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W.P.A. 26148 of 2015

Manika Tripathy (Das)

-vs-

The State of West Bengal & Ors.

Mr. Amal Baran Chatterjee,
Ms. Renuka Roy

....for the petitioner.

Mr. Santanu Kumar Mitra,
Mr. Mirza Kamaluddin

....for the State.

In this writ petition challenge has been thrown to the order dated 29th March, 2012 issued by the Child Development Project Officer, Narayangarh I.C.D.S. Project, District- Paschim Medinipur, being the respondent no.2. Vide order dated 29th March, 2012 petitioner has been dismissed from her engagement as Anganwadi Karmee.

Mr. Chatterjee, learned senior advocate appears on behalf of the petitioner and submits on placing reliance on the employment notification dated 16th October, 2006 issued by the respondent no.2 that requisite educational qualification for the said post of Anganwadi Karmee is school final pass and the petitioner is having such requisite qualification.

It has also been submitted that though there was a stipulation in the said employment

notification dated 16th October, 2006 that if the candidate was possessing higher qualification that was required to be disclosed at the time of offering candidature but non-disclosure of higher qualification ought not to be considered as fatal which may take away the employment of the petitioner.

Petitioner pursuant to said employment notification offered her candidature but while making such application she did not disclose her higher qualification since petitioner was graduate at the material point of time.

On the basis of the selection made by the concerned respondent authorities petitioner was selected and appointment letter was issued on 18th November, 2008 whereby she was engaged as Anganwadi Karmee. Subsequently, the respondent no.2 issued a show cause notice dated 21st December, 2011 addressed to the petitioner based on a complaint lodged by one Sanjay Das asking why necessary steps shall not be taken against her, since it has been found on the basis of communication made by the Belda College Authorities that the petitioner obtained graduation degree in 1982 from the said college. Based on such show cause notice ultimately petitioner has

been terminated vide letter dated 29th March, 2012 on the ground that petitioner was having graduation degree at the time of making application before the concerned respondent authority for her engagement as Anganwadi Karmee which she did suppress while offering her candidature.

On behalf of the petitioner, it has been submitted that employment notification dated 16th October, 2006 does not impose any express bar in engaging graduate candidate as Anganwadi Karmee save and except there was requirement to declare and disclose higher qualification of the candidate.

In support of such contention reliance has been placed on one unreported judgment of the Hon'ble Division Bench dated 6th August, 2015 passed in FMA 3462 of 2013 (Smt. Shyamali Bankura (Makar) -vs- The State of West Bengal & Ors.) wherein the Division Bench has made following observations:-

In the present case, undisputedly the appellant/petitioner did not enjoy any benefit for the higher academic qualification and therefore, we are of the view that the said appellant/petitioner should not be punished for the aforesaid

higher academic qualification. There is no doubt that specific prohibition in respect of graduate candidates was mentioned in the advertisement following the prevalent guidelines of the authorities but the State and its authorities should justify the reasonableness of the aforesaid restrictions. The State respondents did not furnish any ground to justify the prohibition imposed on the graduate candidates. The State respondent failed to justify the necessity of the aforesaid restrictions mentioned in the guidelines as well as in the advertisement.

One Bharati Ghorai, whose service was also terminated along with the appellant/petitioner herein by the aforesaid Memo No.202(5) dated 24th June, 2003, also filed a writ petition challenging the order of termination before this Court and a learned Judge of this Court by the judgment and order dated 4th April, 2014 passed in W.P. 12270(W) of 2003 set aside and quashed the said order of termination

and allowed the writ petition.”

Another judgment of the Special Bench has also been relied upon on behalf of the petitioner reported in (2010) 3 CAL LT 232 (Rina Dutta & Ors.-vs- Anjali Mahato & Ors.).

On perusal of the observations of the Hon’ble Division Bench as contained in Shyamali Bankura (supra), it appears that another unreported judgment of the Hon’ble Division Bench passed in FMA 288 of 2015 (State of West Bengal & Ors. -vs- Bharati Ghorai & Ors.) was relied upon while deciding the appeal being FMA 3462 of 2013. From the said judgement of Bharati Ghorai (supra) as it has been quoted by the Hon’ble Division Bench in the judgement of Shyamali Bankura (supra), it appears that there was subsequent modification of guidelines relating to higher qualification of Anganwadi Workers by the State Government and the State Government by such modification made it clear that all the graduate and higher qualified candidates would be eligible for the post of Anganwadi Workers. It was also quoted therein that the State Government realized that the restrictions imposed earlier were unreasonable and therefore subsequently modified the same by

declaring that all the graduate and higher qualified candidates would be eligible for the post of Anganwadi Workers. Upon placing reliance on this part of the judgment Mr. Chatterjee has submitted that such modified guidelines would come in aid of the petitioner had there been due consideration by the respondent no.2 before taking decision with regard to service of the petitioner which has not been done in the present case.

Mr. Mitra, learned advocate appears on behalf of the respondent authorities and has defended the order of termination dated 29th March, 2012. It is contended on behalf of the respondents that there was specific stipulation in the employment notification dated 16th October, 2006 to the extent that graduate female candidate was not permitted to make application for engagement of Anganwadi Karmee/Sahayika. It is also submitted that by furnishing affidavit petitioner suppressed her graduate qualification while offering her candidature for being appraised for engagement of the Anganwadi Karmee. Therefore, there is no flaw in the decision as contained in the impugned letter of termination dated 29th March, 2012 passed by the respondent no.2.

This Court has heard the submissions made on behalf of the rival parties to this writ petition and perused the relevant materials available on record. It appears that based on the selection process conducted by the respondent authority pursuant to employment notification dated 16th October, 2006 petitioner was selected for the post of Anganwadi Karmee and she was appointed vide appointment letter dated 18th November, 2008. Suddenly, based on one complaint lodged by one Sanjay Das a show cause notice was issued on 21st December, 2011 against the petitioner and subsequently impugned letter of termination dated 29th March, 2012 was issued thereby petitioner was terminated from the post of Anganwadi Karmee.

Taking cue from the submission made on behalf of the petitioner with regard to non-consideration of modified guidelines promulgated by the concerned respondent authorities in the matter of engagement of Anganwadi Workers at the time of taking decision to terminate the petitioner, this Court finds it fit to direct the Director, Integrated Child Development Scheme (I.C.D.S.), being the additional respondent to revisit the issue whether the petitioner will be permitted to continue

her service as Anganwadi Karmee based on the selection made pursuant to the employment notification dated 16th October, 2006 since there was modified guidelines relating to eligibility of the candidates in terms of educational qualification as referred to in the judgement of the Hon'ble Division Bench dated 6th August, 2015 in Shyamali Bankura (supra).

The Director, Integrated Child Development Scheme (I.C.D.S.), is directed to take decision afresh after granting opportunity of hearing to the petitioner or her representative within a period of eight weeks from the date of communication of this order.

At the time of hearing petitioner shall be at liberty to rely upon such modified scheme relating to engagement of Anganwadi Karmee and the decisions of the Hon'ble High Court. The reasoned decision to be taken by the Director, Integrated Child Development Scheme (I.C.D.S.), shall be communicated to the petitioner within a period of one week thereafter.

Till such decision to be taken by the Director, Integrated Child Development Scheme (I.C.D.S.), in terms of the direction passed by this Court today the impugned order of termination

dated 29th March, 2012 shall be kept in abeyance and shall abide by the decision to be taken by the Director.

The advocate-on-record of the petitioner is granted leave to amend the cause title of the writ petition by adding Director, Integrated Child Development Scheme (I.C.D.S), as additional respondent.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)