

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA No. 18864 of 2010

Moumita Mandal & Ors.

Vs

The State of West Bengal & Ors.

For the Petitioners : Mr. Nitish Samanta.

For the State/Respondents : Mr. Somnath Ganguly,
Mr. Dipanjan Datta,
Mr. Soumen Chatterjee,
Ms. Kalpita Paul.

Hearing concluded on : 13.08.2024

Judgment on : 28.08.2024

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred:-

- i) *Challenging the purported illegality on the part of the respondent by cancelling the appointment of the petitioners to the post of Anganwadi Worker under Barjora ICDS Project, District - Bankura;*
- ii) *To consider the representation dated 10.08.2010 as made by the petitioners before the respondent authorities to allow them to join the post of Anganwadi Worker under Barjora ICDS Projects, District – Bankura, and praying for the following reliefs:-*
 - a) *A writ in the nature of Mandamus commanding the respondents and their men and agents to cancel, quash and set aside the order dated 29.07.2010 & 11.08.2010 as issued by the Child Development Project Officer, Barjora I.C.D.S. Project District Bankura being Annexure “P-3” and “P-6” to the writ petition and further allow the petitioners to join as Anganwadi Workers under Barjora I.C.D.S. Project, District Bankura immediately.*
 - b) *A writ in the nature of Certiorari directing the respondents and their men and agents to produce the relevant records before the Hon’ble Court for conscionable justice in the matter.*
 - c) *And other reliefs.*

2. The specific case of the petitioners is as follows :-

- i) That the petitioners are qualified, unemployed and while searching for suitable employment they came across an advertisement published by the Child Development Project Officer on 10.11.2009 for recruitment to the post of Anganwadi Worker in the Barjora Panchayat Samity Office, District – Bankura.
- ii) In terms of the said advertisement, the petitioners applied for recruitment to the post of Anganwadi Worker under Barjora ICDS Project and accordingly they were issued Admit Cards fixing the date of written examination on 14.02.2010 consisting of 80 marks.
- iii) After the written test, the petitioners were called for oral interview on being successful in the written test and all of them became successful in the said exam and interview and they were empanelled and selected for appointment to the post of Anganwadi Worker. A list of selected candidates including the petitioners was published on 26.08.2010 by the Child Development Project Officer, Barjora ICDS Project, District – Bankura.
- iv) After being selected the petitioners were asked by the Child Development Project Officer, Barjora I.C.D.S. project on 26.05.2010, to contact him for joining on 3rd or 4th June, 2010

along with all relevant certificates failing which, the candidature for their appointment shall be cancelled.

- v) On the basis of the said letter issued by the Child Development Project Officer Barjora I.C.D.S. Project, the petitioners joined in the post of Anganwadi Worker and while working in the said post, on 29.07.2010 the Child Development Project Officer issued a letter, whereby the **appointment of the petitioners were cancelled on the ground of suppression of fact regarding the maximum qualification in respect of the eligibility of the said post as advertised.**
- vi) After getting the copy of the cancellation of Appointment to the post of Anganwadi Workers under Barjora I.C.D.S. Project, the petitioners made a representation on 10.08.2010 before the respondent authorities with two fold prayer. Firstly, higher qualification cannot be a bar for lower post if the candidate did not claim any benefit for higher qualification and secondly their Appointment were cancelled by applying pick & choose method since in the similar circumstances many other Anganwadi Workers under Barjora I.C.D.S. Project appointed with the petitioners are still working.
- vii) After getting the said representation dated 10.08.2010, the Child Development Project Officer, Barjora I.C.D.S. Project, District – Bankura on 11.08.2010 issued a letter addressing

the petitioners asking them to provide information with regard to those candidates, mentioned in their letter. But it is stated that with regard to the prayer for joining in the post of lower qualification nothing has been communicated by the said letter.

- viii) The said letter dated 11.08.2010 reflects nothing about the right of the petitioners in respect of the post, with lower qualification.

3. Hence the Writ Petition.

4. The respondents have denied the case of the writ petitioners and a report as called for has been filed by the State respondents.

