

Item No. 28

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 06.07.2022 & 12.07.2022

DELIVERED ON: 12.07.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 940 of 2022

**Rejina Begum & Ors.
VERSUS
The State of West Bengal & Ors.**

Appearance:-

Mr. Ekramul Bari

Mr. Debasish Mukhopadhyay

Ms. Madhusri Dutta

.....for the Petitioners

Mr. Bikramaditya Ghosh

Mr. Pretom Das

.. for the State.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioners have prayed for a writ in the nature of mandamus to command the respondents to reinstate the petitioners in the posts of Anganwadi Workers (for short 'AWW') in their respective places under Matiali ICDS Project, Post Office-Chalsa, District-Jalpaiguri after setting aside the notice of termination of the petitioners dated January 04, 2008.

2. The petitioners were selected in the post of AWW under Matiali ICDS Project and joined the said posts sometimes in June, 2007. The service of the petitioners

were terminated by a letter of termination dated January 04, 2008 with effect from January 10, 2008 on the ground that the qualification of the petitioners were higher than that was prescribed in the G.O. No. 288-SW dated January 25, 2006.

3. Mr. Bari, learned advocate appearing for the petitioners submits that it is not in dispute that the petitioners are all graduates. It is also not in dispute that at the relevant point of time the bar was imposed for graduates to be appointed to the said post. Mr. Bari submits that the Government issued several notifications the last of which was issued on September 19, 2013 thereby lifting the bar on graduates or persons having higher qualification from being appointed as an AWW. He thus submitted that since the earlier notifications have been superseded by the notification dated September 19, 2013, the petitioners are to be reinstated in the post of AWW.

4. Mr. Bari relies upon a Division Bench judgment of this Court passed on **August 06, 2015 in F.M.A. 3462 of 2013 with C.A.N 7138 of 2015 [Smt. Shyamali Bankura (Makar) vs. The State of West Bengal & Ors.]** and submits that the Division Bench has set aside the order of termination passed on similar grounds and has directed reinstatement of such persons in the post of AWW after taking note of the fact that the State Government after realizing that the earlier restrictions were unreasonable declared that all graduates and higher qualified candidates would be eligible for the post of AWW.

5. Mr. Ghosh, learned advocate appears for the State and does not dispute the fact that the Government has issued notifications thereby lifting the bar on persons having higher qualification to be appointed to the post of AWW.

6. Heard the learned advocates for the parties and considered the materials on record.

7. It appears from the memo dated September 19, 2013 issued by the Government of West Bengal, Department of Child Development & Women Development & Social Welfare that as per the new guidelines, the minimum educational qualification, termination age, lower age limit and procedure for selection of AWHs and AWWs as contained in the notification dated January 25, 2006 will be as under :

“A) Minimum Educational Qualification for Recruitment to the post of AWWs and AWHs for all categories (i.e. General, ST,SC,OBC etc.)

- a) The candidates should possess minimum Class-X pass certificate for both AWWs & AWHs.*
- b) Candidates with higher qualifications may be considered for the posts of AWWs/AWHs.”*

8. After going through the Notification dated September 19, 2013, this Court finds that the earlier notifications were superseded by such notification. As per the new guidelines, the candidates with higher qualification may be considered for the posts of AWWs. Thus the bar imposed upon candidates possessing higher qualification from being appointed as AWWs has been lifted by the Government.

9. It further appears from the Notification dated September 19, 2013 that the Memorandum No. 288-SW dated January 25, 2006 in terms of which the applications were invited for recruitment of AWW and the petitioners were selected were modified time and again and the Memo dated September 19, 2013 holds the field.

10. Thus, when the State Government has modified the guidelines subsequently declaring that the candidates with higher qualification are eligible,

the ground for termination of service of petitioners as AWWs no longer survives and the petitioners are entitled to be reinstated in their respective posts.

11. The Hon'ble Division Bench in **Smt. Shyamali Bankura (Makar)(supra)** held as follows:

“A Division Bench of the Court while dealing with the identical issues in the case of State of West Bengal and Ors. vs. Bharati Ghorai & Ors. in FMA 288 of 2015 also observed:

“One other important fact should also be mentioned herein regarding subsequent modification of the guidelines relating to the higher qualifications of Anganwadi Workers by the State Government. The State Government subsequently modified the guidelines and made it clear that all the graduate and higher qualified candidates would be eligible for the post of Anganwadi Workers. The State Government realised that the restrictions imposed earlier were unreasonable and therefore, subsequently modified the same by declaring that all graduates and higher qualified candidates would be eligible for the post of Anganwadi Workers.

This Court, therefore, cannot ignore the subsequent decisions of the State Government whereby the graduates and higher qualified candidates were declared eligible for the post of Anganwadi Workers by modifying the earlier guidelines. In view of the subsequent modified guidelines graduate candidates were admittedly declared eligible for appointment as Anganwadi Workers and the State Government should not have terminated the services of the graduate Anganwadi Workers upon considering the present modified stand.

Pursuant to the earlier guidelines, appointments of the graduate candidates as Anganwadi Workers were liable to be cancelled which does not mean that those appointments has to be cancelled under any circumstances. The competent authority failed to take note of the aforesaid relevant facts before cancelling the appointments of the respondents-writ petitioners although the competent authority of the State Government realised the defects in the earlier restrictions and modified its guidelines and declared the graduate candidates eligible for the post of Anganwadi Workers.”

For the reasons discussed hereinabove, we are also not inclined to hold that the appellant/petitioner herein should be

punished since the said appellant/petitioner did not enjoy any extra benefit for the higher qualification.”

12. The aforesaid decision of the Division Bench is squarely applicable to the facts of the instant case and the same is binding upon this Court.

13. For the reasons as aforesaid, the orders of termination of the petitioners dated January 04, 2008 are set aside and quashed.

14. The concerned respondents viz. the Director, Social Welfare Department, Government of West Bengal being the respondent no. 2, the District Programme Officer, Jalpaiguri, being the respondent no. 7 and the Child Development Project Officer, Matiali ICDS Project, P.O.- Chalsa, District-Jalpaiguri being the respondent no. 8 are directed to take steps for reinstatement of the petitioners as AWWs as expeditiously as possible but positively within a period of four weeks from the date of communication of a server copy of this order.

15. With the aforesaid directions, W.P.A. 940 of 2022 stands disposed of.

16. There shall be, however, no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Pallab, AR(Ct.)