

FORM NO. J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE APURBA SINHA RAY

**MAT 186 OF 2023
WITH
CAN 2 OF 2024**

THE STATE OF WEST BENGAL & ORS.
Vs.
NILIMA DAS

FOR THE APPELLANT : **MR. SUBIR KUMAR SAHA, ADVOCATE**
MR. MOMENUR RAHAMAN, ADVOCATE
MR. BIKASH SINGHA, ADVOCATE

FOR THE RESPONDENT : **MR. SAYAN CHATTOPADHYAY, ADVOCATE**
MS. MEGHNA JOSHI, ADVOCATE

HEARD ON : SEPTEMBER 5, 2024.

JUDGMENT ON : SEPTEMBER 5, 2024.

THE COURT:

1. Though we do not concur with the findings recorded in the impugned order but after hearing the respective Counsel and on perusal of the materials-on-record, we find that the ultimate decision taken therein cannot be faulted with.

2. The recruitment process was initiated in the year 2006 for engagement of Anganwadi Workers throughout the State of West Bengal on the basis of a Notification dated 25.01.2006. The said Notification contained an express clause relating to the eligibility of the candidates and a disqualification clause to the effect that if a person who is having graduate qualification, shall not be eligible for the purpose of Anganwadi Workers and in the event, it is found that they have suppressed such fact, the services shall be terminated without assigning any reason. Obviously, the object and purpose behind incorporation of the same is that the role of the Anganwadi Workers at the grass root level does not require highly qualified person. Furthermore, the nature of services of the Anganwadi Workers does not require a highly qualified person and therefore, the reason for such clause cannot be said to have violated the constitutional provision.
3. Admittedly, the authorities subsequently detected that certain persons who were appointed as Anganwadi Workers suppressed their educational qualification i.e. having a graduate degree and certificate though they are aware that the said clause invite a serious consequence of termination from service. The reason behind incorporation of the said clause disqualifying the graduate candidates is that they have to compete with the persons having lesser qualification which would invite an

unfair competition in public employment. Astonishingly, some of the Anganwadi Workers, whose services were terminated on the ground of suppression of their higher educational qualification, were reinstated but the petitioner was spared and/or discriminated.

4. The petitioner approached the Court and in course of the hearing a Memo dated 04.01.2024 was placed by which the guidelines in the Notification dated 25.01.2006 was modified and the disqualification clause was done away with. Interestingly, the said Notification was made to operate retrospectively i.e. from 01.04.2012 which was construed to the effect that the Anganwadi Workers who were appointed in terms of a recruitment process in the year 2006 but terminated after 01.04.2012, are entitled to be reinstated on the basis of the said Memo dated 04.01.2013. The authority did not extend the benefit of the said Memo to the Anganwadi Workers whose services were terminated before 01.04.2012.
5. There appears to be a misconception in the minds of the authority in extending the benefit through the Memo dated 04.01.2013. The said Memo is to be construed in the manner and the context in which the same is used. The disqualification clause appearing in the Notification dated 25.01.2006 was lifted and/or withdrawn so as to invite a wider competition and some educated persons to be employed for such work because of the competing

circumstances and the necessity which was subsequently felt by the Government. It cannot be construed to whittle down the terms and conditions as well as the eligibility criteria enshrined in the Notification at the time of initiation of the recruitment process. The reason being that there may be certain persons who could not apply in the said recruitment process after noticing the said disqualification clause because of having a graduate degree and, therefore, such eligible candidates has been deprived of a right to offer their candidature in public employment. It offends the very core value of the Article 16 of the Constitution providing for an equal opportunity to all eligible persons in public employment.

6. It is inconceivable that a person who stands on the same footing that of the other is discriminated solely on the ground of misreading of the Memo dated 04.01.2013. The suppression was uniformly made by all the candidates at the time of offering their candidature in terms of the employment notice. For the lapses and/or laches of the authorities in not detecting the suppression timely cannot act harshly upon a person whose termination was made prior to 01.04.2012. The equality amongst equals is the hallmark of Article 14 of the Constitution of India and the authorities are not permitted to transgress such barrier in treating the person standing on the same pedestal differently.

7. We are conscious that the equality must be amongst equals and not amongst unequals. Since the petitioner is standing on the same footing with other persons who have been reinstated, the equality has to be maintained and the discrimination is imminent from the act of the authorities.
8. We thus do not find that the ultimate decision taken by the Single Bench warrants any interference.
9. The appeal being **MAT 186 of 2023** is thus **dismissed**. No order as to costs.
10. The connected application being CAN 2 of 2024 also stands dismissed.
11. Urgently Photostat certified copy of this order, be given to the parties, if applied for within three days of such application.

(HARISH TANDON, J.)

(APURBA SINHA RAY, J.)

