

GAHC010028722015



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

Case No. : WP(C)/7970/2015

SMTI ALAKA DEVI
W/O SRI UMA KANTA SIAKOTI R/O VILL- KURUABASTI BIRJABASTI P.O.
GAMERI P.S. HALEM DIST. SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
SOCIAL WELFARE DEPARTMENT, GUWAHATI - 781006.

Advocate for the Petitioner : MR.D M NATH

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

16.10.2023

Heard Mr. S.K. Chakraborty, learned counsel for the petitioner. Also heard Mr. C.S. Hazarika, learned Government Advocate for the State.

2. This writ petition has been filed by the petitioner praying for a direction to set aside and quash the order dated 29.09.2012 vide No. DSW(LC) 114/2012/38

issued by the respondent No. 2, namely, The Director of Social Welfare whereby the claims of the petitioner for appointment as Anganwadi Worker at Birjabasti, Centre No. 23 under Chaiduar ICDS Project was rejected. The further prayer is for setting aside the appointment of the private respondent No.6.

3. This Court by order dated 23.12.2015, issued Notice. Although Service is complete on the private respondent, she is not represented when the matter is called up.

4. By a Notice dated 05.09.2019, proposals were invited by the Department of Social Welfare, Assam for appointment of Anganwadi Worker and Helper to newly set up Anganwadi Centers under the jurisdiction of Pub Chaiduar Social Child Welfare Service Project. The petitioner, who claimed to have satisfied all the necessary requirements and eligibility for appointment to the said post, submitted her applications. One of the conditions prescribed for the applicant is that the applicant must be a resident of the locality where the particular centre or a permanent resident of the village. Certificate of permanent residents from the Gaon Burah of the particular village must be annexed.

5. Having submitted her application, the petitioner was expecting employment in the post, however, she was not appointed and accordingly, she approached this Court earlier by filing W.P(C) No. 399/2010. A Co-ordinate Bench of this Court by order dated 29.04.2011 disposed of the writ petition granting liberty to the petitioner to make appropriate representation to the Director Social Welfare Department, Government of Assam and if such application is made, the Director, Social Welfare shall hear all parties concerned and pass appropriate orders in the matter.

Pursuant to the said order, applications were made and the matter was considered by the Director in terms of the directions contained by the Court.

The application enclosed all required particulars.

6. By order dated 29.09.2013, the Director, Social Welfare considered the application of the petitioner and upon giving an opportunity of personal hearing, matter was disposed of rejecting the prayer of the petitioner as the same has not found to be based on fact. It is this order which is under challenge in the present proceedings. In the impugned order, it is seen that the Director considered the survey Register which was authenticated by the concerned Lat Gaon Burah and the name of the petitioner was included in the Survey Register of another Anganwadi Centre area i.e. Kuruwa Basti Anganwadi Centre. Her resident was also located in Kuruawa Basti. On the other hand, the private respondent was found to be an inhabitant of Aribhanga Village where Bidyabasti Anganwadi Centre is located. It is also found that the respondent got higher marks and secured the first position over the petitioner who stood in was considered in the second position. Under such circumstances, the application of the petitioner was rejected. Being aggrieved, the present writ petition has been filed assailing the impugned order and praying for interference of the appointment of the private respondent No. 6.

7. The learned counsel for the petitioner has referred to the RTI application filed in this respect. Referring to the reply issued by the Competent Authority which is enclosed at annexure- I, Page-45 of the writ petition. The learned counsel for the petitioner submits that the Revenue Circle reflected in the RTI reply is Helem Revenue Circle and the name of the ward is No. 8 Kuruwabasti (Birjabasti). The learned counsel for the petitioner submits that Kuruwabasi and Birjabasti are one in the same place and the petitioner being the resident of Kuruwabasi and closure to the Anganwadi Centre, the petitioner's case ought to have been considered in terms of the notice dated 05.09.2019 by which

applications were invited for appointment to the post of Anganwadi Centre. It is submitted that the private respondent is not a resident of the concerned village. The learned counsel for the petitioner submits that under such circumstances the respondent authorities ought to have considered the claims raised by the petitioner and given her proper consideration and appointed her in place of private respondent.

