

GAHC010057012022



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

Case No. : WP(C)/2199/2022

MINAKSHI SARKAR
W/O- GOPINATH SARKAR, VILLAGE- RAMRAI KUTI PART-I, P.O-
SATRASAL, P.S- AGOMONI, DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY, GOVERNMENT OF
ASSAM, SOCIAL WELFARE DEPARTMENT
DISPUR, GUWAHATI-781006, ASSAM

2:THE DIRECTOR
SOCIAL WELFARE
ASSAM
UZANBAZAR
GUWAHATI-781001
DIST-KAMRUP (M)
ASSAM

3:THE DIST. SOCIAL WELFARE OFFICER

DHUBRI CUM CHAIRMAN
AWW AND AWH
SELECTION COMMITTEE
AGOMONI
DHUBRI
ASSAM

4:THE CHILD DEVELOPMENT PROJECT OFFICER

AGOMONI
ICDS PROJECT

DHUBRI
ASSA

Advocate for the Petitioner : MRS. R DEVI

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/3024/2022

SMT. MINAKSHI SARKAR
W/O SRI GOPINATH SARKAR
VILL-RAMRAI KUTI PART I
P.O.-SATRASAL
P.S.-AGOMANI
DIST-DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI-6

2:THE DIRECTOR
SOCIAL WELFARE DEPARTMENT ASSAM
UZAN BAZAR
GUWAHATI-1
3:THE DISTRICT SOCIAL WELFARE OFFICER
DHUBRI
CUM-CHAIRMAN
AWW AND AWH SELECTION COMMITTEE
AGOMANI
DHUBRI
ASSAM
4:THE CHILD DEVELOPMENT PROJECT OFFICER
AGOMANI ICDS PROJECT
AGOMANI
DIST-DHUBRI
ASSAM
5:BIJYOTI DAS
D/O PARIMAL CHANDRA DAS
VILL-RAMRAI KUTI PART I
P.O.-SATRASAL
P.S.-AGOMANI

DIST-DHUBRI
ASSAM

Advocate for : MRS. R DEVI

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 21/07/2023

Heard Ms. R. Devi, learned counsel for the writ petitioner in both the writ petitions. Also heard Mr. C.S. Hazarika, learned Additional Senior Government Advocate, Assam, appearing for the official respondents. None has appeared for the private respondent no. 5 in WP(C) 3024/2022.

The facts of the cases, in a nutshell, are that on 22/12/2020, the Child Development Project Officer (CDPO), Agomoni ICDS Project had issued an advertisement notice inviting applications for filling up the posts of Anganwadi Helper in as many as 6 (six) Anganwadi Centers coming within the jurisdiction of the Agomoni ICDS Project including 195 No. Rampurihati Anganwadi Centre.

Responding to the advertisement notice dated 22/12/2020, the writ petitioner herein had submitted her candidature. As per clause-3 of the advertisement notice, a candidate is required to be HSLC/HMLC Passed in order to apply for engagement as Anganwadi Helper. However, in case of non-availability of such qualified candidates, those candidates who have passed Class-IX, could also be selected provided, the School Certificate was countersigned by the Inspector of Schools and the mark-sheet was also submitted. The writ petitioner herein, had passed HSLC from West Bengal Rabindra Open University in the State of West Bengal and she had applied on the basis of such qualification.

After conclusion of the selection process in this case, a select list was prepared wherein, the name of the petitioner found place at Sl. No. 4. Subsequently, a public notice dated 26/11/2021 was also issued by the respondent no. 4 publishing the list of selected candidates on merit, by granting them 7(seven) days time to communicate their acceptance of voluntary service, failing which, the engagement will be automatically cancelled. At that stage, it appears that public complaints were received by the authorities pertaining to the selection of the writ petitioner. Consequently, the respondent no. 3 i.e. District Social Welfare Officer of Dhubri had issued a communication dated 30/11/2021 restraining the petitioner from joining as Anganwadi Helper in the 195 No. Rampurihati Anganwadi Centre until further orders. Aggrieved by the said communication, the petitioner had

approached this Court by filing WP(C) 2199/2022. However, during the pendency of the aforesaid writ petition, the authorities had decided to appoint the private respondent no. 5 as Helper in 195 No. Rampurihati Anganwadi Centre. The second writ petition i.e. WP(C) No. 3024/2022 has been instituted by the same petitioner assailing the appointment of the respondent no. 5, *inter-alia*, on the ground that without cancelling the order of appointment of the writ petitioner, the private respondent no. 5 could not have been appointed in the post of Anganwadi Helper in the aforesaid Anganwadi Centre.

