

19.09.23
95&96 Ct. No.25
Sws.M

WPA 22212 of 2022

**Papiya Ghosal (Maity) & Ors.
vs.
State of West Bengal & Ors.**

With

WPA 6322 of 2022

**Kabita Samanta
vs.
State of West Bengal & Ors.**

Mr. Rajendra Banerjee
Mr. Sudip Kumar Chakraborty

...for the petitioners in WPA 22212 of 2022

Mr. Tushar Kanti Har
...for the petitioner in WPA 6322 of 2022

Mr. Jahar Datta
Mr. Somnath Basu
Mr. Jaladhi Das
...for the State in WPA 22212 of 2022

Mr. Jahar Datta
...for the State in WPA 6322 of 2022

The petitioners in the present writ petition have challenged a notification dated March 7, 2019 issued by the Joint Secretary, Department of Women and Child Development and Social Welfare, Government of West Bengal. By the said notification it has been directed that out of 3376 posts of Supervisors in the Integrated Child Development Scheme (ICDS) projects, 422 posts will be filled up by way of promotion from Anganwadi Workers

(AWWs) and Case Workers under the Controller of Vagrancy and 2954 posts will be filled up by way of direct recruitment.

It is the petitioners' case that pursuant to the notification dated September 15, 2015 issued by the Director, ICDS, Ministry of Women and Child Development, Government of India it has been specifically directed that in supersession of all earlier guidelines 50% of the vacancies to the post of Supervisors will be filled by way of promotion from amongst AWWs with 10 years of experience and having prescribed educational qualifications as per the recruitment rules for the post of Supervisor. Failing such filling up of such 50% vacancies by way of promotion, the same will be filled up by direct recruitment. The remaining 50% vacancies to the post of Supervisors would be filled up by way of direct recruitment.

Mr. Banerjee, learned counsel appearing on behalf of the petitioners in WPA 22212 of 2022 and Mr. Har, learned counsel appearing on behalf of the petitioner in WPA 6322 of 2022 submit that in clear violation of such guidelines the notification dated March 7, 2019 has been published. Before 2015, 75% of the vacancies to the post of Supervisors were to be filled up by direct recruitment and 25% by way of promotion from the AWWs.

It is submitted on behalf of the State-respondents that the total number of vacant posts that were available in January 2019 was 3458 as 82 posts pertaining to LWE Areas (Jungle Mahal) of West Bengal were already to be filled up by way of a previous notification pertaining to recruitment of ICDS supervisors. Therefore, 3376 vacancies were proposed to be filled up post of ICDS Supervisor, in January 2019.

From the Additional Report on Affidavit affirmed by the State-respondents on April 27, 2023 it appears that there were 3009 vacancies as in September 2015. Why the State-respondents chose to fill up the said vacancies in 75:25 ratio has not been explained before this Court.

The Central Government's notification came into effect on September 15, 2015. The promotional posts of AWWs were required to be filled in accordance with the Central Government's Memo dated September 15, 2015.

It has been admitted in the said Report that the recruitment to the post of Supervisors by way of promotion before September 2015 was required to be done in terms of the guidelines that existed prior to September 15, 2015. The posts which were to be filled up after September 2015 had to be done in accordance with the procedure laid down in the

Memo dated September 15, 2015 with effect from the said date.

Therefore, it remained unexplained why despite of vacancies that remained to be filled after September 2015, the State chose to fill it up in 75:25 ratio.

By way of a Notification dated February 25, 2019 issued by the Joint Secretary, Department of Women and Child Development and Social Welfare, Government of West Bengal, the vacancies which arose prior to September 2015 were sought to be filled up in 75:25 ratio. The vacancies which arose after September 30, 2015 were sought to be filled up by 50:50 ratio.

It has not been explained by the State-respondents why the Memo dated September 15, 2015 has been sought to be interpreted in the aforesaid manner by the State Government's Memo dated February 25, 2019.

Furthermore, this Court finds that no chart has been annexed with regard to the dates on which the vacancies arose for the post of Supervisors per year. Despite Report-on-Affidavit being filed it has not been stated why the vacancies which remained on September 30, 2015 were sought to be filled up by the State Government in 75:25 ratio even in 2019, despite the Memo dated September 15, 2015

of the Central Government. How the cut off date of September 30, 2015 has been arrived at, is also unexplained.

After considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the directions given by the Memo dated September 15, 2015 in supersession of all the previous guidelines could not be sought to be interpreted in a manner which would have the effect of curtailing the promotional vacancies of the AWWs to the post of Supervisors, ICDS. Why the artificial distinction is made between the vacancies which arose prior to September 30, 2015 and after September 30, 2015 is unexplained by the State authorities.

Therefore, this Court finds that if the vacancies remained to be filled after September 15, 2015, the same had to be filled in 50:50 proportion. 50% was required to be filled from AWWs by way of promotion and 50% was required to be filled by way of direct recruitment. Only if there were no candidates available who had the necessary experience of 10 years and educational qualification of a direct recruit to the post of Supervisor (female only), ICDS the said vacancy could be filled up by direct recruitment and not otherwise.

Therefore, it directs that out of the total vacancies of 3458 to the post of Supervisors 50% are required to be filled by direct recruitment and 50% are required to be filled from the post of AWWs, by way of promotion.

The objective of such promotional avenue is also not lost upon the mind of this Court. The notification dated September 15, 2015 was issued keeping in mind the aspirations of the field functionaries and to encourage their participation in higher post, keeping in mind their merit, in order to improve their career prospects.

Such right to be considered for promotion could not be arbitrarily and without any reason be curtailed by the State authorities by holding that the vacancies which arose prior to September 30, 2015 have to be filled up in 75:25 ratio.

Accordingly, this Court directs the AWWs to be considered for promotion in respect of 50% of the vacant posts of the Supervisors, the total number of which is 3458 according to the written instructions which were handed over in Court by the State respondents.

With the directions aforesaid **WPA 22212 of 2022** along with **WPA 6322 of 2022** are **disposed of.**

All parties shall act on the server copies of this order duly downloaded from the official website of this Hon'ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)