

GAHC010180802021



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

Case No. : WP(C)/5836/2021

SUPRIYA BEGOM BARBHUIYA
D/O SABUR UDDIN BARBHUIYA,
VILLAGE NA TANPUR, PO KALAIN, DIST CACHAR, ASSAM, 788815

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SOCIAL WELFARE DEPARTMENT, DISPUR, GUWAHATI 06

2:THE DIRECTOR OF SOCIAL WELFARE

ASSAM
UZAN BAZAR
GUWAHATI 01

3:THE DISTRICT SOCIAL WELFARE OFFICER

CACHAR
SILCHAR
ASSAM
788101

4:THE CHILD DEVELOPMENT PROJECT OFFICER

KATIGORAH ICDS PROJECT
PO KATIGORAH
DIST CACHAR
ASSAM
788815

5:ROUSANARA BEGUM BARBHUIYA

W/O SAMSUL HOQUE BARBHUIYA
VILLAGE NATANPUR
PO KALAIN
DIST CACHAR
ASSAM
78881

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/5110/2020

WAHIDA BEGUM BARBHUIYA
W/O- JAMIL AHMED BORBHUYIA
R/O- VILL- NATANPUR
P.O. KALAIN
PIN- 788815
P.S. KATIGARAH
DIST.- CACHAR
SILCHAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPTT.
DISPUR
GHY-6

2:THE DIRECTOR
SOCIAL WELFARE ASSAM
UZAN BAZAR
DIST.- KAMRUP (M)
ASSAM
GHY-1
3:THE PROGRAMMER OFFICER
DIVISIONAL ICDS CELL
CACHAR
P.O. SILCHAR
DIST.- CACHAR

ASSAM
PIN- 788005
4:THE DIVISIONAL SOCIAL WELFARE OFFICER
SILCHAR
DIST.- CACHAR
ASSAM
PIN- 788005
5:THE CHILD DEVELOPMENT PROJECT OFFICER
KATIGORAH ICDS PROJECT
KALAIN
DIST.- CACHAR
ASSAM
PIN- 788005
6:ROUSHANARA BEGUM BARBHUIYAN
W/O SAMSUL HAQUE BARBHUIYAN
VILL. NATANPUR
P.O. KALAN PIN 788815
CACHAR.

Advocate for : MR D J HALOI
Advocate for : GA ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 14-03-2023

Heard Mr. D.J. Haloi, learned counsel for the writ petitioner in W.P.(C) No. 5110/2020 and Mr. M.J. Quadir, learned counsel for the writ petitioner in W.P.(C) No. 5836/2021. Also heard Mr. T.C. Chutia, learned Addl. Sr. Govt. Advocate, Assam appearing on behalf of the official respondents in both these writ petitions.

The controversy involved in these writ petitions pertaining to the procedure adopted for selection and appointment of Anganwadi Worker for the Anganwadi Centre 151 No. North Natanpur Anganwadi Centre. On 25-11-2016 an advertisement was issued

for filling up the post of Anganwadi Worker in the aforesaid Anganwadi Centre, pursuant whereto, both the writ petitioners along with the private respondent Roushanara Begum Barbhuiya had participated. Be it mention herein that Roushanara Begum Barbhuiya has been impleaded as respondent No. 6 in W.P.(C) No. 5110/2020. She has also been arrayed as a party respondent in W.P.(C) No. 5836/2021. On conclusion of the selection process, the name of the respondent No. 6, i.e. Roushanara Begum Barbhuiya was recommended for appointment as Anganwadi Worker. Accordingly, order of appointment was also issued in her favour. Assailing the appointment of the respondent No. 6 as Anganwadi Worker both these writ petitions have been filed. Both the petitioners have claimed that they had scored higher marks than the private respondent in the interview process and as such, the private respondent No. 6 could not have been selected for appointment in the post of Anganwadi Worker.

Responding to the averments made in the writ petition, the official respondents have filed a common affidavit covering both the writ petitions wherein, it has been mentioned that in the interview process, Smti. Supriya Begom Barbhuiya, i.e. the writ petitioner in W.P.(C) No. 5836/2021 had scored the highest marks, but since she was found to be non-resident of the local area/ village of the Anganwadi Centre, her case was not considered. Insofar as the candidature of the private respondent Roushanara Begum Barbhuiya is concerned, she had scored the second highest marks but on scrutiny of the records, it was found that she had crossed the age 44 years as on 01-01-2016, i.e. the first day of year in which the advertisement was issued. As such, as per the terms of the advertisement, she was over-aged. The petitioner in W.P.(C) No. 5110/2020, i.e. Wahida

Begum Barbhuiya was the third highest scorer and she also meets the eligibility requirement as prescribed by the advertisement notice dated 25-11-2016. According to Mr. Chutia, learned Addl. Sr. Govt. Advocate, Assam the writ petitioner in W.P.(C) No. 5110/2020 is candidate who ought to have been appointed as Anganwadi Worker in this case. If the said stand of Mr. Chutia is accepted, then obviously the appointment of the private respondent would have to be set aside and a writ of mandamus would have to be issued to appoint the petitioner in W.P.(C) No. 5110/2020, i.e. Wahida Begum Barbhuiya as the Anganwadi Worker.

