

GAHC010056322021



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

Case No. : Review.Pet./45/2021

MAMONI KALITA BEZBARUA
W/O DIPEN BEZBARUA, R/O PAZIPAR, PO BORBARI, DIST. NALBARI,
ASSAM-781335

VERSUS

SANGITA HALOI BARUAH AND 5 ORS.
W/O SRI PRASANTA BARUAH, R/O KHTAPAZIPARA, PO BORBARI, PS
NALBARI, DIST. NALBARI, ASSAM, PIN-781335

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DIRECTOR
SOCIAL WELFARE DEPARTMENT
ASSAM
UZANBAZAR
GUWAHATI-781001

4:THE PROGRAMME OFFICER
DIVISIONAL ICDS CELL
KOKRAJHAR (BTAD)
ASSAM
UZANBAZAR
GUWAHATI-781001

5:THE DISTRICT SOCIAL WELFARE OFFICER NALBARI-CUM-CHAIRMAN
SELECTION COMMITTEE
NALBARI DISTRICT

PO AND DIST. NALBARI
ASSAM-781335

6:THE CHILD DEVELOPMENT PROJECT OFFICER
NALBARI ICDS PROJECT
NALBARI
PO AND DIST. NALBARI
PIN-781335
ASSA

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

26.09.2023

1. Heard Mr. P. Mahanta, learned counsel for the review petitioner. Also heard Mr. U.K. Nair, learned Senior Counsel for the opposite party no.1 and Mr. R. Dhar, learned counsel for the opposite party nos.2 – 6.

2. The review petitioner's case is that a mistake has occurred in the impugned order dated 11.02.2021 passed in WP(C) No.3023/2020, inasmuch as, this Court had decided the case on the basis of a vacancy that had occurred in Parowa Pazipar Anganwadi Centre, which had the number 23. However, this Court had decided the issue by considering the vacancy to be that of Parowa Pazipar Pub Anganwadi Centre, covered by number 217.

3. The review petitioner submits that in terms of the documents in the review petition, the vacancy that occurred was in respect of No.23 Parowa Pazipar

Anganwadi Centre and not in respect of No. 217 Parowa Pazipar Pub Anganwadi Centre. He submits that the confusion with regard to the vacant post of Anganwadi Worker had occurred, as this Court had decided the issue on the basis of the names of the Anganwadi Centres, without going into the fact that the vacancy should have been considered on the basis of numbers provided to the Anganwadi Centres.

4. Mr. U.K. Nair, learned Senior Counsel for the opposite party no.1 submits that the issue raised by the review petitioner has already been decided in the impugned order dated 11.02.2021, which was clarified by the official records which had been produced in the Court. He submits that the fact that there was a vacancy in Parowa Pazipar Pub Anganwadi Centre is supported by the order dated 14.06.2021 passed by the Office of the Child Development Project Officer, Nalbari, Government of Assam, wherein the review petitioner has been released from her post as Anganwadi Worker of Parowa Pazipar Pub Anganwadi Centre and the opposite party no.1 (writ petitioner) has been appointed to the said post in her place.

5. Mr. R. Dhar, learned counsel for the State submits that there is no infirmity with the impugned order dated 11.02.2021, as the vacancy had occurred in the post of Anganwadi Worker in Parowa Pazipar Pub Anganwadi Centre.

6. I have heard the learned counsels for the parties.

7. The impugned order dated 11.02.2021 passed in WP(C) No.3023/2020 had considered the submissions of the review petitioner, who was respondent no.6.

The extract of the order dated 11.02.2021 passed in WP(C) No.3023/2020 is reproduced below :

“

Mr. A. Gohain, learned counsel for the respondent no.6, on the other hand submits that the vacant post of Anganwadi worker was to be filled up was in respect of Anganwadi Centre No.23 that is Parowa Pazipar Kordoitola Anganwadi Centre. He submits that the advertised post that was to be filled up, was in relation to the Anganwadi Centre No.23 and not in relation to Parowa Pazipar Pub Anganwadi Centre No.217, and as the petitioner is not a resident of Anganwadi Centre No.23, there was no infirmity with the decision of the State respondents in not selecting the petitioner, even though she had higher marks than the respondent no.6. Mr. A. Gohain also submits that the vacancy in the Anganwadi Centre occurred due to death of the earlier Anganwadi worker, whose name was Anima Bezbaruah.

