

GAHC010240412022



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

Case No. : WP(C)/7591/2022

HIRANYA DEVI BORA
W/O SHIVA BORA,
R/O AIBHETIA PAHUKATA,
P.O.- AIBHETI,
P.S.- JAJORI,
DIST.- NAGAON, PIN- 782002.

VERSUS

THE GOVERNMENT OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT., SOCIAL
WELFARE DEPTT., DISPUR GUWAHATI- 06.

2:THE DIRECTOR
SOCIAL WELFARE
ASSAM
GUWAHATI- 01.

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

4:THE CHILD DEVELOPMENT PROJECT OFFICER
KHAGARIJAN ICDS PROJECT
NAGAON
ASSAM
PIN- 782001.

5:DIMPI BARUAH
W/O AJIT BORA

VILL.- PAHUKATA

P.O.- AIBHETI

DIST.- NAGAON

PIN- 782002

Advocate for the Petitioner : MS. S T BOKTH

Advocate for the Respondent : GA, ASSAM

Linked Case : I.A.(Civil)/772/2023

DIMPI BARUAH

W/O AJIT BORA

VILL.- PAHUKATA

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Advocate for : MR. P D NAIR
Advocate for : GA
ASSAM appearing for THE GOVERNMENT OF ASSAM AND 4 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

16.08.2023

Heard Mr. P.D. Nair, learned counsel for the applicant, who is arrayed as respondent no. 5 in the connected writ petition. Also heard Ms. S.T. Bokth, learned counsel for opposite party no. 1, who is the petitioner in the connected writ petition, as well as Mr. R. Dhar, learned Addl. Senior Government Advocate, representing opposite party nos. 1 to 4.

2) By filing this interlocutory application under Article 226(3) of the Constitution of India, the applicant, who is arrayed as respondent no. 5 in the connected writ petition filed by the opposite party no. 5, has prayed for vacation/ modification/ variation of the order dated 07.12.2022, passed by this Court in the connected writ petition. By the said order, the Court had directed, in the interim, that the selection and appointment of respondent no. 5 as Anganwadi Worker in Pahukata Anganwadi Centre shall remain stayed.

3) Upon hearing the learned counsel for the applicant

perused the materials available in the record.

4) It is seen that this Court, while granted interim relief by order dated 07.12.2022, has observed in paragraphs 3 and 4 thereof as follows:-

“3. The petitioner was earlier engaged as an Anganwadi Worker from November, 2019 onwards for a period of 2 years and 4 months in the said Pahukata Anganwadi Centre. A selection process was made pursuant to an undated notice requiring the eligible candidates to appear in an oral interview on 04.26.2022. In the selection process although the respondent No.5 was selected, the claim of the petitioner was rejected on the ground of being overage by taking note that the upper age limit is 44 years and the petitioner was marginally over the age of 44 years.

4. In the circumstance, a question would arise if the post was vacant from the year 2019 and the petitioner was working against such post as to why no direct recruitment process had taken place for more than two years, and further if the recruitment process did not take place for more than two years, where the post was vacant and the petitioner was made to work, whether the authorities ought to have given a consideration to condone the upper age of the petitioner. In the Instant case, it appears that the said consideration has not been given. Accordingly, no reason is forthcoming as to why it cannot be construed that the authority who conducted the selection could have manipulated the situation in such a manner that the petitioner becomes over age on the date when the actual process takes place.”

5) It is seen that the opposite party no. 5 had not annexed any appointment order in her favour by the competent authority. Moreover, had the opposite party no. 5 being already appointed, there was no reason for her to subject herself to a fresh interview for the post of Anganwadi Worker.

6) In the said regard, the stand of the opposite party no. 5 in her affidavit-in-opposition in this interlocutory application is to the effect that

she had participated in the interview on the basis of an undated and unsigned notice and that the authorities had not provided her with any eligibility criteria. She has also denied knowledge of advertisement dated 25.03.2023 concerning Khagorijan ICDS Project.

7) As per the stand taken by the opposite party no.4 i.e. The Child Development Project Officer, (CDPO for short), Khagorijan ICDS Project, Nagaon in para-4 of the affidavit-in- opposition filed in the connected writ petition, it has been denied that the opposite party no. 5 was working as an Anganwadi Worker at Pahukata Anganwadi Centre No. 21, by specifically stating that nobody allowed her to work as an Anganwadi Worker in the said Anganwadi Centre because one Late Mona Bora was serving in the said Anganwadi Centre as Anganwadi Worker till her death upto 20.12.2021. The specific stand of the opposite party no. 4 was to the effect that the purported monthly report of the said Pahukata Anganwadi Centre was signed by the opposite party no. 5 and that when the same came to the light of the Circle Supervisor, he had warned the opposite party no. 5 not to sign the monthly report in future.

8) Referring to the statement made by the respondent no. 4 in the said affidavit-in-opposition filed in the connected writ petition, the learned Addl. Senior Govt. Advocate has pointed out that after the death of Late Mona Bora, Anganwadi Worker of the said Anganwadi Centre 20.12.2021, the authorities had processed the matter of filling up the said post. Accordingly, the CDPO, Khagorijan ICDS Project, Nagaon had issued an advertisement vide notification no. CDPO(Khag) 452/2021-22/508 dated 25.03.2022. It has been specifically pleaded in para-8 of the affidavit-in-opposition filed by the opposite party no. 4 in the connected writ petition that after scrutinizing all the original

documents of the opposite party no. 5 it was found that she was 44 years 11 months and therefore, over-aged as the upper age limit for appointment to the post of Anganwadi Worker was 44 years as per Government guidelines. A copy of the said Guidelines, which was produced by the learned Addl. Senior Government Advocate was perused and returned. Thus, it was also pleaded that the applicant was duly selected and appointed as Anganwadi Worker in the said Anganwadi Centre.

9) This Court, by order dated 10.08.2023, had adjourned the proceedings of the connected writ petition to enable the opposite party no. 5 to produce her age certificate on the basis of which her candidature for Anganwadi Worker in Pahukata Anganwadi Centre was rejected on the ground that she was over-age beyond the upper age limit prescribed, which is 44 years. However, despite being given the said opportunity, the opposite party no. 5 did not produce her age certificate.

10) Therefore, as per the pleadings exchanged in the connected writ petition, no material has been produced by the opposite party no. 5 to show that she had been lawfully appointed as Anganwadi Worker in Pahukata Anganwadi Centre earlier for last 2 (two) years 4 (four) months. A specific statement has made by the opposite party no. 4 in his affidavit-in-opposition that previously, one Late Mona Das was working as Anganwadi Worker in the said Anganwadi Centre till her death on 20.12.2021. However, although in her affidavit-in-opposition filed in this interlocutory application, the opposite party no. 5 has denied the allegations, but despite being aware of the stand of the opposite party no. 4, the opposite party no. 5 has elected to withhold her appointment order by which she had worked in the said Anganwadi Centre allegedly for 2 years 4 months. Moreover, if the opposite party no. 5 had

rendered service allegedly for 2 years- 4 months, there was no reason for the opposite party no. 5 to withhold the proof of having received remuneration/ honourarium for rendering her service.

11) It is also surprising to note that although the opposite party no. 5 claims to have rendered service as Anganwadi Worker, she is not aware about Government guidelines as on 1st January of the year when the selection is to be made vide notification No.SWD.515/2017/18 dated 25.01.2019, issued by the Social Welfare Deptt., Govt. of Assam, limiting upper age for appointment as Anganwadi Worker at 44 years under Clause 1(iii) thereof relating to eligibility criteria.

12) The fact that is damning to the interest of the opposite party no. 5 is that in two numbers of monthly reports for the period from 1st September to 30th September, 2021 (annexed at pages 34 to 41 of the writ petition), and 01.10.2021 to 31.10.2021 (annexed at pages 42 to 49 of the writ petition) the name of the Anganwadi Worker is written as "Mona Bora". The said two documents has exposed that the opposite party no. 5 had portrayed a totally false and concocted case in the writ petition that she had rendered service as Anganwadi Worker for 2 years- 4 months.

13) Thus, on the basis of pleadings on record in the connected writ petition, the applicant has *prima facie* been able to satisfy the Court that facts in the connected writ petition were either suppressed and/or distorted and a factually incorrect picture had been portrayed in the connected writ petition by the opposite party no. 5, based on which the interim order dated 07.12.2022 was granted *ex parte* against the applicant. Moreover, despite being given an opportunity to the opposite party no. 5 to produce her age certificate vide order

dated 10.08.2023, passed in the connected writ petition, she has failed to produce the same so as to dispel the correctness of the decision of the authorities to reject her candidature on the ground that she was over-aged, being 44 years 11 months of age whereas the upper age limit for being appointed as Anganwadi Worker is 44 years. It is not at all believable that the opposite party no.5 had participated in the interview for the post of Anganwadi Worker in Pahukata Anganwadi Centre without any knowledge of the advertisement dated 25.03.2023, by which process was initiated to fill up the post of Anganwadi Worker/ Helper in as many as 10 (ten) Anganwadi Centres named therein, including Pahukata Anganwadi Centre.

14) Therefore, this present case is found to be a fit and proper case to forthwith vacate the interim order dated 07.12.2022, passed by the Court in the connected writ petition i.e. W.P.(C) 7591/2022. Resultantly, there would be no impediment for the opposite party nos. 1 to 4 to allow the applicant, namely, Dimpi Boruah to resume her duties as Anganwadi Worker in Pahukata Anganwadi Centre.

15) Thus, this interlocutory application stands allowed.

16) The applicant shall produce a certified copy of this order before the opposite party no. 4. Moreover, the learned Addl. Senior Government Advocate shall also communicate a downloaded order of this Court to the opposite party nos. 1 to 4 to bring it to the notice of the authorities.

17) It is clarified that the observations made in this order shall not prejudice the opposite party no. 5 when her connected writ petition is heard on merit.

JUDGE

Comparing Assistant