
(2018) 01 CAL CK 0010
In the Calcutta High Court
Case No : 525 of 2015

The State of West Bengal & Ors.

APPELLANT

Vs

Farmila Parveen

RESPONDENT

Date of Decision : 31-01-2018

Acts Referred:

Citation : (2018) 01 CAL CK 0010

Hon'ble Judges : I.P.Mukerji, Md. Mumtaz Khan

Bench : Division Bench

Advocate : Supratim Dhar, D. Nayak, Anjan Bhattacharjee, S. Khandakar, Kamallesh Bhattacharjee, Gautam Kumar Thakur, Anandamoyee Ghosh

Final Decision : Disposed off

Judgement

1. This writ was preferred by four aspirants (respondent nos. 1 to 4) for the post of "Anganwadi Workers" within Dinhata-I ICDS project, District-Cooch Behar. Their alleged right is founded on a panel of candidates for such work prepared on or about 3rd December, 2007 initially valid for two years upto 1st October, 2009. Thereafter it was extended till 1st October, 2010. The said four respondents/writ petitioners are included in that panel. Their grievance is that although the panel was prepared, it was not acted upon. They were not appointed.

2. The Hon'ble 1st Court noted that on 2nd June, 2010 the government directed the appellants to complete the recruitment process of "Anganwadi Workers" or "Anganwadi Helpers" within four weeks from the said date. On 8th July, 2010 the Child Development Project Officer, Dinhata-I issued a notice inviting applications from eligible candidates to fill up the vacancies for the self same posts. After four years, in 2014 the instant writ was filed by the said respondents/writ petitioners praying for inter alia the following reliefs. "a) A writ in the nature of Mandamus commanding the respondents and their men, agents, and servants particularly the Child Development Project Officer, Dinhata ICDS Projects within the District of Cooch Behar being the respondent No.8 herein to recall and/or rescind and/or cancel the advertisement dated 8th July, 2010 under Memo No. 215/ICDS/

D.T.A.-1 issued by the aforesaid respondent for filling up the vacancies to the post of Anganwadi Workers in different gram panchayat under Dinhata-I Development Block and also municipal area of Dinhata Municipality."

"c) A writ in the nature of mandamus commanding the respondents particularly the Child Development Project Officer, Dinhata-I ICDS Project Dinhata, Cooch Behar to issue appointment letters to the post of Anganwadi Workers from the panel in favour of the petitioners on the basis of memorandums dated 7th August, 2009 under Memo No. 5672 (2)- Sw/3S-04/09, dated 11th September, 2009/19th September, 2009 under Memo No. 4656-Sw/3S-86/2009 and also dated 2nd June, 2010 under Memo No. 2404-Sw/2M-106 (Pt-II) issued by the Officer on- Special Duty and Ex-Officio Joint Secretary, Department of Women and child Development and Social Welfare, Government of West Bengal, Writers' Building, Kolkata being the respondent No. 3 herein."

3. There is no explanation whatsoever for this delay of four years. It is said that the said panel of 2010 was prepared during the validity period of the 2007 panel which consisted of 281 candidates. The selection process of 2007 was abandoned. On the basis of the selection process started in 2010, the added respondents were selected in 2012.

4. The Hon'ble first court remarked that there were no materials produced before it why during the validity period of the panel of 2007, it was discarded and a fresh recruitment process started. The notice dated 8th July, 2010 starting the recruitment process was quashed. The writ application was disposed of at the court application stage.

5. Learned counsel for the appellants said that no opportunity was given to them to file an affidavit in opposition to the writ petition to show why the 2007 panel was not acted upon. Without an affidavit, the court on the basis of absence of oral instructions with the state counsel came to the conclusion that the appellants had no materials to justify why the panel was not acted upon. There was no justification for quashing the recruitment process begun in 2010. It was also submitted on its behalf that there was a long period of delay by the said four respondents in preferring the writ application. Now, I come to my findings.

6. The 2007 panel was duly approved by the competent authority. The empanelled candidates had no doubt a legitimate expectation of being appointed against these existing vacancies, during the life of the panel. Nonetheless, it is settled law that empanelment does not confer an indefeasible right on a candidate to be appointed to a post. Hence, it follows that the appellants had the right not to follow the panel and to start a fresh recruitment process. But when this is the situation they also had a clear obligation to show why they were not filling up the vacancies from the approved panel but resorting to a fresh recruitment process, during the life time of the panel. In the instant case it is an admitted position that a new recruitment process was started in July 2010 during the life time of the 2007 panel.

