

GAHC010013632015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2847/2015

MUSST JINNATARA BEGUM
W/O MD. ABED ALI, VILL. SENGAJAN GOROIMARI, P.O. BAJBATMARI,
MOUZA- JARABARI, P.S. KAMPUR, G.P.- AMTOLA, UNDER RAHA ICDS
PROJECT, DIST- NAGAON, ASSAM,

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
SOCIAL WELFARE DEPTT., DISPUR, ASSAM, GHY-6

2:THE DIRECTOR
SOCIAL WELFARE
ASSAM
THE DIRECTORATE OF SOCIAL WELFARE
ASSAM
UZAN BAZAR
GHY-1

3:THE DISTRICT SOCIAL WELFARE OFFICER
NAGAON
ASSAM
PIN-782001

4:THE CHILD DEVEL. PROJECT OFFICER
RAHA I.C.D.S. PROJECT SECY. OF THE SELECTION COMMITTEE
RAHA I.C.D.S. PROJECT
RAHA
NAGAON
ASSAM
PIN-782427

5:THE CIRCLE OFFICER
RAHA REVENUE CIRCLE
THE CHAIRMAN OF THE SELECTION COMMITTEE
RAHA I.C.D.S. PROJECT
RAHA
NAGAON
ASSAM
PIN-782427

6:MUSSTT. JESMIN SULTANA
W/O MD. NURUL HOQUE
PERMANENT R/O SENGAJAN
P.O. BAJBATMARI
MOUZA- JARABARI
P.S. KAMPUR
GP- AMTOLA
UNDER KAPILI I.C.D.S. PROJECT
DIST- NAGAON
ASSA

Advocate for the Petitioner : MR.S A CHOUDHURY

Advocate for the Respondent : SC, SOCIAL WELFARE

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 05.01.2023

Heard Mr. M.H.Ahmed, the learned counsel appearing on behalf of the petitioner, Mr. T.C.Chutia, the leaned counsel appearing on behalf of the respondent Nos. 1 to 5 and Mr. S.Islam, the learned counsel appearing for the respondent No.6.

2. This is the second round litigation filed by the petitioner challenging the letter No.CDPO(R) 02/2009-10/145 dated 14.12.2012, the letter No.NDC.15/2014/426 dated 27.01.2014 and the order No.DSW (LC)

103/2011/170 dated 23.06.2014 as well as seeking a writ of mandamus directing the respondent to initiate fresh selection process for appointment of Anganwadi Worker in the Sengajan Goroimari Anganwadi Centre.

3. The brief facts of the instant case is that vide a Notification dated 19.09.2009, the Commissioner and Secretary to the Govt. of Assam, Social Welfare Department had reconstituted the Selection Committee for selection of Anganwadi Worker and Helper and also had set out the various terms and conditions necessary for the purpose of selection. In terms with Clause 2A of the said Notification dated 19.09.2009, the various eligibility criterion were laid down. The relevant criterion for the purpose of instant writ petition is Sub-Clause (i) and Sub-Clause (iii). Being relevant, the same are quoted herein below:

“i. The candidate for the post of Anganwadi Worker (AWW) and Anganwadi Helper (AWH) shall be a local Women residing in the same village, where the Anganwadi Centre is located.

iii. All Anganwadi Worker should have the qualification of HSLC/HMLC Examination passed from the Board of Secondary Education or its equivalent examination from a recognized Board by Govt. of Assam only. If such qualified candidate is not available, candidates with qualification read up to class IX will be considered.”

4. A perusal of the above quoted eligibility criterion would show that the candidate for the post of Anganwadi Worker and Anganwadi Helper shall be a local women residing in the same village where Anganwadi Centre is located. In terms with the clause (iii), the basic educational qualification required for an Anganwadi Worker was HSLC/HMLC examination passed from the Board of

Secondary Education or its equivalent examination from a recognized Board by the Government of Assam. It is only when no educationally qualified candidate is available, candidates with qualification read up till Class IX can be considered. This educational qualification is in respect to Anganwadi Workers only.

5. It reveals from the record that the Child Development Project Officer had issued an advertisement for the purpose of filling up the post of Anganwadi Worker in the Sengajan Goroimari Anganwadi Centre. The petitioner herein along with respondent No.6 duly applied. However, the respondent No.6 was selected as the Anganwadi Worker against the Sengajan Goroimari Anganwadi Centre as per the selection test held on 06.10.2009. Accordingly, the respondent No.6 was appointed vide an order dated 26.11.2009. However, it is relevant to mention that the petitioner have not challenged the order dated 26.11.2009 in the instant proceedings.

6. It further appears from the record that pursuant to the appointment made in favour of the respondent No.6, the petitioner had challenged her appointment vide a writ petition being WP(C)/456/2010. This Court vide an order dated 22.06.2011, taking into account that the dispute involved in the said writ petition were factual in nature, directed the Director of Social Welfare Department, Assam to look into the grievances of the petitioner and make an enquiry in that regard and to pass an appropriate order. In pursuance to the said direction, The Director of Social Welfare Department vide an order dated 23.06.2014, came to a finding that from the report submitted by the Circle Officer, Raha Revenue Circle it revealed that the residence of the petitioner fell outside the concerned Anganwadi Centre area and the residence of the

respondent No.6 is within the concerned Anganwadi Centre. The Director thereupon, taking into consideration that the petitioner have confessed that she did not appear in the interview before the Selection Board and also taking into account that the residence of the respondent No.6 is within the concerned Anganwadi area, rejected the claim of the petitioner. Being aggrieved the instant writ petition has been filed challenging the various orders as already detailed herein above.

