
(2019) 09 CAL CK 0033

In the Calcutta High Court

Case No : Temporary Number (AST) No. 8 Of 2019, CRAN No. 3769 Of 2019

Simla Dhanwar And Others

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 226

Citation : (2019) 09 CAL CK 0033

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Subrata Mukhopadhyay, Basabi Roychowdhury, Chaitali Bhattacharjee, Tuli Sinha

Final Decision : Dismissed

Judgement

Protik Prakash Banerjee, J

1. This petition under Article 226 of the Constitution of India is at the instance of 39 persons. The principal prayers in the writ petition including the one after the prayer for Rule Nisi, are as follows: -

a. A writ of in the nature of Mandamus commanding the respondents, their men, agents and subordinates to allow all the petitioners to appear in the selection process promotion in the post of Anganwadi Workers in terms of the Notification being No. 36/ICDS/DPG dated 29.1.2019 issued by the respondent no.3 treating the qualification of your petitioner Class X passed as valid document.

b. A writ of in the nature of Mandamus commanding the respondents, their men, agent and subordinates to cancel and/or rescind and/or withdraw the purported decision, if any, in allowing the petitioners to appear in the selection process of promotion in the post of promotion in the post of Anganwadi Workers in terms of the Notification dated 29.1.2019 issued by the respondent no.3.

c. A writ of in the nature of Mandamus commanding the respondents, their men,

agents and subordinates not to give any effect any effect for further effect the result of selection process in any manner for the post of Anganwadi Worker in terms of the Notification dated 29.1.2019 issued by the respondent no.3.

d. A writ of in the nature of Mandamus commanding the respondents, their men, agents and subordinates to proceed de novo of selection process for promotion in the post of Anganwadi Workers in terms of the Notification dated 29.1.2019 issued by the respondent no.3.

e. A writ of in the nature of Mandamus commanding the respondents, their men, agents and subordinates to cancel and/or rescind and/or withdraw the entire selection process for the promotion in the post of Anganwadi Workers in terms of the Notification dated 29.1.2019 issued by the respondent no.3.

f. A writ of in the nature of Certiorari commanding the respondents, their men, agents and subordinates to produce and transmit the entire case records before this Hon'ble Court so that "condensable" (sic) may be rendered upon consideration of the same.

There was a Rule Nisi prayed after these prayers and then, a prayer (h).

(h) An appropriate order be passed directing the respondents their men, agents and subordinates not to give any effect or further effect to the result of the selection process for promotion in the post of Anganwadi Workers in terms of the Notification dated 29.1.2019 issued by the respondent no.3.

Since no prayer for issuance of Rule Nisi has been made in respect of prayer (h), I think it will be safe to restrict myself to the other prayers since they still deal effectively with the reliefs prayed for by the writ petitioner. An interim order had been passed on contest on February 13, 2019 that the respondents were at liberty to continue with the promotion process but were not to issue final order of promotion, initially for a limited period which was subsequently extended from time to time and was subsisting till September 9, 2019. It was subsisting when I reserved judgment on September 2, 2019 and naturally, it was expected that nothing would be done till I delivered judgment.

2. The immediate cause for the petitioners to approach this Court was the oral refusal of the respondent no.3 to issue admit cards to the 39 writ petitioners, individually, purportedly on the ground that the 'Class X passed' certificates produced by the petitioners as eligibility condition for the petitioners, all of whom were Anganwadi Helpers in employment in different Panchayats in Dhupguri Block in the District of Jalpaiguri, as stated in paragraphs 11 and 12 of the writ petition. The writ petitioners submitted that they had put in deficit court fees.

3. Affidavits and supplementary affidavits were allowed to be used, and respective counters/replies thereto were filed and taken on record. An application for vacating the interim order was made and affidavits used therein. To expedite hearing of the matter, with the consent of the parties I chose to take the main writ petition up for hearing alongwith the said CAN 3769 of 2019.

4. To appreciate the stand of the writ petitioners perhaps it is important to go to the source of the problem, the eligibility criteria, which also is the fountain of their right. The relevant condition is quoted from the Notification dated January 29, 2019 issued by the respondent no. 3 which was duly publicized and circulated and amounts to a binding representation to the public.

