

GAHC010117312015



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

Case No. : WP(C)/3480/2015

MRS. BINNAT NAHAR
W/O NAZRUL ISLAM R/O NIZ DHING, P.O. NIZ DHING, DIST. NAGAON,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
SOCIAL WELFARE DEPARTMENT, DISPUR, GUWAHATI-06.

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

3:THE DISTRICT SOCIAL WELFARE OFFICER

MORIGAON
P.O. and DIST. MORIGAON
ASSAM.

4:THE DEPUTY COMMISSIONER

MORIGAON
P.O. and DIST. MORIGAON
ASSAM.

5:THE CHILD DEVELOPMENT PROJECT OFFICER

MOIRABRI ICDS PROJECT
P.O. MOIRABARI
DIST. MORIGAON

ASSAM.

6:MUSSTT. ANJUWARA BEGUM
W/O SAIFUL ISLAM
VILL and P.O. NIZ DHING
DIST. NAGAON
ASSAM
PIN - 782123.

7:SAMINA KHATUN @ SMTI SHAMINA AKHTARA

WIFE OF AIJUL HAQUE
R/O
NIZ DHING
P.O. NIZ DHING
DIST. NAGAON
ASSAM

Advocate for the Petitioner : MR. M KHAN, MRJ RAHMAN

Advocate for the Respondent : MR.S HOQUER-6, MR.K R PATGIRI,MR A HAQUE(R-6),MR.B K SHARMA(R-1,2,3,&5),MR.M U MAHMUD(R-6),GA, ASSAM(R4),MS.A MEDHI (R-6),SC, SOCIAL WELFARE,MR.A DAS(R-6),MR.A RAHMAN(R-6)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order (Oral)

Date : 30.07.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Ms. M. Battacharjee, learned Addl. Senior Government Advocate, Assam appearing for the respondents no. 1 to 4 and Mr. M. U. Mahmud, learned counsel for the respondent no. 6 as well as Mr. K. R. Patgiri, learned counsel appearing for the respondent no. 7.

2. The petitioner,in the present proceeding has presented a challenge to an order dated 14.05.2015, issued by the Director, Social Welfare, Assam

cancelling the engagement of the petitioner herein as Anganwadi Helper in No. 22 Niz Dhing 2 Anganwadi centre and requiring the matter to be placed before the Project Level Selection Committee, to select the next suitable candidate for engagement as Anganwadi Helper in the said Anganwadi centre.

3. As projected in the writ petition, the petitioner herein in pursuance to an advertisement dated 07.09.2007, issued by the Commissioner and Secretary, Social Welfare Department, inviting applications from eligible candidates, amongst others, for engagement as Anganwadi Helper in No. 22 Niz Dhing 2 Anganwadi centre, submitted her application, complete in all respects. The petitioner and other candidates, who had applied in pursuance to the said advertisement for the engagement in question, were called for an interview which was scheduled on 23.09.2007 in the office of the respondent no. 5 herein. On conclusion of the selection, a select list came to be so published and the name of the petitioner herein was placed at Serial No. 2 in the select list, while the name of the respondent no. 6 figured at Serial No. 4 and the respondent no. 7 was placed at Serial No. 1 on merits.

4. It is contended that the respondent no. 7 having expressed that she was not so interested for such engagement, the petitioner being the next candidate on merit came to be engaged as Anganwadi Helper in the said Anganwadi centre, vide issuance of a communication dated 28.09.2007. The petitioner herein, accordingly, accepted the engagement and joined the said Anganwadi centre as its Anganwadi Helper on 29.09.2007.

5. The respondent no. 6 herein, being aggrieved by the selection and engagement of the petitioner herein, had approached this Court by way of

instituting WP(C)/4743/2014.

6. This Court, vide order dated 02.02.2015, on consideration of the issues as arising therein, in the light of the submission advanced by the parties to the proceeding, proceeded to dispose of the writ petition, noticing that disputed questions of fact were involved in the matter and accordingly, an independent body was required to verify whether the respondent no. 5 i.e. the present petitioner is a resident of Niz Dhing Moktab School area/Anganwadi Centre. Accordingly, the Deputy Commissioner, Morigaon, was directed to verify the residential status of the present petitioner as well as the respondent no. 6 and to submit his report within the period mandated therein, to the Director of Social Welfare, Assam; who, basing on the said report would be required to take appropriate action in the matter in accordance with law.