8. Mr. C.S. Hazarika, learned Government Advocate appearing for the State opposed the contention of the learned counsel for the petitioner. The State has filed its affidavit contesting the case projected by the petitioner.

9. In the affidavit filed, the respondent authorities reiterated their stand that the name of the private respondent as found in the Survey Report countersigned by the CDPO reflected that the private respondent belonged to Birjabasti Anganwadi Centre whereas the petitioner belonged to Kuruwabasti Anganwadi Centre. On the direction of this Court, the said Survey Register was produced before the Court and Mr. Hazarika submits that the said position is clearly reflected in the survey register.

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

11. It is seen that the question which is placed before the Court is whether the petitioner is a resident of Kuruwabasi village and her place of residents is closure to the concerned Anganwadi center as compared to that of the private respondent No. 6. This Court earlier disposed of the writ petition filed by the petitioner directing the competent authorities to look into the issues concerned and pass appropriated order. In the earlier order dated 29.04.2011 passed in W.P.(C) No. 399/2010, a Co-ordinate Bench has clearly observed that this is a disputed question of fact and determinations of such disputed questions of fact

will require holding or moving enquiry and also recording of evidence which is not appropriate in the facts and circumstances in the present case. Under such circumstances, the matter was relegated to the Director, Social Welfare to look into and pass appropriate orders in the matter Pursuant thereto, the matter was heard and the contesting parties were given adequate opportunities to represent their case and furnished relevant documents in support of their contentions. The question whether the petitioner is a resident of Kuruwabasti village and whether the private respondent is an inhabitant of Aribhanga village where Bidyabasti centre is located, is a question which has to be determined on facts. The department in terms of the direction issued by the Court undertook the exercise by placing reliance the Survey Register which has been duly certified by Lat Gaonburah. It is on the basis of this Survey Register that a decision has been taken to consider the case of the private respondent over the present petitioner. This decision is challenged by the petitioner, however, the fact remains that the Survey Register is certified by the Lat Gaon Burah. Therefore, the question to determine whether the petitioner residence is closure to the concerned Anganwadi Centre or is it the private respondent No. 6 whose residence is closure to the said Anganwadi Centre, is actually question, which requires evidence and required to be determined by the competent authority. The procedure adopted by the Director was in pursuance to order passed by this Court which is put to challenge in the present proceedings. However, we find that there is no specific challenge made to the findings arrived at in the Survey Register which was relied upon by the CDPO and which is stated to be certified by the Lat Gaon Burah. There is no requirement being referred to by the petitioner to suggest that the procedure adopted in arriving at the conclusion by the competent authority by placing reliance of the Survey Register

certified by the Lat Gaon Burah is not the proper procedure to arrive at a finding as to the question raised namely whose residence is closure to the concerned Anganwadi Centre.

11. It is well established that the writ Court ordinarily does not enter into disputed question of fact. These questions of fact required specific findings based on evidence and for which appropriate forums are available. The petitioner has not been able to produce before this Court any reference to such forums being approached for arriving at a correct finding in respect of her disputed question of fact.

12. Under such circumstances, there is no reason why the Survey Register certified by the Lot Gaon Bura relied upon by the departmental authorities is not required to be accepted by the Court. No reasons has been pleaded in the present writ petition to show that the findings arrived at by the Lot Gaon Burah is contrary to the records available under the Revenue Department.

13. In that view of the matter, we find no merit in the writ petitioner and the same is not required to be entertained any further and the same is therefore dismissed. No order as to cost.

14. It is made clear that dismissal of the writ petition will not foreclose filing of any representation before the competent authority if the petitioner is so advised.

JUDGE

Comparing Assistant