

GAHC040010902021



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

WP(C) No. 376(AP)/2021

Mrs. Toter Riba Bam,
W/o Shri bommin Bam,
Resident of Bam village,
P.O. & P.S.: Basar,
District: Leparada, Arunachal Pradesh.

...PETITIONER

VERSUS

1. The State of Arunachal Pradesh,
represented by the Secretary, Women & Child Development,
Government of Arunachal Pradesh, Itanagar.

2. The Child Development Project Officer,
Basar ICDS Project, Leparada District,
Arunachal Pradesh, Basar.

...RESPONDENTS

Advocate for the Petitioners : Mr. T. T. Tara, Adv.

Advocate for the Respondent : Mr. I. Riram, G.A.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 04.06.2024

Date of Judgment & Order : 14.06.2024

JUDGMENT & ORDER (CAV)

Heard Mr. T. T. Tara, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Government Advocate for the State respondents.

2. This is an application under Article 226 of the Constitution of India for issuance of writ in the nature of mandamus or certiorari and/or any other appropriate writ, order or direction of like nature.

3. The present writ petition has been filed challenging the legality and validity of the impugned Advertisement, being Memo No. BSR/ICDS/Esstt-02/2021-22/169, dated 27.10.2021, issued by the Child Development Project Officer, Basar ICDS Project by inviting eligible candidate from Bam Hikar Centre to fill up vacant post of Anganwadi Worker, as well as impugned reply dated 02.11.2021.

4. The case of the petitioner, in brief, is that in pursuant to the Advertisement, being Memo No. BSR/ICDS/Esstt-02/2021-22/169, dated 27.10.2021, issued by the Child Development Project Officer, Basar ICDS Project (respondent No. 2 herein), for filling up the post of Anganwadi Worker at Bam Hikar Centre, the petitioner, being eligible candidate having requisite

qualification, also applied for the said post with required documents. However, the respondent No. 2 denied the application of the petitioner citing the reason that she is from Yorte area and not from Hikar area of Bam Village. Thereafter, the petitioner submitted an application/representation dated 29.10.2021 for cancellation of aforesaid Advertisement on the ground that the advertisement in question is a violation of the Government of India Guidelines No. D.O. No. 1-13/2010-CD.1, dated 18.10.2010, whereby the selection of Anganwadi Workers under the ICDS scheme should be a lady from the local village and acceptable in the local community. However, the respondent No. 2 had rejected the application submitted by the petitioner vide its reply dated 02.11.2021 stating that the said Government of India Guidelines is changed under the new guideline of "Arunachal Pradesh Terms and Conditions of Services of Anganwadi Workers and Helpers their roles and responsibilities Guidelines 2019" (hereinafter referred to as 'Guidelines of 2019'). Thereafter, the petitioner again submitted another application/representation on 03.11.2021 for furnishing the Guidelines of 2019, however same has not been provided by the respondent No. 2. Hence, this writ petition under article 226 of the Constitution of India has been filed praying for setting aside the impugned Advertisement, dated 27.10.2021, issued by the Child Development Project Officer, Basar ICDS Project, being illegal and arbitrary, and also for a direction to the respondent authorities to allow the petitioner to participate in written test interview for the post of Anganwadi Worker which is laying vacant at Hikar Centre, Bam Village for the ends of justice and equity.

5. It is submitted by Mr. T. T. Tara, learned counsel for the petitioner, that the impugned Advertisement dated 27.10.2021 as well as the impugned rejection Order dated 02.11.2021 is in contravention of the Government of India

