

12.12.2022
Sl. No.9(DL)
srm

W.P.A. No. 25657 of 2022
Barnali Mitra alias Barnali Mallick
Versus
The State of West Bengal & Ors.

Ms. Joyita Ray

....for the Petitioner.

Mr. Rajarshi Basu,
Mr. Kapil Guha

...for the State-respondents.

Affidavit-of-service is taken on record.

The petitioner prays for revocation of the order of termination dated September 26, 2008 and reinstatement of the petitioner as an Anganwadi Worker. Similar prayer was made by the petitioner in WP No.14293 (W) of 2012. The said writ petition was dismissed. An appeal was preferred. MAT No.934 of 2014 was also dismissed by a Division Bench. The Court held that a candidate who furnished false and incomplete information or had withheld or concealed materials or information, should be debarred from securing employment.

The memorandum/notification dealing with the recruitment process for Anganwadi Workers dated January 25, 2006, imposed a bar. Graduates could not participate. The

petitioner suppressed the fact that she had a bachelor's degree prior to being selected. When such misrepresentation/suppression was discovered, the petitioner was terminated. The petitioner now alleges that similarly situated candidates have been reinstated and they have been allowed to perform their duties as Anganwadi Workers. The petitioner prays for similar relief.

The writ petition is devoid of material particulars. The details of the candidates who had been allegedly allowed to continue upon reinstatement despite having been terminated on similar grounds as the petitioner, have not been provided. Omnibus allegations, by mentioning two names of such candidates, cannot give rise to a cause of action in favour of the petitioner and entitle her to seek reinstatement.

The law is well settled that right to equality cannot operative in the negative. Thus, the petitioner's case cannot be considered even if any illegality had been committed by the authority by allowing ineligible candidates to continue their service.

In the decision of *Gursharan Singh & Ors v. New Delhi Municipal Committee & Ors.* reported in *AIR 1996 SC 1175*, it was held as follows:-

“..... This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other

words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.”

In the decision of *Shanti Sports Club v. Union of India*

reported in (2009) 15 SCC 705, it was held as follows:-

“The concept of equality enshrined in that article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities.”

Moreover, the prayer of the petitioner is barred by the principles of *res judicata*. Such prayer was denied by a co-ordinate Bench and the order of the co-ordinate Bench was upheld by the Hon’ble Division Bench.

The Court expects that the Child Development Project Officer, Pandua will not act contrary to the recruitment rules. The authority always has the liberty to take remedial measures in accordance with law, in case any irregularity is detected.

This Court has not expressed any opinion with regard to the allegation of the petitioner in view of the absence of proper pleadings and materials. The petitioner does not have any right to be appointed as already discussed above.

The instructions filed by the Child Development Project Officer, Pandua are taken on record.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)