In the counter affidavit filed by the respondent no. 4 in WP(C) 2199/2022, the reason for issuing the impugned communication dated 30/11/2021 has been furnished in paragraph 4, which is reproduced herein below for ready reference :-

“4. That with regard to the statements made in paragraph 2 of the writ petition, the deponent begs to state that it is admitted that the petitioner had been selected as Anganwadi Helper in 195 No. Rampurihati Anganwadi Centre under Agomni ICDS Project, Dhubri and it is also admitted that the petitioner was stopped from joining in the said post. However, it is denied that the respondent authority stopped the petitioner from joining on the ground alleged in the writ petition. Rather, the joining of the petitioner was stopped on the basis of legally valid grounds inasmuch as the petitioner was not at all eligible for the post of Helper under ICDS Project because as per the advertisement dated 22/12/2020 a candidate for the post of Helper should have qualification of HSLC/AHM examination pass from the Board of Secondary Education, Assam or its equivalent examination from a recognized board by the Government of Assam. But the writ petitioner did her HSLC examination from West Bengal Council of Rabindra Open Schooling and not from the Board of Secondary Education, Assam. Hence the writ petitioner was not at all eligible for the post of Anganwadi Helper.”

By producing a copy of the notification dated 25/01/2019 issued in the name of the Governor of Assam, through the Department of Social Welfare, Government of Assam, Mr. Hazarika submits that unless a candidate possess HSLC/AHM from the Board of Secondary Education Assam (SEBA) or its equivalent examination from a recognized Board by the Government of Assam, such candidate would not be qualified for being appointed as Anganwadi Helper. In the present case, since the petitioner had obtained her HSLC from an organization, which did not meet the norms as laid down by the notification dated 25/01/2019, she was not eligible for appointment and hence, was not allowed to join.

Ms. R. Devi, learned counsel for the petitioner, on the other hand, has submitted that in the

advertisement notice dated 22/12/2020, no such condition had been laid down. As such, the ground on which the petitioner has been denied appointment, is illegal. It is also her submission that without cancelling the appointment of the petitioner, the respondent no. 5 could not have been appointed, *moreso*, since there is no transparency in the process through which she was selected.

I have considered the submissions made at the Bar and have also gone through the materials available on record.

There is no doubt or dispute about the fact that that the petitioner has relied upon HSLC pass certificate obtained by her from an institution located in the State of West Bengal. As per clause-3 of the advertisement notice dated 22/12/2020, a candidate was required to possess HSLC/HMLC pass certificate for being appointed as Anganwadi Helper. However, Clause – 1(v) of the notification dated 25/01/2019 lays down as follows :-

“1(v) - *The candidate for the post of Helper should have the qualification of HSLC/AHM examination passed from the 'Board of Secondary Education, Assam' or its equivalent examination from a recognized Board by the Govt. of Assam. In case, there is no such qualified candidate, educational qualification may be relaxed up to Class-IV pass. In such case, the educational qualification issued by the School Authority must be countersigned by the concerned Inspector of Schools.*”

The notification dated 25/01/2019 had been issued prior to the issuance of the advertisement notice dated 22/12/2020. The notification dated 25/01/2019 having been issued in the name of the Governor of Assam, such executive instruction, in the opinion of this Court, would have the force of a statute. Therefore, it would have overriding effect on the qualification norms laid down in the advertisement notice dated 22/12/2020. In other words, since the notification dated 25/01/2019 had clearly provided that HSLC/AHM examinations would have to be passed from the 'SEBA' or its equivalent examination from a recognized Board by the Government of Assam, the writ petitioner having passed HSLC from West Bengal was clearly not eligible since she did not fulfill the aforesaid norm. The notification dated 25/01/2019 is not under challenge. Under the circumstances, it cannot be said that the refusal to allow the petitioner to join was arbitrary or actuated by malice.

It is also to be noted herein that the respondent no, 4 had merely published the list of selected candidates. No order of appointment had been issued in favour of the petitioner. Therefore, the submission of Ms. R. Devi, learned counsel for the writ petitioner that without cancelling the order of

appointment of the petitioner, the private respondent could not have been appointed, also does not merit acceptance by this Court.

Since the petitioner was apparently not eligible to be appointed as Anganwadi Helper as per clause 1(v) of the notification dated 25/01/2019, the question of validity of the selection process of the private respondent no. 5 need not be gone into in the present proceeding.

For the reasons stated above, this Court does not find any infirmity on the action of the departmental authorities in not allowing the petitioner to join in the post of Anganwadi Helper on the grounds stated in the affidavit. Consequently, both the writ petitions are held to be devoid of any merit. The same are accordingly dismissed.

There would be no order as to costs.

JUDGE

sukhamay

Comparing Assistant