"Notification for Promotion

Applications are invited from all the eligible Angan Wadi Helpers of Dhupguri Main ICDS Project for the promotion to Angan Wadi Workers of this project.

Selection Criterion:

Minimum Education qualification: Class X Passed from Recognized Board for all categories (no bar for further E.Q. if acquired after joining as AWH).

Age: Till the age of her discontinuation of service, i.e., 65 years as on 01.01.2019.

Experience: Minimum 5 years of experience as AWH as on 01.01.2019.

Residence: Must be resident within the project area."

5. I have put this in quotation marks to show exactly what a member of the public, an ordinary person of reasonable prudence would have read and understood for on that this case turns.

6. The petitioners submit, through Mr. Subrata Mukhopadhyay, learned advocate, that the essential educational qualification of an Angan Wadi helper who was in service at the time of the application for being considered for the process of selection, was to have a qualification having passed class X, from any board, regardless of whether the State of West Bengal or its authorities had formally recognized that Board. He says that this is because of the phrase in parenthesis, that if the qualification is obtained after joining as Angan Wadi Helper, then there was no bar for further equivalent qualification. All his clients, he submits, are serving as Angan Wadi Helpers, and were class VIII passed when they joined according to the qualifications then required for that post, and subsequently have passed Class X examinations from various open university institutions though the respondents submit that most of these with that particular subject mix are not recognized by the State. Since the advertisement was on the basis of a twenty five percent ratio for Angan Wadi Helpers to be promoted to Angan Wadi Workers, he submits that in effect this means and can only mean that equivalent qualification is no bar and without having published a corrigendum well before the last date of making the applications, the rules of the game could not be changed after the play had started by seeking to impose another qualification which restricted the scope of consideration.

7. In fact, on this basis, the petitioner contended, in precis, as follows: -

a. The petitioners have already enhanced their qualification to at least Class X passed during the period of engagement as Anganwadi Helpers and such enhancement is not barred for the purpose of eligibility under the above-mentioned Notification.

b. The Indira Gandhi National Open University or different other boards are recognised by different states including the State of West Bengal and in fact a certificate issued under "National institute of Open Schooling"(NIOS) shall be considered in the same footing as of any other Board id est, Madhyamik or other recognised boards for the purpose of weighing eligibility in the selection process.

c. All the petitioners have been discharging the duties as Anganwadi Helpers for more than 9(Nine) years which is much above the required experience for eligibility id est, of minimum 5 years as has been prescribed No.36/ICDS/DPG dated 29.01.2019 issued by respondent No.3.

d. The Petitioners were neither informed nor aware of any other addition, alteration, qualification made in connection to the said Notification and therefore any other possible construction, reference, variance, interpretation to or of the language of the said notification especially to the Clause Selection Criterion cannot be considered as just and allowing such contention on the part of respondent authorities will allow the respondent authorities, who are "State" within the meaning of Article 12 of the Constitution of India to change the rules of the game after the play has begun, thus acting arbitrarily and in a manner which denies to the petitioners equality before the law and equal protection of the laws in a matter where the right to be considered for a better livelihood is concerned.

8. It is not disputed by Ms. Bhattacharya, learned senior government advocate for the State, that no corrigendum was published after the advertisement/notification dated January 29, 2019 before seeking such an equivalent qualification even from existing Angan Wadi Helpers.

9. Rather, she relies upon the same parenthetical phrase as I have referred to in paragraphs 4 and 6 above, to say that the plain meaning is not what Mr. Mukhopadhyay submits it is, and there is another way of reading it, even using the principles of plain language and literal interpretation.

10. She submits that since it is common ground that at the relevant time the essential minimum qualification for an Angan Wadi Helper was having passed Class VIII from any recognized school, what the present notification dated January 29, 2019 clearly means is that if an Angan Wadi Helper acquired her equivalent qualification as required under this advertisement after joining as Angwan Wadi Helper, then it would not be a bar. Thus, she submits that whether the qualification was equivalent or not is still material and a limiting factor, and no separate corrigendum was necessary for this.

