
(2017) 01 OHC CK 0013

In the Orissa High Court

Case No : 18801 of 2016

Smt. Manani Bariha

APPELLANT

Vs

State of Odisha and others

RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 01 OHC CK 0013

Hon'ble Judges : A.K. Rath

Bench : SINGLE BENCH

Advocate : Pradip Kumar Ray, Samapika Mishra

Final Decision : Dismissed

Judgement

1. By this application under Article 226 of the Constitution of India, challenge is made to the advertisement dated 17.9.2016 issued by the Child Development Project Officer, Khaprakhol, Dist.-Bolangir, opposite party no.4, fixing the age limit for the post of Anganwadi Worker in respect of Nandupala Anganwadi Centre.

2. The case of the petitioner is that the opposite party no.4 issued an advertisement on 17.9.2016 vide Annexure-1 to fill up the post of Anganwadi Worker in respect of Nandupala Anganwadi Centre. The petitioner, who has passed H.S.C. Examination, 2016 and belongs to scheduled tribe, applied for the same. She is otherwise eligible for the post. Due to the cut-off date fixing the age limit, her application was not considered.

3. Pursuant to issuance of notice, a counter affidavit has been filed by the opposite party nos.2 and 4. It is stated that the advertisement dated 17.9.216 vide Annexure-1 was issued in accordance with the provisions laid down in the revised guidelines issued vide No.145/SWCD dtd.02.05.2007 of Government of Odisha in Women and Child Development Department, wherein it has been

stipulated that the applicant for the post of Anganwadi Worker should have attained 18 years of age but below 43 years in the first day of the year in which the application has been invited. Thus a candidate below 18 years of age as on 01.01.2016 is not eligible for the post of Anganwadi Worker. It is further stated that the date of birth of the petitioner is 24.06.1998 and she was below 18 years of age as on 01.01.2016 and as such, she is not eligible for the said post.

4. Heard Mr. Pradip Kumar Ray, learned counsel for the petitioner and Miss Samapika Mishra, learned Additional Standing Counsel for the State-opposite parties.

5. Mr. Ray, learned counsel for the petitioner, argued with vehemence that fixing the minimum age limit as on 1.1.2016 is wholly unreasonable and the same has no nexus to the object sought to be achieved. He further submits that though the advertisement issued on 17.9.2016, but the cut-off date was fixed on 1.1.2016. There was a wide gap between the cut-off date and date of advertisement and as such the advertisement is liable to be quashed. He further submits that in the previous guidelines no such stipulation was there, but in the revised guidelines of 2007, the same has been inserted. He cited the decision of the apex Court in the case of Dr. Ami Lal Bhat vs. State of Rajasthan and others, AIR 1997 SC 2964.

6. Per contra, Miss S. Mishra, learned Additional Standing Counsel for the State-opposite parties, submits that the advertisement was issued pursuant to the revised guidelines dated 02.05.2007 of Government of Odisha in its Women and Child Development Department vide Annexure-A/4 annexed to the affidavit. Clause 2 of the said guidelines provides that the applicant will be a female candidate in the age group of 18 to 42 years. Furthermore, the candidate should have attained the age of 18 years, but not 43 years on the first day of the year in which the application has been invited. No challenge is made to the guidelines. She further submits that fixing a cut-off date with regard to age cannot be dubbed as arbitrary.

7. In Dr. Ami Lal Bhat (supra), the question arose before the apex Court as to whether a rule-making authority can fix a cut off date with reference to the calendar year for determining the maximum age of a candidate who is to be considered for direct recruitment to a service under the State. The apex Court in paragraph 5 of the said report held that fixing of a cut off date for determining the maximum or minimum age prescribed for a post is not per se, arbitrary. The fixing of a cut off date for determining the maximum or minimum age required for a post, is in the discretion of the Rule-making Authority or the employer as the case may be. Cut off date cannot be fixed with any mathematical precision. As soon as a cut off date is fixed there will be some persons who fall on the right side of the cut off date and some persons who will fall on the wrong side of the cut off date. That cannot make the cut off date per se arbitrary unless the cut off date is so wide off the mark as to make it wholly unreasonable.

8. Clause 2 of the revised guidelines issued by the Government of Odisha in

Women and Child Development Department vide Annexure- A/4 provides that the applicant will be a female candidate in the age group of 18 to 42 years. She should have attained the age of 18 years, but not 43 years on the first day of the year in which the application has been invited. Pursuant to the said guidelines, the advertisement was issued by the opposite party no.4. Though a feeble attempt has been made by Mr. Ray, learned counsel for the petitioner, that guideline has been challenged, but this Court finds that no such prayer has been made to quash the guideline. The advertisement is in consonance of the guidelines. The submission of Mr. Ray that there is a wide gap between the date of advertisement and cut-off date is difficult to fathom. Once a post is created, to fill up the post the employer has to take steps by issuing advertisement. Usually there is a gap. By no stretch of imagination, the gap of eight months cannot be said to be unreasonable. The decision cited by Mr. Ray, learned counsel for the petitioner, is of no help to the petitioner. The apex Court in no certain terms stated that fixing of a cutoff date for determining the maximum or minimum age limit of a candidate for the post of Anganwadi Worker is exclusive domain of the employer.

9. The logical sequitur of the analysis made above is that the writ petition, sans merit, deserves dismissal. Accordingly, the same is dismissed. No costs.