7. Unfortunately, the appellants were not given an opportunity to file an affidavit in opposition to the writ petition explaining why they were abandoning the 2007 panel and starting a new recruitment process. In the impugned judgement and order it is just stated that the appellants were unable to produce any record to show why they had not been following the 2007 panel. It may have well been the case that the learned government counsel was not handed over the relevant papers at the time he was opposing the motion, to convince the court why the 2007 panel was discarded. On the basis of absence of evidence at the motion stage the court ruled that the appellants were obliged to make appointments from the 2007 panel. The court was bolstered by the government order dated 2nd June, 2010 quoted in the impugned order asking the appellants to complete the recruitment process on the basis of 2007 panel.

8. We do not think a correct approach was adopted by the Hon"ble 1st Court. In this type of case where facts had to be ascertained, it was essential that the appellants were compelled to file an affidavit in opposition, saying why they were not following 2007 panel, which was re-validated upto 1st October, 2010.

9. This alleged justification for abandoning the 2007 panel has been provided in one paragraph of the stay petition being paragraph 8 thereof, in the following terms: "8. After receiving the aforementioned Government Order, a meeting of the Project Level Selection Committee was convened on 7th January, 2010, wherein the instant matter was discussed. However the members of the Project Level Selection Committee were not ad idem and accordingly it was not mutually decided whether appointment would be issued from the existing panel or through fresh advertisement. Pursuant to the Government Order No. 2404- SW dated 02.06.2010 issued by the OSD & Ex-Officio Joint Secretary to the Government of West Bengal, Department of WCD & Sw, where the Government of West Bengal, Department of WCD & SW, where the Government issued directives to the CDPO"s for filling up the entire vacancy of "Anganwadi Helper and "Anganwadi Worker, except the vacancies under the Home Quota"s and Others and by promotion of "Anganwadi Helper", only through advertisements, the Project Level Selection Committee in the meeting dated 2nd July, 2010 resolved that notification will be issued inviting applications from the willing female candidates for the post of "Anganwadi Helper" and "Anganwadi Worker" sanctioned in the 3rd phase of expansion of ICDS."

10. The court treats the stay petition as the affidavit in opposition of the government in the writ application as in our view it could be unnecessary wastage of time to send the matter back to the trial court with a direction upon the government to file the affidavit in opposition. Cancellation of the panel under the above circumstances was not at all called for.

11. It appears that on 8th July, 2010 a new recruitment process was started inviting applications for 87 posts of "Anganwadi Workers" or "Anganwadi Helpers". Five posts were reserved for home quota and others.

12. The recruitment process under the new notification progressed. We were told during the course of the appeal that the selection process was concluded in 2012 but could not be given effect to because of the impugned order.

13. We are of the view that the writ application is vitiated by delay. It was filed in 2014 some four years after the new selection process started and two years after it was concluded. This delay has been very crucial. It has substantially eroded whatever rights the respondent writ petitioners had. Mr. Bhattacharjee learned senior advocate says that only four empanelled candidates of 2007 have come to court by filing the writ.

14. This court is very conscious that in the garb of protecting the rights of the respondent writ petitioners it should not take away the rights of the newly empanelled candidates. The three added respondents are the selected candidates in the 2010 recruitment process. Only four candidates from the 2007 panel preferred this writ. Only those three candidates from the 2010 panel have come forward to oppose the respondents/writ petitioners' case. We feel there are sufficient number of vacancies in the subject post to accommodate all seven of them. Considering this solitary fact we ignore the delay of the writ petitioners/respondents. Undoubtedly, the inclusion of their names and those of the added respondents in the respective panels speaks of their merit.

15. Therefore, the impugned judgement and order, quashing the notice dated 8th July, 2010 is set aside. The appellants are directed to appoint the respondent writ petitioners from the 2007 panel and the added respondents against the vacancies of "Anganwadi Workers" Child Development Project Officer, Dinhata ICDS Projects within the District of Cooch Behar, first, within 2 (two) months of communication of this order, ignoring the age criterion, if necessary, subject to the candidates complying with the routine formalities. The rest of the vacancies may be filled up from the selected candidates further to the recruitment process started by the advertisement dated 8th July, 2010, ignoring the age criterion but subject to the candidates complying with the routine formalities also within 2 (two) months of communication of this order.

16. This appeal is accordingly disposed of by setting aside the impugned order dated 28th August, 2014. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.