11. Therefore, she submits that even if I resort to literal interpretation, there are

two possible interpretations of the plain language of the minimum eligibility criteria. For the sake of convenience, I again reproduce the relevant extract from the same as already quoted in paragraph 4 of this judgment, alongwith the two interpretations: -

"Minimum Education qualification: Class X Passed from Recognized Board for all categories (no bar for further E.Q. if acquired after joining as AWH)"

a. It means, as Mr. Mukhopadhyay contends, that for Angan Wadi Helpers who obtain their Class X passed qualification after having joined service, further equivalence of the qualification is not required to be considered, as an exception to the general rule outside the parenthesis.

b. It means, as Ms. Bhattacharya contends, that no bar will be created if the Angan Wadi Helper acquires a qualification equivalent to Class X passed after joining service as Angan Wadi Helper, though she was not Class X passed when recruited as Angan Wadi Helper but whether it is equivalent or not shall be determined by the extant rules of the Respondent State.

12. None of these interpretations appear to assign any meaning to the word "further" in the phrase "no bar for further E.Q.".

13. In order to bolster her submissions that her interpretation is what the authorities intended, Ms. Bhattacharya took me through the original Integral Child Development Scheme as it has changed over time. She also commented, in passing, that initially a lion's share was paid by the Central Government and a smaller share by the State Government, but now the Central Government pays nothing and the State Government has to pay all. She has, however, indicated two documents to support her interpretation.

14. These two documents are annexures R/2 and R/3 to the affidavit-in-opposition. They can also be found in the application for vacating the interim order, and have been dealt with by the petitioners who have contended that they did not and could not have known about it, since these were not published in the official gazette or otherwise made known to the public at large before they were disclosed in the vacating application and the affidavits.

15. Annexure R/2 purports to be the proceedings of a meeting of the said ICDS committee meeting. In the last page of the minutes of the Proceedings of Meeting of the ICDS District Selection and Monitoring Committee, Jalpaiguri held on June 12, 2018, more than six months before the date of the Notification dated January 29, 2019, it is recorded as follows: -

"It was discussed that for Academic qualification the Mark Sheet/Certificate issued by the Recognized Board/Council/University is to be submitted as per extant rules of the Govt. In respect of certificates awarded by different organizations recognized by the State Govt, candidates who have cleared the compulsory subjects in the examination similar to those in the Madhyamik Examination under West Bengal Board of Secondary Examination will be eligible

to appear."

16. Annexure R/3 to the said Affidavit-In-Opposition is a Memo bearing No.742-SE(Apptt) and dated July 31, 2002 issued by the Special Secretary, Department of School Education, Government of West Bengal and is addressed to the Director of School Education (now Commissioner of School Education) West Bengal, who in turn forwarded it to the President, West Bengal Board of Primary Education which was forwarded by the Secretary of the West Bengal Board of Primary Education to the Chairman, Jalpaiguri District Primary School Council and Kolkata/Silguri Primary School Council and the Director of School Education, West Bengal, Bikas Bhawan, 7th Floor, Salt Lake, Kolkata- 700 091. There is nothing in the said Memo which says that this it is to be disseminated to the general public and in fact, it is not shown to have been sent for publication in the Official Gazette. For the sake of completeness, however, it is quoted in its entirety, hereinbelow: -

Sub: Equivalence of Certificate awarded by different organization.

In cancellation of this department's memo no. 316-SE(Apptt.) dated 21.03.2000 the undersigned is directed to say that the certificates awarded by the Indira Gandhi National Open University, Vidyasagar University, Burdwan University, Netaji Subhas Open University engaged in providing distant education/ correspondence courses are hereby recognized by the state government.

The undersigned is further directed to say that Madhyamik (Secondary) and UccaMadhyamik (Higher Secondary) certificates awarded by Rabindra Mukhta Vidyalaya, West Bengal (erstwhile West Bengal State Open School) to successful candidates who have cleared the compulsory subjects in the examination similar to those in the Madhyamik Examination under West Bengal board of Secondary Education and cleared the compulsory and Minimum number of Elective subjects as stipulated for the Higher Secondary examination under West Bengal Council of Higher Secondary Education respectively, are recoiled by the govt.