7. The record shows that this Court on 18.05.2015 had issued notice making it returnable on 27.07.2015. While issuing notice, this Court had made it categorically clear that the issue of maintainability of the writ petition would remain open, taking into account that the grounds taken by the petitioner involved disputed questions of facts regarding the residential status of the parties.

8. It reveals from the records that the respondent No.2 had filed an affidavit-in-opposition. In the said affidavit-in-opposition various documents have been enclosed. From the affidavit-in-opposition and the documents so enclosed, it reveals that there is a report by the District Social Welfare Officer, Nagaon dated 20.07.2012, wherein, it has been mentioned that the residence of the respondent No.6 is not within the concerned AWC area, whereas, the residence of the writ petitioner was within the AWC area. There upon on the basis of the said report, a hearing was conducted. During the hearing, the CDPO produced the survey report of the concerned AWC area, which was found not maintained in proper manner. Accordingly, the CDPO was directed to make a proper survey through the concerned Supervisor and to authenticate the same through the

concerned Gaonbura and the concerned Gaon Panchayat. In that regard, an order was also issued dated 17.10.2012. There upon, the CDPO, Raha ICDS project submitted the survey report dated 14.12.2012. The said survey report was authenticated by the Ward Member, Ward No.10 under Amtola GP, The President Amtola GP, the Circle Supervisor, the Statistical Assistant of the project and by the CDPO. In terms with the said survey report the name of the respondent No.6 had figured at Sl. No.66 against House No.13. The CDPO also submitted its certificate issued by the President, Amtola GP and Ward Member of Amtola GP, wherein, it has been stated that the respondent No.6 is a resident of the concerned AWC area.

9. It further reveals that the survey report submitted by the CDPO, was contrary with the report submitted by the District Social Welfare Officer dated 20.07.2012. Accordingly, both the officials were directed to attend the Directorate to discuss about the matter on 17.05.2013. The District Social Welfare Officer thereupon decided to re-verify the matter and to submit a fresh report. Accordingly, the District Social Welfare Officer on 21.05.2013, had submitted a report. In terms with the said report, the residence of the respondent No.6 is at Sengajan Goroimari area and nearer to the concerned AWC. It was further informed that the residential location of the petitioner is within the concerned AWC area but as per the records of the Circle Supervisor, it was found that the petitioner did not appear in the interview for the post of AWW against concerned AWC. The records further reveals that the Directorate thereafter decided to collect the report from the Deputy Commissioner Nagaon to get a clear picture of the matter of the residential status of the petitioner and the respondent No.6. Accordingly, the Office of the Deputy Commissioner

Nagaon had forwarded the report dated 29.01.2014 from the Circle Officer, Raha Revenue Circle. As per the said report the residence of the petitioner is not within the concerned AWC area whereas, the residence of the respondent No.6 is within the concerned AWC area. Thereupon, another date of hearing was fixed on 28.04.2014. Pursuant thereto, on 23.06.2014, the claim of the petitioner was rejected vide the impugned order. To the said affidavit-in-opposition filed by the respondent No.2 an affidavit-in-reply had been filed by the petitioners.

10. This Court have perused the materials on record and have also heard the learned counsels for the parties. The question as to whether the residence of the petitioner is within the concerned AWC is one aspect of the matter which have been conclusively held by the authority to be outside the AWC Centre. But pivotal the consideration on the basis of the materials on record is that it is clear that the residence of the respondent No.6 is within the concerned AWC. The said have been conclusively held by the authorities below. It has also to be taken note of that, this Court cannot enter into the disputed questions of facts as to whether the authorities were correct in coming to the finding as to whether the respondent No.6 residence is within the concerned AWC inasmuch as the same are purely questions of facts which the authorities have conclusively held. Under such circumstances, if Clause 2A (iii) is applied to, it would be seen that the respondent No.6 had admittedly passed Higher Secondary Examination and under such circumstances, the respondent No.6 has the educational qualification which is required in terms with the Notification dated 19.09.2009. On the other hand, admittedly the petitioner have not passed HSLC/HMLC which is the requirement in terms with Clause 2A (iii) as quoted

herein above. The petitioner's qualification would have been helpful for the petitioner only if there was no other candidate available. But taking into account that there was a candidate which had the qualification in terms with Clause 2A (iii), the petitioner cannot claim any right to be selected or appointed to the post of Anganwadi Worker in the concerned AWC. Moreover, the petitioner have not challenged the appointment order of the respondent No.6 dated 26.11.2009.

11. The orders which have been put to challenge by the petitioner in the instant writ petition are orders passed by the authorities carrying out facts finding enquiry and this Court as already stated herein above would not be in any position to interfere with the said findings without any perversity being shown by the petitioner. However the petitioner have failed to show any perversity in the findings arrived at in the order dated 23.06.2014.

12. Consequently, this Court does not find any merit in the instant writ petition for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant