
(2012) 04 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 1330 of 2000

Minati Nayak @ Behura

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 134 FLR 647

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : M.K. Mohanty, B.P. Routray and S. Samal, for the Appellant; S.K. Nayak -2, B.K. Rout, M.K. Jena, B.K. Sahoo and Miss P. Mishra, for the Opp. Party No. 6, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mishra, J.—In this writ application, the petitioner, has assailed the selection of opposite party No. 6 as Anganwadi Worker of Bishunpur Anganwadi Center under Pattamundai I.C.D.S. Projects in the district of Kendrapara. The case of the petitioner, in short, is that the I.C.D.S. Projects are under the Panchayati Raj Department and the said Department published a Government Order on 8.6.1992 bearing No. 5642 for selection, engagement and training of Anganwadi Workers. In that Government Order, it has been stipulated that the Anganwadi Worker should be in the age group of 18 to 44 years and permanent inhabitant of the concerned village, where the center is established. The qualification for the said post is H.S.C. and for rural areas the minimum qualification was stipulated as Class-VIII pass. The selection was to be made on the basis of two examinations, i.e. written examination and viva-voce test

2. For selection of Anganwadi Worker, the Child Development Project Officer, Pattamundai I.C.D.S. Project, Pattamundai, Kendrapara, opposite party No. 5, invited applications from the intending candidates to take part therein prescribing the minimum qualification as Class-VIII pass. The petitioner having passed

H.S.C. examination in the year 1992 made an application in the prescribed form for the post of Anganwadi Worker in the aforesaid Centre. Her application was scrutinized by the authority and after finding the same to be correct in all respects received on 31.7.1999.

3. When matters stood thus, the Government vide G.O. No. 8184 dated 7.10.1998 prescribed fresh guidelines for selection of Anganwadi Worker. In the said guidelines, it has been prescribed that the applicant should be a female candidate in the age group of 21 to 40 years and she should have attained the age of 21 years but not 41 years on the first day of the year in which the application has been invited. The minimum qualification was stipulated to be H.S.C. On the basis of the said modified order, no application was invited for Bishunpur Anganwadi Centre, but the petitioner did not receive any call letter to appear in the examination/test. On enquiry she could know that her application has not been considered on the ground that she has not attained the age of 21 years as on 1.1.1999 and, therefore, she was not called for. The petitioner, therefore, submits that rejection of her application on the changed guideline is illegal and she should have been given, a chance to appear, in the examination and, therefore, she prayed that the selection of opposite party No. 6 should be declared invalid and she may be given an opportunity to appear in the examination.

4. In the counter-affidavit, opposite party Nos. 3 to 5 claimed that on 7.10.1998 the Government of Orissa, Women and Child Development Department, published fresh guidelines for selection of Anganwadi Worker in suppressing all the previous guidelines. In this regard, it has been stipulated that a female candidate in the age group of 21 to 40 years shall be eligible for the said post. Therefore, as per the revised guidelines the petitioner shall not be eligible for the post of Anganwadi Worker. It is further claimed that the petitioner was less than 21 years at the relevant time. It is further pleaded by the opp. party Nos. 3 to 5 that in pursuant to the aforesaid guide lines, opposite party No. 5 issued a notification dated 30.12.1998 indicating therein that candidates in the age group between 21 to 40 years are to be eligible to be considered for the post of Anganwadi Worker. Therefore, it is contended that the writ application is devoid of any merit and the same be dismissed.

5. Learned Counsel for the petitioner, in course of argument, has relied upon several reported cases and contended that once an advertisement has been made as per the existing guidelines, the same cannot be changed by the authorities in view of the fresh guidelines issued by the Government.

6. Learned Counsel appearing for the State, on the other hand, submits that pursuant to the revised guidelines, the authorities have given a notification before the selection proceedings, therefore no illegality has been committed.

7. The moot question that remains to be decided in the case is whether after the initial advertisement, the authorities have the jurisdiction to change the age limit

as per the revised guidelines, It is trite law that empanelling of a candidate does not create any right to the post he has applied. Similarly, an advertisement issued before the selection process is taken in view of the changed guidelines, the eligibility criteria can be changed provided there is sufficient reason for the same. Further more, it is brought to the notice of this Court that the Supreme Court in the case of State of Karnataka and others v. Ameerbi and others (2007) 11 SCC 681 = 2007 (1) LLJ 996 (SC) has held as follows:--

The posts of Anganwadi workers are not statutory posts. They have been created in terms of the scheme. It is one thing to say that, there exists a relationship of employer and employee by and between the State and anganwadi workers but it is another thing to say that they are holders of civil post.

We are not oblivious to the fact that their presence in their respective villages is extremely important. They are supposed to make significant contribution to the society. They, we understand, are required to carry out a large number of activities, primary amongst them being the welfare of the children.

Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees to the date are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme exists. We do not think that the said decision has any application in the instant case.

8. Thus, from the aforesaid discussions, it is clear that the service law as applicable to civil servants are not applicable to the selection of Anganwadi Workers.

9. In the case of Kunilata Dutta v. State of Orissa and others, 2010 (supp-ii) OLR 437 this Court, relying upon the reported case of State of A.P. and others v. D. Dastagiri and others, 2003 (97) FLR 805 (SC) held that the candidates who have been elected in a selection process, though the final list has not been declared, they do not have any vested right to claim engagement on the selection process. The State Government has a right to take a policy decision either to have prohibition or not have prohibition in the State and the policy decision imposed, the petitioner cannot insist for engagement. In the reported case of Kunilata Dutta (supra) this Court was answering a question whether after selection procedure was completed, the advertisement can be cancelled keeping in view the revised guidelines issued for engagement of Anganwadi Worker and this Court has answered the question in affirmative.

This is more so because Anganwadi workers are volunteers and they have important role to play in implementing the welfare schemes of the Central/State Government. Service rule is not applicable for their selection, removal etc. Moreover, it is seen that opposites party No. 9 has been selected way back in the

year 1999 and in the meantime thirteen years have elapsed. An Anganwadi Worker so selected has gained immense experience and has been contributing a lot towards implementation of the welfare of the schemes. So, this Court does not find any valid reasons to interfere with the selection of opposite party No. 6.

Hence, this writ application is dismissed.