Guidelines for selection of Anganwadi Worker, issued on 18.10.2010, and as such, the impugned Advertisement issued by the respondent authority by inserting the given terms and conditions is illegal and arbitrary as because in the said guideline of Government of India, the Anganwadi Worker should be a lady from a local village and acceptable in local community. He further submitted that in Old Bam Village, there are as many as 5 (five) Anganwadi Centre, namely, Yorte Centre, Hikar Centre, Check Post Centre, Bane Centre and Old Bam (Pomte) Centre, and in all those Centre, the workers and helpers are not from their area where the Anganwadi Centre are located, though all are inhabitant of Bam Village and they are appointed as Anganwadi workers and helpers of aforesaid Centre of Old Bam Village. Thus, the impugned Advertisement and Reply of rejection are irrational and perverse and is violation of principle of natural justice and administrative fair play as well as in clear violation of Article 14, 16, 21 & 309 of the Constitution of India, which is liable to be set aside. Accordingly, it is prayed for issuance of writ in nature of mandamus directing the respondent authorities to cancel/rescind the impugned Advertisement dated 27.10.2021 by allowing the petitioner to participate in the written test for vacant post of Anganwadi Worker of Bam Hikar Centre.

6. He further submitted that as per Section 20 of the Representation of People Act, 1950, the concept of resident is transitory and even when qualified by the word "ordinarily" the word "resident" would not result in a construction having the effect of a requirement of the person using a particular place for dwelling always or on permanent uninterrupted basis.

7. For ready reference, Section 20 of the Representation of People Act, 1950 is quoted hereinbelow:

“20. Meaning of "ordinarily resident":— (1)A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein.

(1A)A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(1B)A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.

(2)A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not by reason thereof be deemed to be ordinarily resident therein.

(3)Any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date.

(4)Any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the provisions of this sub-section apply, shall be deemed to be ordinarily resident on any date in the constituency in which, but for the holding of any such office he would have been ordinarily resident on that date.

(5)The statement of any such person as is referred to in sub-section (3) or sub-section (4) made in the prescribed form and verified in the prescribed manner, thatbut for his having the service qualification or but for his holding any such office as is referred to in sub-section (4) he would have been ordinarily resident in a specified place on any date, shall, in the absence of evidence to the contrary, be accepted as correct.

(6) The wife of any such person as is referred to in sub-section (3) or sub-section (4) shall if she be ordinarily residing with such person be deemed to be ordinarily resident on in the constituency specified by such person under sub-section (5).

(7) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission.

(8) In sub-sections (3) and (5) "service qualification" means—

(a) being a member of the armed forces of the Union; or

(b) being a member of a force to which the provisions of the Army Act, 1950 (46 of 1950), have been made applicable whether with or without modifications; or

(c) being a member of an armed police force of a State, who is serving outside that State; or

(d) being a person who is employed under the Government of India, in a post outside India."

8. In this context, Mr. I. Riram, learned Government Advocate, has submitted that after the notification of the "Arunachal Pradesh Terms and Conditions of Services of Anganwadi Workers and Anganwadi Helpers their Role and responsibility Guideline 2019" vide Notification No. WCD-32/2017 (E), dated 23.11.2019, the notification of the Central Government is discontinued and the State Government is following the said Guidelines of 2019 in the State of Arunachal Pradesh. He further submitted that there are 5 (five) numbers of Anganwadi Centre in Bam Village and therefore, the Anganwadi Workers were selected from Bam Village irrespective of their feeder area of Anganwadi Centre. These recruitments were done before the Guidelines of 2019 framed by the State Government. However, after the notification of the Guidelines of 2019, the State Government is following the same for conducting the selection process of

Anganwadi Workers and as per the said Guidelines of 2019, the candidates should be an ordinary resident of village where the Anganwadi Centre is located or belongs to the feeding villages/areas of the Anganwadi area. However, if the candidates are not available within the feeder area, the applications can be invited from the desirous candidates residing within the concerned Gram Panchayat in case the feeder area falls in 2 (two) Gram Panchayats. He further submitted that there are 5 (five) Anganwadi Centre in Bam Village and as such, the candidates from feeder area should be given first preference and if no suitable candidate is available in the feeder area of Anganwadi Centre then the candidates from Gram Panchayat will be considered. Accordingly, he submitted that the impugned Advertisement for recruitment of the Anganwadi Worker/Anganwadi Helper as well as the impugned Rejection Order of Application of the petitioner, issued by the respondent No. 2, is in accordance with the provision of the Guidelines of 2019 notified by the State Government in the matter of recruitment procedure and service condition of Anganwadi Workers and Anganwadi Helpers. Since the residence of the petitioner does not fall under the feeder area of the Bam Hikar Anganwadi Centre, the petitioner has no merit unless no other candidate within the feeder area has applied for the post Anganwadi Worker of Bam Hikar Anganwadi Centre. Accordingly, he submitted that in such a situation, the application of the petitioner does not deserve for any consideration and hence, it was dismissed by the respondent No. 2.