The undersigned is further directed to say that secondary and senior secondary certificates issued by the National Open School, New Delhi are also recognized by this govt. provided the conditions mentioned at para 2 above are fulfilled."

17. Drawing the convoluted strands of arguments together, let us see what Ms. Bhattacharya has really contended for the State. She has said that the State did not have to separately publicize these documents as essential minimum criteria for eligibility by publishing a corrigendum before the last date of making the application in terms of the notification dated January 29, 2019, because the word "recognized" in the main part of the minimum educational qualification outside the parenthesis, subsumed all of these documents, and the petitioners are deemed to have known this. She says that if her interpretation of the parenthetical statement as in paragraph 11(b) of this judgment is accepted, then it will be clear that there is no contradiction. She also submitted that where two interpretations by using the literal construction rule are equally plausible, the

Court ought to prefer that interpretation which advances the purpose of the Integrated Child Development Scheme, that is to say, the purpose of a welfare scheme and not the other plausible interpretation. For this she has naturally relied upon the law settled for purposive interpretation, inter alia expounded by the House of Lords in *Shah-v-Burnet* London Borough Council reported in (1983) 1 AER 226, and also the celebrated rule in *Heydon's Case*, reported in 76 ER 637 equivalent to (1584) Co. Rep. 7a, at p 7b (I prefer Coke's Reports) though she did not cite any case for this.

18. She says that for the above purpose I am to look into the original comprehensive guidelines for recruitment of Angan Wadi Workers, disseminated by the Government of West Bengal through its Department of Women and Child Development and Social Welfare by Memo No.288- SW/3S-225/05 dated January 25, 2006. She handed over a copy to the Court and immediately, like a blaze of light, the following minimum qualification in clause 7d presented itself: -

"Qualification for recruitment by promotion from Anganwadi Helpers:

In the matter of promotion the minimum qualification is Class VIII passed.

There will be no age bar in case of promotion to Anganwadi Workers from Anganwadi Helpers.

There will be no bar for an Anganwadi Helper in promotion to the post of Anganwadi Worker if she possesses further academic qualification after joining the post of Anganwadi Helper". (emphasis supplied by me).

19. Clause 7 which deals with recruitment of Anganwadi workers through direct recruitment makes it clear by way of Clause 7b that at that time the minimum educational qualification for candidates in the general category was Madhyamik/ School Final/High Madrasah Examination or Equivalent Examination passed from any recognized Board, and for candidates of the scheduled castes/tribes, minimum qualification of Class VIII passed. However, for the government quota candidates, by way of Clause 7c, similar conditions were made. Only in case of promotion from Angan Wadi Helpers to Angan Wadi workers was the question of equivalence not mentioned in the said guidelines/memo dated January 25, 2006 as I have quoted in paragraph 19 above.

20. Therefore, initially the provisions made by January 25, 2006 memorandum clearly seems to have been that Angan Wadi Helpers who were class VIII passed but had acquired the further qualification of Class X passed after joining as Angan Wadi Helper, were eligible to be considered, without the question of the equivalence of their qualification, board or examination with Madhyamik Pariksha being examined. Initially, but not under the advertisement dated January 29, 2019.

21. The petitioners cannot purport to be unaware of the recruitment rules/ guidelines of 2006 under which they were recruited or were in vogue and that by the advertisement/notification dated January 29, 2019 a departure was made

from the nature of the minimum educational qualification for promotion by using the word "equivalent". In the meanwhile, in 2013, the minimum educational qualification for both general and scheduled castes/tribes candidates was changed to "Class X Passed (Matriculation)" by a Circular dated March 21, 2013 bearing Number 1104-SW/3S-255/04 Part. By using the parenthetical statement in the minimum educational qualification as in paragraph 11 above, for the first time, the Respondent state and those administering the Integrated Child Development Scheme departed from the memorandum of January 25, 2006, by due resolution in Jalpaiguri, after the due process of consultation reviewed the recruitment procedures mentioned in Annexure R/2 and the result of this resolution, the departure, was briefly but clearly mentioned by use of the words "no bar for further E.Q. if acquired after joining as AWH".

