sl.Nos.19 to 22 had joined as Anganwadi Workers in May, 1997 whereas the candidates appearing at Sl.Nos.23 and 24 had joined as Anganwadi Workers on 21st March, 1996, i.e., more than one year before the candidates appearing at Sl.Nos.19 to 22. This was so done because the candidates appearing at Sl.Nos.23 and 24 had passed their graduation in 1997, whereas candidates appearing at Sl.Nos.21 and 22 had passed their graduation in 1990. It is pertinent that even this list is not properly prepared because even if the date of graduation is considered for the purpose of fixation of seniority, some of the candidates, who are shown senior had passed out graduation much later and whereas some of the persons shown as junior had done their graduation much earlier in time.

10. Probably because of this, Department has prepared final gradation list on 10.8.2011 (Annexure-A at page 9 of the counter). I have carefully scrutinized the final gradation list of Graduate Anganwadi Workers of Balasore District. I do not find any discrepancy of any nature in this list. The date of joining has been considered as the criteria for fixation of seniority; of course five years graduation as Anganwadi Workers has also been reckoned and taken care of while preparing the gradation list. Clearly the impugned list dated 19.5.2011 (Annexure-5) annexed to office order No.14/ SW dated 19.5.2011 and the subsequent list dated 11.8.2011 are in consonance with the orders dated 4.10.2008 and 29.7.2009 issued by the Women and Child Development Department. It would be a fallacy to say that the date of graduation should be considered for the purpose of fixation of seniority in the gradation list because the Rules do not envisage that seniority has to be determined considering the date of graduation with minimum five years experience as Anganwadi Workers after graduation. There is no ambiguity in para-3 of the letter dated 29.7.2009. In fact the Commissioner-cum-Secretary to Government himself clarified the manner in which seniority has to be fixed and gradation list to be prepared. Under the facts and circumstances and in view of my observations as above, inevitable conclusion is that the petition has no merits and deserves to be dismissed. Consequently, the petition is hereby dismissed.