9. After hearing the submissions made by the learned counsels for both sides, I have perused the case record as well as the annexures, especially the Notification and the Advertisement of Recruitment, annexed along with the petition.

10. It is seen that as per the Advertisement dated 27.10.2021, issued by the Child Development Project Officer, Basar ICDS Project, the application was invited from the eligible candidates to fill up the vacant post of Anganwadi Worker at Bam Hikar Anganwadi Centre and as per the terms and conditions, the candidates must be inhabitant of Bam Hikar area household. But, since the petitioner is not the resident of the Bam Hikar area, rather she is a resident of Old Bam Village, and hence, her candidature was rejected by the respondent authority only with the view that her area does not fall or come under the jurisdiction of Bam Hikar area. Subsequently, her application/ representation was also cancelled/rejected by the respondent authority in terms of the new Guidelines of 2019 of Anganwadi Worker/Anganwadi Helper.

11. As per the submission of the learned counsel for the petitioner, in Old Bam Village, there are 5 (five) Anganwadi Centre, namely, Yorte Centre, Hikar Centre, Check Post Centre, Bane Centre and Old Bam (Pomte) Centre, wherein the Anganwadi Worker/Anganwadi Helper are appointed from nearby areas and they are not from the area where the Anganwadi Centre are located and all are the inhabitant of the Old Bam Village. However, it is seen that the appointment orders of those Anganwadi Workers/Anganwadi Helpers were passed prior to the Notification/Guidelines of 2019 of the Government of Arunachal Pradesh and it is a fact that as per the Government of India Guidelines for selection of Anganwadi Worker, issued on 18.10.2010, the only criteria was that the Anganwadi Worker should be a lady from the local village and acceptable in the local community. However, from the new Guidelines of 2019 of the State Government, it is seen that if the candidates are not available within the feeder area, the application can be invited from the desirous candidate residing within the concerned Gram Panchayat in case of feeder area falls in 2 (two) Gram

Panchayat. Thus, the suitable candidate from the feeder area has to be given first preference and if no suitable candidates are available for the feeder area of the Anganwadi Centre, the candidates from the Gram Panchayat will be considered. But the application of the petitioner was rejected on the ground that she is not the resident of the feeder area of Bam Hikar Anganwadi Centre. However, as per the Guidelines of 2019, her candidature may be considered if no such suitable candidate is found to be appointed in the vacant post of Anganwadi Worker/Anganwadi Helper in the area of Bam Hikar Centre. Accordingly, it is seen that presently the earlier notification of the Central Government is discontinued and the new Guidelines of 2019, issued by the Government of Arunachal Pradesh, is adopted for appointment of any Anganwadi Worker/Anganwadi Helper in the specified Anganwadi Centre and thus, the candidature of the present petitioner was rejected only on the ground that she is not the person from the feeder area of Bam Hikar Centre following the new Guidelines of 2019 of Government of Arunachal Pradesh.

12. In view of the entire discussions made above and also considering the entire aspects of the case, I find that no illegality or irregularity has been committed by the respondent authority while rejecting the application of the present petitioner and there could not be any reason for a fresh advertisement which was issued as per the new Guidelines of 2019 of Government of Arunachal Pradesh. Hence, the present writ petition, being devoid of merit, stands dismissed. However, there shall be no order as to cost.

13. In terms of above, this writ petition stands disposed of.

JUDGE

Comparing Assistant