5. **From the materials on record, it appears that :-**

- i) The advertisement in the present case is dated 13.11.2009 and the relevant extract is as follows:-

“2)
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 Kha)
 Ga) *Educational qualification:- **Minimum Class IV (For all category).***
 Gha) ***Application for the said post by persons with Matriculation or higher qualification as on 01.11.2009 shall stand cancelled/rejected.”***

- ii) Condition of appointment no.2 in order dated 26.05.2010, issued by the CDPO, Bankura is as follows :-

“2. The appointment may be terminated if any of the particulars furnished by the candidate at the

time of application or thereafter is found to be incorrect.”

- iii) Vide letter dated 29.07.2010 **the appointment of the petitioners** was cancelled on the ground :-

“Your appointment to the post of Anganwadi Worker of Barjora ICDS Project, Bankura, (vide order no. 166/ICDS/Brj, dt. 26.05.2010) hereby stands cancelled on the ground of suppression of fact regarding your maximum qualification in respect of advertisement issued vide memo no. 278/ICDS/Brj., dt. 10-11-2009.

Sd/-

*Child Development Project Officer
Barjora ICDS Project, Bankura”*

- iv) The Petitioners then filed a representation dated 10/08/2010 stating that almost all the selected candidates e.g. :-

- | | | |
|----|--------------------|---------------|
| 1) | Mousumi Roy | (Bel – 131); |
| 2) | Barnali Maji | (Ghut – 131); |
| 3) | Bandana Ghosh | (Bel – 62); |
| 4) | Munmun Saha | (Ghut – 127); |
| 5) | Mousumi Chatterjee | (Brj – 109); |

were graduates.

- | | | |
|----|------------------|------------|
| 6) | Bimala Soumondal | (God – 98) |
|----|------------------|------------|

But while working in the said post as ‘Anganwadi-worker’ the Child Development Project Officer, Barjora I.C.D.S. Projects by applying pick and choose policy on 29.07.2010

issued one letter whereby their appointment as 'Anganwadi-Worker' of Barjora I.C.D.S. Project was cancelled on the ground of suppression of fact regarding their maximum qualification in respect of advertisement.

And that Higher qualification should not be a bar for lower cadre post, if they do not claim any benefit for higher qualification and on that ground their appointment as I.C.D.S. Worker cannot be cancelled.

That to that effect they undertook, for not claiming any scale as per their Higher Educational Qualification. And that, the candidate like them who have the Higher Qualification in the similar circumstances are still working depriving the writ petitioners, thus causing gross injustice to them.

v) In response to the said representation, the authorities stated :-

"In response to your letter dated 10-08-2010, I am to inform you that till now appointment of 7 (Seven) candidates against whom specific complaints regarding their educational qualification were received, have been cancelled. So, the question of "pick and choose" does not arise.

Moreover, I am also to request you to kindly provide specific information, such as i) Address) ii) Year of completion of Graduation iii) Name of College and iv) Steam regarding the newly appointed Anganwadi Workers of Barjora ICDS Project, Bankura, whose names you have mentioned in your letter, Action, similar to that taken against you, will also be taken against them after getting the facts verified by the appropriate authorities.

Sd/-
CDPO
Barjora ICDS Project
BANKURA”

6. The respondent no.5, being the Child Development Project Officer, Barjora, ICDS Project has filed a report, wherein it is stated:-

*“It was established beyond doubt through Letter No. 583/JRC/2010 dated July 21, 2010 (**annexed hereto as Annexure -3**) of the Principal, Jamini Roy College and Letter No. SM/MISC/44 dated June 25, 2010 (**Annexed hereto as Annexure-4**) of the Principal, Bankura Zilla Saradamani Mahila Mahvidyapith that the petitioners had deliberately suppressed the fact that they were graduates prior to November 1, 2009. Consequently, their appointment to the posts of Anganwadi Worker were cancelled vide Memo No. 216/ICDS/Brj dated July 1, 2010, Memo No. 259(2)/ICDS/Brj dated July 29, 2010 and memo No. 260(2)/ICDS/Brj dated July 29, 2010.*

It is stated that no conclusive proof could be obtained that the six persons mentioned in the representation dated August 10, 2010 had a higher qualification, that would disqualify them for the post of Anganwadi Worker.

i) Out of Six (6) candidates, Mousumi Roy, Barnali Maji and Bandana Ghosh had resigned subsequently, even after being appointed as Anganwadi Worker.

ii) Mousumi Roy was appointed again as Anganwadi Worker after participation in a separate process of recruitment notified in 2017.

iii) Munmun Saha, Mousumi Chatterjee and Bimala Sou Mandal had been appointed and are still continuing in service. No conclusive proof has been obtained till now, that they were graduates at the time of appointment as Anganwadi Workers.”

