

GAHC010026542015



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

Case No. : WP(C)/7307/2015

SULTANA BASIRA AHMED
W/O SAIDUR RAHMAN, VILL. PAMPARA, P.O. KASUMARA, DIST-
BARPETA, ASSAM, PIN-781127

VERSUS

THE STATE OF ASSAM 7 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
SOCIAL WELFARE, DISPUR, GHY-6

2:THE DIRECTOR OF SOCIAL WELFARE
ASSAM
BAL BHAWAN
UZANBAZAR
GHY-1

3:THE DISTRICT SOCIAL WELFARE OFFICER
BARPETA
P.O. and DIST- BARPETA
ASSAM
PIN-781301

4:THE CHILD DEVELOPMENT PROJECT OFFICER
CHENGA ICDS PROJECT
P.O. BOHORI
DIST- BARPETA
ASSAM
PIN-781302

5:THE DY. COMMISSIONER
BARPETA
P.O. and DIST- BARPETA

ASSAM
PIN-781301

6:RUMIA AHMED
W/O RAMZAN ALI
VILL. PAMPARA
P.O. KASUMARA
DIST- BARPETA
ASSAM
PIN-781127

7:ANJU MANOWARA KHATUN
W/O AMZAD HUSSAIN
VILL. PAMPARA
P.O. KASUMARA
DIST- BARPETA
ASSAM
PIN-781127

8:OMME KULSUM AHMED
W/O JAYNAL ABEDIN
VILL. PAMPARA
P.O. KASUMARA
DIST- BARPETA
ASSAM
PIN-78112

Advocate for the Petitioner : MD.S ALI

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

05-10-2023

Heard Mr. B.K. Das, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned Addl. Sr. Government Advocate for the respondents/department.

2. This writ petition is filed by the petitioner praying for setting aside the

appointment of the private respondent No. 6 as an Anganwadi Worker in Centre No. 140 Madhya Pampara Bahir Char and to consider the petitioner for appointment to the said post of Anganwadi Worker against the said Anganwadi Centre.

3. The pleaded case of the petitioner is that the petitioner was initially appointed as Anganwadi worker against Centre No. 140 Madhya Pampara Bahir Char for a period of three months temporarily subject to the selection by the selection committee. The appointment was given by the Child Development Project Officer, Chenga ICDS Project Bohori, Barpeta. She was appointed on 27.08.2010 by an order issued by the CDPO Bohori, Barpeta. While she continued to work in the said post, the department by an advertisement dated 08.11.2012 invited applications from eligible candidates to fill up the vacant posts of Anganwadi worker/Helper available in various Anganwadi Centres under the Barpeta district. The applications were invited from interested female candidates for mini-Anganwadi Centre worker as well as for the vacant worker/Assistant post in the Centre. Amongst the list of Anganwadi centers for which the recruitment was initiated by the advertisement, the Anganwadi centre in which the petitioner was earlier working, namely Centre No. 140 Madhya Pampara Bahir Char under Child Development Project Officer, Chenga ICDS project Bohori, Barpeta was also named in the list. The petitioner being interested and eligible for being considered for selection and appointment to the said post submitted her application for the said post. It is submitted that the petitioner satisfied all the conditions mentioned in the advertisement. Likewise, the private respondents No. 6, 7 and 8 had also applied for the said post. Pursuant to the selection conducted, the private respondent No. 6 was selected

and appointed in the said post. The private respondent No. 7 who was also initially appointed subsequently submitted a No Objection Certificate in favor of the present petitioner stating that she does not wish to serve as an Anganwadi worker as she has been appointed elsewhere. The respondent No. 8 was also selected and appointed in the said selection process

4. It is submitted by the learned counsel for the petitioner that the appointment of the respondent No. 6 in the said centre is assailed on the ground that that her appointment has been made *dehors* the conditions specified in the advertisement. It is submitted that in the said advertisement, it was clearly specified the conditions in which an applications can be rejected. Amongst the conditions mentioned, one of the conditions is that a *regular student of school or college will not be recommended as fit for the said post.* The learned counsel for the petitioner submits that it is this particular condition which has not been adhered to by the respondent authorities and flouting this particular condition, the respondent No. 6 has been appointed. In that view of the matter, the appointment made of the respondent No. 6 to be post of Anganwadi worker/helper in Centre No. 140 Madhya Pampara Bahir Char is required to be interfered with and set aside and the petitioner be directed to be considered against the said vacancy.

