

GAHC010238202017



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

Case No. : WP(C)/3919/2017

RANJU TALUKDAR THAKURIA
W/O- RAMESH THAKURIA, VILL and P.O- CHANMAGURI, DIST- KAMRUP,
ASSAM

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
SOCIAL WELFARE DEPTT., DISPUR, GUWAHATI- 781006

2:THE DIRECTOR OF SOCIAL WELFARE
ASSAM
UZAN BAZAR
GUWAHATI-01

3:THE DISTRICT SOCIAL WELFARE OFFICER
KAMRUP DIST
GUWAHATI
ASSAM

4:CHILD DEVELOPMENT PROJECT OFFICER
ICDP
KAMALPUR-RANGIA
DIST- KAMRUP
ASSAM

5:MOLAYA SALOI
W/O- DURGA RAM SALOI
R/O- VILL- CHANGMAGURI
P.O- CHANMAGURI
DIST- KAMRUP
ASSA

Advocate for the Petitioner : MR.M SARMA

Advocate for the Respondent : MR.P K MAZUMDARR-5

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 20/09/2023

Heard Ms. K. Devi, learned counsel for the petitioner. Also heard Mr. R. S. Baruah, learned counsel for the respondents.

2. This writ petition is filed by the petitioner, who is aggrieved by the order dated 07.07.2015 passed by the Director of Social Welfare, Assam. The petitioner as well as the private respondent, in response to an advertisement dated 10.09.2009 issued by the Department of Social Welfare, Office of Integrated Child Development Project, Kamalpur-Rangia, (ICDS) project invited applications from intending female candidates for the post of Anganwadi Worker and Helpers under various Gaon Panchayats falling under Rangia-Kamalpur under ICDS project against the New/ Additional Centers. In response to this advertisement both the petitioner and the private respondent along with other similarly situated candidates are applied.

3. It is submitted by the learned counsel for the petitioner that one of the conditions prescribed in the advertisement is that the '*candidates must be a permanent resident of the area nearest to the centre.*' The learned counsel for the petitioner submits that pursuant to the selection process the private respondent was appointed overlooking the claim of the petitioner as her residence is nearer to the Anganwadi Centre. The concerned Anganwadi Centre

is the No.21 Chanmaguri Koch Chupa Anganwadi Centre under Kamalpur-Rangia ICDC Project. The learned counsel for the petitioner submits that the petitioner's residence is closer to the said Anganwadi Centre and therefore the selection and appointment of the private respondent overlooking her claim is contrary to the Advocate itself.

4. Being aggrieved the petitioner approached this Court by filing WP(C)/3182/2011. That writ petition was disposed of with a direction to the respondent No.2, namely the Director of Social Welfare to make an enquiry into the matter and thereafter pass a speaking order. Pursuant to the order passed by this Court the Director Social Welfare vide the impugned order dated 07.07.2015 relying upon the enquiry made by the concerned CDPO passed the speaking order holding that the claim of the present petitioner cannot be accepted. Being aggrieved the present writ petition has been filed.

5. Notices in the matter were issued as far back as 23.06.2017. Pursuant thereto the respondent No.5 was also represented by a counsel and has filed an affidavit contesting the claims of the petitioner. But the Government did not file any response to the contentions made by the petitioner. In spite of several opportunities granted, no affidavit has been filed by the department.

6. Upon hearing the learned counsels for the parties and upon due perusal of the pleadings on record, this Court is of the view that the matter need not be kept pending for want of instructions from the department counsel. A careful perusal of the advertisement dated 10.09.2009 reveals that there is a specific clause being in Clause No.2 in the advertisement which prescribes that candidates must be permanent resident of the area nearest to the centre.

7. The impugned order dated 07.07.2015 reflects that there was a direction

by the Director of Social Welfare to the CDPO, Kamalpur-Rangia ICDS Project to submit the relevant records, however the same was received by the Director on 16.06.2015. The impugned order also reflects that the old survey records of all the 4 (four) Anganwadi Centres were destroyed in a devastating flood in the year 2012 and therefore these survey records for the year 2012 could not be furnished. And on that basis without the relevant records the impugned order was passed rejecting the claim of the petitioner.

8. Having heard the learned counsels for the parties and upon careful perusal of the pleadings available, this Court is of the view that the impugned order dated 07.07.2015 has been passed without reference to the relevant records and without any finding as to whether who between the petitioner and the private respondent satisfies the requirement of clause No.2 in the advertisement dated 10.09.2009 of being a permanent resident nearest to the concerned Anganwadi Centre. The report of the Director of Social Welfare reveals that the survey records are not available.

9. Accordingly the writ petition stands disposed of with a direction to the respondent No.2, namely, the Director of Social Welfare, Assam to cause an enquiry into the *interse* claims made by the petitioner and the private respondent regarding their permanent residences in the local area of the Anganwadi Centre and the relative distance from the Anganwadi Centre to their respective houses. This enquiry will be caused by the Director of Social Welfare now re-designated as the Directorate of Women and Child Development, Government of Assam through the office of the concerned Deputy Commissioner/Circle Officer. The Office of the Deputy Commissioner/Circle Officer will conduct the enquiry and furnish the report on the basis of the information procured during such an enquiry, to the Directorate of Women and

Child Development, Government of Assam. The Directorate of Women and Child Development, Government of Assam will thereafter pass the necessary orders in the matter. Prior to passing such orders an opportunity of hearing to the petitioner as well as to the respondent No.5 be also furnished. Thereupon a speaking order will be passed disposing of the *interse* claims of the parties before this Court. It is directed that while making the survey/enquiry, the records pertaining to the concerned area must be taken into consideration with effect from 10.09.2009, namely the date of the advertisement till the date of passing of the impugned order by the Director, Social Welfare which is 07.07.2015.

10. Writ petition in terms of the above stands disposed of. The impugned order dated 07.07.2015 is hereby set aside and the matter is remanded back to the Directorate of Women and Child Development, Government of Assam to comply with the directions as indicated above.

11. The directions, as indicated be completed within a period of 60(sixty) days from the date of receipt of certified copy of this order.

JUDGE

Comparing Assistant