7. In *Puneet Sharma & Ors. ETC vs Himachal Pradesh State Electricity Board Ltd. & Anr. ETC.*, in Civil Appeal No(S). 1318-

1322 of 2021 (arising out of SLP (C) Nos. 10533-10537 of 2020),

decided on April 07, 2021, the Supreme Court has held:-

*“28. It would be also useful to notice a later judgment of this court, in Chief Manager, Punjab National Bank and Another v Anit Kumar Das 2020 SCC On Line SC 897 where the issue was, whether for the post of peon in the appellant Bank, a degree holder (graduate) could be appointed, given the conscious decision of the employer, that only those who held 10+2 pass qualifications would be considered and those with graduation qualification could not be considered. **This court held that the appointment of the respondent, who was a graduate, after he suppressed the fact that he held a degree, and did not disclose it, was unsupportable. In this context, it was observed that as to what qualifications are applicable to what class of posts, is a matter of discretion to be exercised by the employer, which the courts would be slow to interdict.** This decision too supports the conclusions in the present case, since the employer, HPSEB asserts that it considers degree holders eligible for appointment to the post of JE.*

37. The considerations which weighed with this court in the previous decisions i.e. P.M. Latha, Yogesh Kumar, Anita (Supra) were quite different from the facts of this case. This court’s conclusions that the prescription of a specific qualification, excluding what is generally regarded as a higher qualification can apply to certain categories of posts. Thus, in Latha and Yogesh Kumar as well as Anita (supra) those possessing degrees or post-graduation or B.Ed. degrees, were not considered eligible for the post of primary or junior teacher. In a similar manner, for “Technician-III” or lower post, the equivalent qualification for the post of Junior Engineer i.e. diploma holders were deemed to have been excluded, in Zahoor Ahmed Rather (supra). This court is cognizant of the fact that in Anita as well as Zahoor (supra) the stipulation in Jyoti (supra) which enabled consideration of candidates with higher qualifications was deemed to be a distinguishing ground. No such stipulation exists in the HPSEB Rules. Yet, of material significance is the fact that the higher post of Assistant Engineer (next in hierarchy to Junior Engineer) has nearly 2/3rds (64%) promotional quota. Amongst these individuals, those who held degrees before appointment as

a Junior Engineers are entitled for consideration in a separate and distinct sub-quota, provided they function as a Junior Engineer continuously for a prescribed period. This salient aspect cannot be overlooked; it only shows the intent of the rule makers not to exclude degree holders from consideration for the lower post of Junior Engineers.”

8. In **Chief Manager, Punjab National Bank Vs. Anit Kumar Das**, 2020 SCC Online SC 897, on 03.11.2020, the Supreme Court held:-

“6. It is required to be noted that the eligibility criteria/educational qualification mentioned in the advertisement inviting the applications was as per Circular letter No. 25 of 2008 dated 06.11.2008, the relevant portion of which is reproduced hereinabove. As stated in the counter to the writ petition, a conscious decision was taken by the bank providing eligibility criteria/educational qualification that a graduate candidate shall not be eligible for the post of Peon/subordinate staff. The said decision was taken consciously looking to the nature of the post. At this stage, it is required to be noted that the original writ petitioner never challenged the eligibility criteria/educational qualification mentioned in the advertisement. He participated in the recruitment process on the basis of the advertisement, without challenging the eligibility criteria/educational qualification mentioned in the advertisement. Therefore, once having participated in the recruitment process as per the advertisement, thereafter it is not open for him to contend that acquisition of higher qualification cannot be a disqualification and that too when he never challenged the eligibility criteria/educational qualification mentioned in the advertisement.