5. The learned counsel for the petitioner submits that the respondent No. 8 also supports the case of the petitioner and to that extent has also filed their affidavit. The learned counsel for the petitioner has referred to a certificate issued by the Principal of Sontali Anchalik College issued on 12.10.2015 enclosed as Annexure-4 of the writ petition. In terms of the said Communication, the in-charge Principal of Sontali Anchalik College certifies that

respondent No. 6, Smti Rumia Ahmed was a regular student of Sontali Anchalik college for the session 2011-2014. She has successfully cleared the BA final examination on 2014 from the said college under Gauhati University. The learned counsel for the petitioner submits that the certificate issued by the college authorities of said College reveals that during the session 2011 to 2014, petitioner was a regular student of the college. The advertisement was published in 08.11.2012 and pursuant thereto her appointment was made. It is submitted that it is evident that the petitioner was a regular student of the said college and therefore, as it is certified by the competent college authorities that she was a regular student, her candidature could not have been considered as it is mentioned in the advertisement itself that regular students of school and colleges will not be considered fit for the post. The learned counsel for the petitioner submits that the respondent No. 6 was appointed by the respondent authorities violating this condition which is specified in the advertisement itself. It is, therefore, submitted that the appointment of the petitioner being contrary to the conditions of the advertisement, the same ought to be interfered with, set aside and the respondent authorities be directed to consider the case of the petitioner.

6. Ms. M. Bhattacharjee, learned Addl. Sr. Government Advocate, Assam appears for the department and she submits that the affidavit on behalf of the department has been filed. In the said affidavit, it is categorically stated that the respondent No. 6 secured 53.83 marks as compared to the petitioner who obtained 44.25 marks. Under such circumstances, the respondent No. 6 being the more meritorious she has selected. It is submitted that the competent authority has expressed satisfaction in respect of the services rendered by

respondent No. 6 and as such the contentions of the petitioner are not tenable and the writ petition is accordingly liable to be dismissed.

6. Although notices have been served, none has represented respondents NO. 7 & 8.

7. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused.

8. It is seen that the advertisement dated 08.11.2012 calling for applications from female candidates for filling up the posts of Anganwadi Workers/Assistant specifies the conditions which are required to be fulfilled by the candidates. There are also conditions specified in the advertisement on the basis of which the application can be rejected. One of the conditions specified for rejection in the advertisement is that a regular student of college or school will not be considered for the post. It is also seen that the respondent No. 7 has filed an affidavit stating that she is not interested to work as an Anganwadi worker in Centre No. 140 Madhya Pampara Bahir Char. She otherwise supports the case of the petitioner. Similar is the stand of the respondent No. 8. The respondent No. 8 was also selected against in one of the posts as Anganwadi worker/Assistant in the Centre No. 140 Madhya Pampara Bahir Char. She also supports the case of the petitioner and it is stated in her affidavit that the selection of the respondent No 6 was contrary to the norms published. These grievances were ventilated before the Director, Social Welfare by representations filed jointly by the petitioner along with two other persons. It is submitted that this representations although filed did not evoke any response and therefore, the present writ petition has been filed.

9 Having considered the rival contentions raised at the bar, it is seen that there is a condition specified in the advertisement dated 08.11.2012 which stipulates that regular students of school and colleges will not be considered. The private respondent No. 6 has not contested the matter by filing any affidavit. No counsel is also present today before the Court when the matter is called up. Office Note reflects that service on respondent No. 6 was completed as far back as 10.05.2016. It is also seen from the pleadings that the respondent No. 7 who was working in the same centre did not continue rendering her services in the said center as she was engaged in a separate job.

10. It is also seen that the advertisement was published on 08.11.2012 and the selections were concluded in the year 2015.

11. Under such circumstances, this Court is of the considered view that in the absence of any rebuttal by the Respondent No. 6, the contentions of the writ petitioner that the respondent No. 6 was a regular student of Sontali Anchalik College remains unrebutted. The affidavit filed by the Department also does not dispute the averments made by the petitioner that the candidature of Respondent No. 6 ought to have been rejected in view that the respondent No.6 was a regular student of Sontali Anchalik college. The Department supported the selection of the Respondent No. 6 on the ground that she obtained higher marks than the petitioner. While securing of higher marks will certainly enhance the possibility of selection of a candidate, however, if any of the conditions specified in the advertisement are not found to be fulfilled, then the authority is expected to take into account such shortcomings and pass necessary orders, more particularly, when the conditions for rejection are specified in the

advertisement dated 08.11.2012 itself.

12. Under such circumstances, this Court considers it appropriate to dispose of the writ petition with a direction to the respondent authorities, more particularly, to the Respondent No. 2 to look into the grievances raised by the petitioner and consider her claims by passing a speaking order. If any vacancy relating to the year of the advertisement, namely the year 2012-13 is still available in the Centre No. 140 Madhya Pampara Bahir Char and if the petitioner still satisfies the norms and conditions specified in the advertisement, then the department may consider the case of the petitioner along with any other such similarly situated candidates for filling up those posts subject to the provisions of law as may be prescribed. The Respondent No. 2 will pass a speaking order examining the claims made by the petitioner in the present proceedings.

13. Considering that this matter pertains to the year of 2015, the petitioner is granted liberty to file a copy of the writ petition along with annexures, which will be treated by the Director, Social Welfare, as a representation and thereupon pass speaking order as directed on the claims raised.

14. This exercise be completed within a period of 60 days from the date of receipt of a certified copy of this order. Any such order that may be passed, copy thereof be furnished to the petitioner.

15. With the above observation, the writ petition stands disposed of.

JUDGE

Comparing Assistant