22. Therefore, it is clear that the interpretation in paragraph 11b is the only possible interpretation and not one of the two plausible interpretations, since it is clear by the use of the word "equivalent qualification" after the word "further" that what was intended was to allow all Angan Wadi Helpers who had acquired their qualification after being recruited as Class VIII passed, to become eligible to participate, provided that the subsequent and further qualification was "Equivalent" for the purposes of the State of West Bengal which was administering the scheme. Once I hold as above, the questions of separate publication of errata, corrigendum and changing the rules of the game after the play has started, do not arise. The writ petitioners do not have to be telepaths to know that once an advertisement for promotion/recruitment departs and adds to the original rules for in-service Angan Wadi Helpers, the additional words in the advertisement must be given due effect. It is not their case that before the last date for making of the application (February 5, 2019) they had inquired as to whether they were eligible and were told that they were so eligible. They presumed, contrary to the plain meaning of the words in the Notification dated January 29, 2019, that they were eligible.

23. Once this is held, I cannot fault the respondents for giving effect to Annexures R/2 and R/3. There is a chart given in the application for vacating the interim order being CAN 3769 of 2019 at paragraph 5c, starting from page 26, setting out the qualifications and the boards from which each of the petitioners obtained their Class X qualification. Apart from the petitioners no.19 and 36, none of them appear to have Mathematics and Bengali, and Mathematics is a compulsory subject in Madhyamik Examination. To be in consonance with Annexure R/3 and R/2, the candidate must have in its possession a certificate showing that he or she appeared for and passed an examination in the subject-mix of which mathematics was there; besides, Angan Wadi Workers work at the grassroots of the country, its rural base, and if they have chosen not to take Bengali, in West Bengal, as a subject even at Class X level, the Respondents cannot be faulted for having held them not to be eligible. Therefore, for only two of the petitioners who were eligible, being petitioners no.19, Manu Sarkar and no.36, Aarti Gupta, none of them was eligible, as rightly held by the respondents

and they were rightly not issued admit cards for the selection test.

24. In an argument of desperation, to counter this, Mr. Mukhopadhyay produced what he submitted were the "Revised Guidelines for selection of Anganwadi Workers" disseminated by Memo No. 145/SWCD IV-ICDS-I-1/04 dated May 2, 2007 which states that it is in supersession of all previous guidelines/orders in this regard, issued by the Commissioner-cum-Secretary of the Government of Orissa to All Collectors. He said that since ICDS is a central scheme, the same applied to West Bengal. He relied upon clause 3 of the said revised guidelines which reads as follows: -

"The minimum educational qualification for selection will be Matriculation. In the ITDA and MADA areas, however, if no Matriculate candidate is available, the educational qualification may be relaxed for the tribal candidates and SC candidates to Class - VIII examination from a recognized High School.

Percentage of marks obtained in the Matriculation Examination shall be the basis for drawing a merit list amongst the applicants."

Mr. Mukhopadhyay submitted that this clearly showed that way back in 2006 the guidelines stood superseded by new guidelines which did not mention anything about equivalence of certificate for an in-service candidate. He said that is binding on all the States in case of recruitment/or giving opportunity of promotion to the already employed /engaged Anganwadi Helpers or Anganwadi Workers. Therefore, the notification dated January 29, 2019 could not be interpreted as I have done after accepting Ms. Bhattacharya's submissions in paragraph 11b above for the reasons stated by me in paragraphs 20, 21 and 22 above.

25. Ms. Bhattacharya countered this by pointing out that the direction cum guideline was issued under the hand, seal and signature of the "Commissioner-Cum-Secretary to Govt. Women and Child Development Department, Government of Orissa" and such was addressed and issued to all the Collectors, meaning thereby Collectors in Odisha, and this could not and did not bind the State of West Bengal in administering the ICDS in West Bengal.

