

35. 03.02.2022
BD Ct.15

W.P.A. 19460 of 2010

(Through Video Conference)

Rekha Diger (Dolai)

-vs-

The Child Development Project Officer & Ors.

Mr. Biswajit De

Ms. Moushumi Arji

... for the petitioner.

Mr. Pantu Deb Roy

Mr. Subrata Guha Biswas

... for the State.

This is a writ petition relating to appointment for the post of Anganwari Worker under ICDS project in the district of Paschim Medinipur under Dewan Chawk-2 Gram Panchayat. The employment notice was issued under Memo No. 1 (30) I.C.D.S/G.T.C. by the concerned respondent authorities on 6th November, 2009 asking for submitting application for appointment for the post of Anganwari Worker and Sahayika by eligible female candidates having requisite educational qualification of Madhyamik Pass and also the candidates were required to be within the age group of 18 years to 45 years.

It is the case of the petitioner that she was having the requisite educational qualification and was eligible to participate in the selection process for appointment for the post of Anganwari Worker and accordingly offered her candidature by making application before the concerned authority. Subsequently on scrutiny of the application as well as documents attached therein of the writ

petitioner the concerned authority issued admit card in favour of the petitioner on 7th December, 2009 for participating in the written test which was scheduled to be held on 20th December, 2009. The writ petitioner participated in the written test and qualified the said test. Subsequent thereto the concerned authority issued admit card which permitted the petitioner to participate in the oral examination which was held on 27th February, 2010. The writ petitioner also participated in the said oral examination and was selected for appointment in the post in question. On appraising candidature of the petitioner by holding written test and oral test an appointment letter dated 8th April, 2010 was issued in favour of the writ petitioner for her appointment in Anganwari Center under Dewan Chawk-2 Gram Panchayat. Pursuant thereto the writ petitioner joined as Anganwari Worker on 16th April, 2010. It is the case of the writ petitioner that in spite of such joining all on a sudden she came to know in the month of September, 2010 that her appointment for the said post of Anganwari Worker was cancelled vide order dated 31st August, 2010 issued by the Child Development Project Officer, Ghatal I.C.D.S. Project, district- Paschim Medinipur. Petitioner has assailed this order of cancellation of appointment issued by the respondent no. 1.

It has been submitted by Mr. Biswajit De, learned advocate, appearing for the writ petitioner, that it is indisputable that the petitioner was found eligible on scrutiny of the credentials which she submitted as well as after her participation in

written test as well as oral test and was appointed as Anganwari Worker. Therefore, after being appointed her engagement cannot be cancelled on the ground that her age was below 18 years on 1st November, 2009 and in this regard reliance has been placed on an order of a Co-ordinate Bench passed in W.P. 21212 (W) of 2010 (Smt. Supriya Jana -vs- The State of West Bengal & Ors.) dated 15th September, 2016. It has been submitted that on a similar situation the Co-ordinate Bench setting aside the identical decision of the concerned authority upon condoning gap of one day with regard to age of the applicant and remitted the issue to the concerned authority for taking fresh decision with regard to the right of the writ petitioner to continue in her post. Therefore, it has been contended that the writ petitioner in the present case is also entitled to be considered upon condonation of gap of four months in reaching 18 years on 1st November, 2009.

Mr. Pantu Deb Roy, learned Additional Government Pleader, representing the respondent authorities has submitted that it is a case of misrepresentation on the part of the writ petitioner since there is specific stipulations in the employment notice dated 6th November, 2009 that the candidate must be within the age group of 18 to 45 years as on 1st November, 2009. The writ petitioner knowing fully well that she was not within the said age group applied before the authority concerned as an eligible candidate and was able to secure appointment. If the condition relating to the age of a candidate is considered as

contained in the employment notice the writ petitioner cannot be adjudged as an eligible candidate since it is indisputable that the writ petitioner was below 18 years of age on 1st November, 2009 and accordingly has defended the decision of the respondent no. 1 dated 31st August, 2010.

This Court has considered the rival submissions made by the learned advocates representing the writ petitioner and the respondent authorities. Since the writ petitioner applied under the employment notice as a candidate having the requisite age but after consideration of the documents when it was found by the respondent authorities that the writ petitioner was not within the age group of 18 years to 45 years on 1st November, 2009 it was decided by the respondent no. 1 to cancel the appointment of the writ petitioner on the ground that she was not within the prescribed age limit. From the facts as enumerated above as well as from the submissions made on behalf of the parties it appears that the writ petitioner knowing fully well that she was not having prescribed age applied before the appointing authority for securing job of Anganwari Worker under ICDS project which amounts to misrepresentation on her part which cannot be countenanced.

This Court has also considered the order dated 15th September, 2016 passed by a Co-ordinate Bench in the matter of Smt. Supriya Jana (supra) which was passed chiefly upon placing reliance on the decision of the Supreme Court

reported in AIR 1986 SC 1948. It appears from the quoted portion of the Judgment of the Supreme Court as contained in the order of the Co-ordinate Bench dated 15th September, 2016 that the Apex Court was considering condonation of one day gap in the matter of an eligibility of candidate in securing job and the case which was considered by the Co-ordinate Bench was also on condoning one day gap in acquiring eligibility in terms of specification of age as contained in the employment notice. But here in the instant case the writ petitioner fell short of four months in reaching the minimum age of 18 years. Therefore, the decision of the Co-ordinate Bench dated 15th September, 2016 is of no assistance.

Accordingly, this Court does not find any merit in the writ petition and the same is dismissed. However, there shall be no order as to costs.

However, this order shall not preclude the writ petitioner from making an application before the concerned authority for getting appointment as Anganwari Worker under the ICDS project in future if there is fresh initiation of selection process by the concerned respondent authorities.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