7. Even otherwise, prescribing the eligibility criteria/educational qualification that a graduate shall not be eligible to apply was a conscious decision taken by the Bank and the same was as per the Circular letter No. 25 of 2008 dated 06.11.2008. In the case of J. Rangaswamy (supra), it is observed and held by this Court that it is not for the court to consider

the relevance of qualifications prescribed for various posts.

7.1 In the case of Yogesh Kumar (*supra*), it is observed and held by this Court that recruitment to public service should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post.

7.2 In a recent decision of this Court in the case of Zahoor Ahmad Rather (*supra*), this Court has distinguished another decision of this Court in the case of Jyoti K.K. v. Kerala Public Service Commission (2010) 15 SCC 596 taking the view that in a case where lower qualification is prescribed, if a person has acquired higher qualifications, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the said decision, this Court also took note of another decision of this Court in the case of State of Punjab v. Anita (2015) 2 SCC 170, in which case, this Court on facts distinguished the decision in the case of Jyoti K.K. (*supra*). While distinguishing the decision in the case of Jyoti K.K. (*supra*), it is observed in paras 25 and 26 as under:

“25. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] has been considered in a judgment of two learned Judges in State of Punjab v. Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years' course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a “higher qualification”.

Adverting to the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , this Court noted that Rule 10(a)(ii) in that

case clearly stipulated that the possession of a higher qualification can presuppose the acquisition of a lower qualification prescribed for the post. In the absence of such a stipulation, it was held that such a hypothesis could not be deduced: (Anita case [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] , SCC p. 177, para 15) “15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT Teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K. case [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder:

(SCC p. 598, para 6) ‘6. Rule 10(a)(ii) reads as follows:

10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or Standing Orders of Government as equivalent to a qualification specified for a post in the Special Rules [Ed.: The matter between two asterisks has been emphasised in original.] and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.’ (emphasis supplied) A perusal of the Rule clearly reveals that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorising the appointment of persons with higher qualifications.” (emphasis supplied)

26. We are in respectful agreement with the interpretation which has been placed on the judgment in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* in the subsequent decision in *Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329]*. The decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* turned on the provisions of Rule 10(a)(ii).

Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [*Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12102017 (J&K)*] of the High Court was justified in reversing the judgment [*Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936*] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [*Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12102017 (J&K)*] of the Division Bench.” That thereafter it is observed in para 27 as under:

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes

requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decisionmaking. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned.

7.3 Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008.

Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.

8. Even on the ground that respondent – original writ petitioner deliberately, wilfully and intentionally suppressed the fact that he was a graduate, the High Court has erred in directing the appellant Bank to allow the respondent – original writ petitioner to discharge his duties as a Peon. In the application/biodata, the respondent original writ petitioner did not mention that he was a graduate. Very cleverly he suppressed the material fact and declared his qualification as H.S.C., whereas as a matter of fact, he was holding a degree in the Bachelor in Arts. Had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. That thereafter when scrutiny of the documents was going on and when the respondent – original writ petitioner produced a graduation certificate, at that time, the bank came to know that he was a graduate and therefore not eligible and therefore the bank rightly cancelled his candidature and he was not allowed to join the bank in the subordinate cadre. Therefore, on the aforesaid ground alone, the High Court ought not to have allowed the writ petition when it was a clear case of suppression of material fact by the original writ petitioner. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact overqualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent –original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in the case of Ram Ratan Yadav (supra), suppression of material information and making a false statement has a clear bearing on the character and antecedents of the employee in relation to his continuance in service. **A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service.** Thus, on the ground of suppression of material information and the facts and as the respondent – original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational

*qualification mentioned in the advertisement which was as per Circular letter No. 25 of 2008 dated 06.11.2008, **the bank rightly cancelled his candidature and rightly did not permit him to resume his duty.***

- 9. In the present case,** the respondents thus rightly cancelled the appointments of the writ petitioners on the ground of suppression of material information and for giving false information **(Chief Manager, Punjab National Bank Vs. Anit Kumar Das, (Supra))** and as such there being no irregularity in the orders dated 29.07.2010 and 11.08.2010, issued by the CDPO Barjora, **the Writ Petition stands dismissed and accordingly disposed of.**
- 10.** All connected applications, if any, stand disposed of.
- 11.** There will be no order as to costs.
- 12.** Interim order, if any, stands vacated.
- 13.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)