26. I have gone through the Integrated Child Development Scheme documents sourced from the website of ICDS at <https://icds-wcd.nic.in/successstory.aspx> including the document being "Potential Good Practices - The ICDS Experience" at <https://icds-wcd.nic.in/Best%20Practices.pdf> and it appears to me therefrom that though the Scheme is central in nature, sufficient federalism has been retained by making the implementation of the scheme State/Union Territory Specific, and within the broad parameters of the mission of the scheme, State Governments have been allowed to create the framework for delivery of services so long as the basic design of Angan Wadi Helpers, Angan Wadi Workers, Supervisors, Auxilary Nurse Midwife and Accredited Social Activist is adhered to - how they will be recruited and what their qualifications are, have not been specified by the Central Government, but it has laid down what honoraria it will

pay for differently qualified and experienced personnel, with wide liberty given to the States to supplement this; besides, there are certain areas in which the States are equal participants and in some cases where the State is to bear the expenditure. Most importantly, each State has its own practice and procedure and those considered the best are recommended but not made mandatory for all other States. These are the "innovations" and "good practices" so called. It does not, therefore, appear to me that the recruitment guidelines of Angan Wadi Workers in Odisha are binding on the State of West Bengal, particularly when it is addressed to only all the Collectors, when obviously, the writ of that Government runs only in respect of its own collectors, and not to those of the State of West Bengal in a country with a federal structure like ours. So, I hold that the guidelines of the State of Odisha dated May 2, 2007 as in paragraph 24 of this judgment, are not applicable in and to the State of West Bengal for recruitment or promotion of Angan Wadi Workers.

27. So far as Manu Sarkar and Aarti Gupta are concerned, the respondents have admitted at paragraph 5c at page 34 of the vacating application that they were eligible. The subject-mix of the writ petitioner no.19 comprises Bengali, English, Mathematics, Physical Science, Life Science, History and Geography and the issuing Board is All India Council for Open Education which is recognized by the West Bengal Board of Secondary Education as capable of taking NIOS examination and certificate because of the subject-mix. Similar is the case of the writ petitioner no.36 whose subject mix is Bengali, English, History, Geography, Life Science, Physical Science and Mathematics and has been certified by the Central Board of Secondary Education and Higher Secondary Education, Delhi. Their subject mix and the boards issuing their certificates are equivalent within the meaning of Annexures R/2 and R/3 to the affidavit-in-opposition. Therefore, the respondents cannot be allowed to deprive them of a chance to be considered for promotion. However, for only two candidates, it will be unjust to cancel the entire selection process. Yet the selection process, I am told, has already been completed and in fact by the order dated February 13, 2019 a coordinate bench had recorded in this matter that the viva voce was being held on that date. The finding that the eligibility of all the writ petitioners was disputed recorded in the said order dated February 13, 2019 was naturally prima facie, and subject to the final result of the writ petition. Therefore, adjusting the equities, in this case, I direct that while the writ petition stands dismissed in respect of the writ petitioners No.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38 and 39, in case of the writ petitioners no.19 and 36, they shall be allowed to participate in the process for selection to promotion to the post of Angan Wadi Workers and for this reason, until the process of their selection through written test and viva voce is completed anew, the respondents will be at liberty to issue appointment letters in case of all but two of the vacancies in the promotional post of Angan Wadi Workers from Angan Wadi Helpers. If at the selection test including viva voce the writ petitioners no.19 and 36 do better than the others already selected on

merits, then after marking them in terms of the selection procedure, the inter se merit position of the writ petitioners no.19 and 36 and the other selected candidates would be considered by the respondent authorities and appointment letters on promotion shall be granted in terms of merit after such results are published for the selection tests of the writ petitioners no.19 and 36. I expect that the entire exercise shall be concluded expeditiously but preferably no later than 2 months from the date of communication of this order.

28. Therefore, the writ petition fails and is dismissed for all writ petitioners except the writ petitioners no.19 and 36, and in case of the writ petitioners no.19 and 36 the directions given in paragraph 27 shall apply. There shall be no order as to costs.