Mr. D. Nath, learned counsel for the State respondents submits that as per Official Records which he has brought today, the Advertisement for filling up the vacant post of Anganwadi worker is in relation to Parowa Pazipar Pub Anganwadi Centre and there is no Anganwadi number mentioned in the Advertisement. He also submits that the applications submitted by the petitioner and the respondent no.6 is for appointment to the vacant post of Anganwadi worker in Parowa Pazipar Pub. Mr. D. Nath also submits that the petitioner was not selected by the State respondents as she was found to be outside the surveyed area of Parowa Pazipar Pub Anganwadi Centre as per the survey register.

I have heard the learned counsels for the parties.

Paragraph 6 of the affidavit-in-opposition filed by the respondent no.6 is to the effect that the writ petitioner is not a local resident of the jurisdictional area of Parowa Pazipar Anganwadi Centre (Centre No.23), but is a resident of Parowa Pazipar Pub Anganwadi Centre (Centre No.217). It also states that the respondent no.6 is a local resident within the operational area of Parowa Pazipar Anganwadi Centre (Centre No.23).

Thus from the averments made in the affidavit-in-opposition of the respondent no.6, it is clear that the stand of the respondent no.6 is that the petitioner is a resident of Parowa Pazipar Pub Anganwadi Centre, while the respondent no.6 is a resident of Parowa Pazipar Anganwadi Centre.

Annexure-H to the affidavit-in-opposition filed by the respondent no.6 is a Certificate issued by the Headman of the village-Kardoitola, Mouza-Khata, District-Nalbari, which states that the petitioner is included within the area of Parowa Pazipar Pub No.217 Anganwadi Centre and the respondent no.6 is included within the area of Parowa Pazipar No.23 Anganwadi Centre.

The Official records are perused and it is seen that the Advertisement had been issued for filling up the vacant post of Anganwadi worker in the Parowa Pazipar Pub Anganwadi Centre and not for filling up the post of Anganwadi worker in Parowa Pazipar Anganwadi Centre. There is no number reflected in the Advertisement, either Nos.23 or 217 against the Anganwadi Centre. The list of vacant posts of Anganwadi workers under Nalbari ICDS Project, which has been made by the Child Development Project officer on 18.02.2019, shows the vacancy in respect of Parowa Pazipar Pub Anganwadi Centre. The applications submitted by the petitioner and the respondent no.6 is for the post of Anganwadi worker in Parowa Pazipar Pub Anganwadi Centre. The Comparative Statement of candidates for selection of Anganwadi worker under the Nalbari ICDS Project, 2019 shows that in respect of Parowa Pazipar Pub side Anganwadi Centre, the respondent no.6 had been selected.

....."

8. This Court in it's order dated 11.02.2021 passed in WP(C) No.3023/2020 had held that the opposite party no.1 (writ petitioner) should have been appointed to the post of Anganwadi Worker in respect of Parowa Pazipar Pub Anganwadi Centre and consequently the appointment order issued in favour of

the review petitioner was set aside. The State opposite parties thereafter issued the order dated 14.06.2021, releasing the review petitioner from service as Anganwadi Worker and appointing the writ petitioner in her place in Parowa Pazipar Pub Anganwadi Centre. As such, this Court is of the view that the issue pertained only to the post of Anganwadi Worker in Parowa Pazipar Pub Anganwadi Centre and the present case appears to be an appeal in the guise of a review petition. In the case of ***The State of West Bengal & Others vs. Kamal Sengupta & Another***, reported in ***(2008) 8 SCC 612***, the Supreme Court has held that a review cannot partake the character of an appeal. Thus in view of the above facts, this Court is of the view that no case for review has been made out.

9. The review petition is accordingly dismissed.

JUDGE

Comparing Assistant