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F.M.A. 3462 of 2013
With
C.A.N. 7138 of 2015

Smt. Shyamali Bankura (Makar)
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari,
Mr. Gourav Das ...for the
Appellant/petitioner.

Mr. Tapan Kumar Mukherjee,
Mr. Nilotpai Chatterjee ... for the State.

This application has been filed in connection with the appeal preferred from the judgment and order dated 3rd January, 2006 whereby a learned Judge of this Court dismissed the writ petition on the ground that the said appellant/petitioner got the appointment upon suppressing the graduate qualification.

From the records it appears that the appellant/petitioner herein filed a writ petition challenging the order of termination dated 24th June, 2003 issued by the respondent Child Development Project Officer, Sabang, namely, the respondent No. 2 herein. The services of the appellant/petitioner along with several other candidates were terminated by the aforesaid order dated 24th June, 2003 issued by the respondent no. 2 herein on the ground of suppression of higher qualification.

The learned Advocate representing the State respondents submits that it was specifically mentioned in the advertisement that the graduate female candidates have no scope to apply for the post of Anganwadi Workers and the appellant/petitioner is undisputedly a graduate candidate and suppressing the said qualification the appellant/petitioner herein got the appointment to the post of Anganwadi Workers.

Undisputedly, the appellant/petitioner was duly selected as Anganwadi Workers on the basis of disclosed qualification, that is, Madhyamick qualification and therefore, no extra weightage and preference were granted to the appellant/petitioner for the higher qualification specially when the appellant/petitioner admittedly did not mention about her higher qualification in the application form.

Mr. Bari, learned Counsel representing the appellant/petitioner also submits that higher qualification of a candidate cannot be a ground for taking any penal action. Mr. Bari further submits that the respondent no. 2 herein terminated the services of the appellant/petitioner along with other four Anganwadi Workers on the identical ground by issuing the Memo. No. 202(5) dated 24th June, 2003 without initiating any disciplinary proceeding. Mr. Bari also submits that the respondent no. 2 herein did not issue any show cause notice to the appellant/petitioner before imposing penalty by issuing the impugned order of termination.

Mr. Bari relies on a Special Bench Judgment of this Court in the case of **Rina Dutta & Ors. vs. Anjali Mahato & Ors.** reported in 2010(3) Calcutta Law Times 232 wherein the Special Bench specifically held :

"When a particular qualification is laid down in an advertisement relating to a distinct class of candidates, the candidate possessing a qualification higher than that advertised can ordinarily not be debarred or disqualified, but it is open to the employer to make a rule providing for disqualification of candidates possessing qualification higher than the prescribed qualification, but the burden would be on the employer to justify such a rule."

Mr. Bari also relies on the following decisions of the Division Bench to this Court wherein identical issues were decided earlier by this Court :

- i) **F.M.A. 238 of 2010 with C.A.N. 7356 of 2008 (Shyamali Sarkar (Roy) vs. State of West Bengal & Ors.)**
- ii) **A.S.T. 205 of 2014 with A.S.T.A. 150 of 2014 (Mukul Samanta (Maity) vs. State of West Bengal & Ors.).**

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 respondents 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.

The authorities concerned thereafter preferred an appeal before this Court which was numbered as F.M.A. 288 of 2015. A Division Bench of this Court by the judgment and order dated 18th June, 2015 affirmed the decision of the learned single Judge and dismissed the aforesaid appeal on merits.

The service of the appellant/petitioner was terminated by the respondent no. 2 only on the ground of non-disclosure of graduate qualification although no extra benefit was granted to the appellant/petitioner for the said higher qualification.

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 graduate 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.

Therefore, we set aside and quash the impugned order under appeal passed by the learned single Judge and allow both the application as well as the appeal upon treating the said appeal as on day's list

The respondent authorities including the respondent no. 2 herein are directed to reinstate the appellant/petitioner in the post of Anganwadi workers under Sabang ICDS Project without any further delay and positively within a period of two weeks from the date of communication of this order and pay all the admissible salary and allowances regularly for discharging the duties as Anganwadi Workers from the date of joining the duties in terms of this order.

In the facts of the present case, there will be no order as to costs.

Let a xerox plain copy of this order, duly countersigned by the Assistant Registrar (Court), be given to the parties on usual undertaking.

(Pranab Kumar Chattopadhyay, J.)

(Ishan Chandra Das, J.)