However, the said submission has been opposed by Mr. Quadir, learned counsel for the writ petitioner in W.P.(C) No. 5836/2021 to contend that his client had not only scored higher marks but is also a local resident of the revenue village and therefore, she was erroneously held to be an outsider. In support of his argument Mr. Quadir has relied upon and referred to a decision of the Division Bench passed in the case of ***Sabita Begum Vs. State of Assam***, reported in ***(2018) 1 GLT 816***.

On a careful scrutiny of the materials available on record, I find that the advertisement dated 25-11-2016 lays down the eligibility criteria pertaining to the local area requirement, which is extracted here-in-below for ready reference:

- (b) *The candidate for the post of Anganwadi Worker (AWW), Anganwadi Helper (AWH) in Anganwadi Centre shall be a local women residing in the local village and within the functional area of the concerned Anganwadi Centre. The resident of the candidates for the post of Anganwadi Worker (AWW), Anganwadi Helper (AWH) of the concerned Anganwadi centre must be from the said locality within the functional area of concerned Anganwadi Centre. So that the candidates belong to the concerned area only can apply.*

On 21-07-2016, the Govt. of Assam in the Social Welfare Department had issued a circular which lays down the definition of “functional area” of Anganwadi Centre/ Mini Anganwadi Centre, which is reproduced herein-below for ready reference:-

“c) Functional Area of Anganwadi Centre/ Mini Anganwadi Centre :

I. The Functional Area of the Anganwadi Centre/ Mini Anganwadi Centre is the area of the village/ hamlet encompassing the identified household of the village/ hamlet and registered in the Family Details Register and reflected in the Social Map.

II. In case of Mini Anganwadi Centre is carved out of an existing Anganwadi Centre due to excess population/ geographical barrier etc. the household to be included in the Mini Anganwadi Centre shall have to be deleted from the existing Anganwadi Centre's Family Details Register. The deleted households shall be the Functional Area of the Mini Anganwadi Centre in such case and a new Social Map will be prepared for the Mini Anganwadi Centre.”

The definition of the functional area of Anganwadi Centre, as contained in the notification dated 21-07-2016, has not been altered in the subsequent Govt. notification dated 25-01-2019. From the above, it is apparent that a revenue village is not included in the definition of functional area for Anganwadi Centre.

The decision in the case of ***Sabita Begum (Supra)*** of the Division Bench was not rendered after considering the notifications dated 21-07-2016 and 25-01-2019 wherein the expression “revenue village” is not included. As such, the aforesaid decision, relied upon by Mr. Quadir, in the opinion of this Court, would be of no assistance to him in the facts of the case.

Since the writ petitioner in W.P.(C) No. 5836/2021 is not a resident of the functional area of the Anganwadi Centre as per the criteria laid down in the advertisement, she cannot be appointed in the post of Anganwadi Worker even if she had scored higher

marks. The private respondent No. 6 was admittedly over-aged and therefore, she was also ineligible for appointment in the said post. As such, the respondent authorities could not have issued the order of appointment in her favour.

Since there is no dispute about the fact that the two other candidates scoring higher marks than the petitioner in W.P.(C) No. 5110/2020 were found to be ineligible under the advertisement notice dated 25-11-2016 and since there is no wrangle at the bar that the writ petitioner Wahid Begum Barbhuiya who was eligible under the advertisement notice, this Court is of the unhesitant opinion that the writ petition filed by her deserves to be allowed.

In the result the W.P.(C) No. 5110/2020 succeeds and is hereby allowed. The appointment of the respondent No. 6 is hereby set aside.

The concerned authorities are directed to issue the order of appointment in favour of the writ petitioner Wahida Begum Barbhuiya as expeditiously as possible but no later than 60 days from the date of receipt of a certified copy of this order.

In view of the determination made hereinabove, the W.P.(C) No. 5836/2021 stands answered accordingly.

Both the writ petitions stand disposed of.

JUDGE

GS

Comparing Assistant