7. It is seen that in terms of the directions passed by this Court, the Deputy Commissioner, Morigaon, on carrying out the enquiry through the Circle Officer, Dhing Revenue Circle, had submitted his report in the matter on 10.03.2015. Thereafter, the Director of Social Welfare, Assam, on considering the said report and also upon hearing the present petitioner and the respondent no. 6 herein, proceeded to conclude that the petitioner herein as per the enquiry report as submitted by the Deputy Commissioner, Morigaon, that the petitioner was a resident of Ward No. 10 under Dhing Town Committee. It was further held that the petitioner could not bring on record, document in support of her claim that her residence was within the concerned Anganwadi area.

8. In view of the said conclusion, the engagement of the petitioner herein

as Anganwadi Helper of the said Anganwadi Centre was interfered with and the respondent no. 5 was directed to place the matter before the Project Level Selection Committee to select the next suitable candidate for engagement in the said Anganwadi centre. Being aggrieved by the said order dated 14.05.2015; the petitioner had instituted the present proceeding.

9. The learned counsel for the petitioner, by referring to the statement as available in the writ petition has contended that the enquiry report as submitted by the Deputy Commissioner, Morigaon, was not furnished to her. However, she had contended that the jurisdictional Circle Officer, who had conducted the enquiry, had required her to submit her documents in the matter to establish that she was an inhabitant within the area covered by the said Anganwadi centre, which were duly submitted by her, but not appreciated in a proper manner.

10. Mr. Khan, learned counsel for the petitioner by referring to the directions as passed by this Court, vide the order dated 02.02.2015 in WP(C)/4743/2014 has contended that the direction being issued to the Deputy Commissioner, Morigaon, to carry out the said enquiry, the jurisdictional Deputy Commissioner could not have delegated the same to the jurisdictional Circle Officer and ought to have carried out the said enquiry on his own and submitted the report in the matter. Accordingly, it is contended that the report submitted by the jurisdictional Deputy Commissioner being not so based on an enquiry carried out by him in the matter, the same cannot be considered for the purpose of determining the residential status of the petitioner as well as the respondent no. 6 herein.

11. Mr. Khan, learned counsel has further submitted that the petitioner

resides within Ward No. 10 under the Dhing Town Committee; however, the place of residence of the petitioner in the said area falls within the areas covered by the Anganwadi centre in question and accordingly, the petitioner was eligible for being engaged as the Anganwadi Helper, in the said Anganwadi centre. Mr. Khan, learned counsel has further submitted that the petitioner herein, in terms of her engagement as effected vide the communication dated 28.09.2007, had rendered her services in the said Anganwadi centre for around 8(eight) years and accordingly; the respondent authorities ought not to have interfered with her such engagement.

12. The learned counsel for the petitioner, in support of his submission has relied upon a certificate, issued by the jurisdictional Gaon Bura, wherein it was certified that the petitioner herein was a resident of Ward No. 10 under the Dhing Town Committee.

13. Per contra, Ms. M. Bhattacharjee, learned counsel for the State respondents has contended that the Anganwadi centre in question is located at Ward No. 1 and the petitioner herein was a resident of Ward No. 10, under the Dhing Town Committee and accordingly, she was not from the area wherein the said Anganwadi centre was so situated, and as such, the petitioner being a resident outside the area of coverage of the said Anganwadi centre, she would not be eligible to be so engaged as an Anganwadi Helper of the said Anganwadi centre.

14. The learned counsel for the respondent no. 6 at the outset has submitted that in pursuance to the order dated 14.05.2015, issued by the Director of Social Welfare, Assam, the respondent no. 6 was engaged as an Anganwadi Helper on 14.01.2016, for a period of 3(three) months from the

date of her joining. However, the said engagement was contended to have been so extended from time to time and as on date, it is contended that the respondent no. 6 is functioning as the Anganwadi Helper in the said Anganwadi centre.

15. Mr. Mahmud, learned counsel for the respondent no. 6, by referring to the enquiry report as submitted in the matter by the jurisdictional Circle Officer has contended that therein, the respondent no. 6 was on enquiry held, to be a resident of Ward No. 1 under the Niz Dhing Gaon Panchayat, while the petitioner herein was held to be a resident of Ward No. 10 under the Dhing Town Committee. Mr. Mahmud, learned counsel has submitted that in pursuance to receipt of the enquiry report from the office of the jurisdictional Deputy Commissioner, the Director of Social Welfare, Assam vide a communication dated 23.03.2015, had scheduled a hearing in the matter on 31.03.2015 and had required both the petitioner and the respondent no. 6 to appear before him. The order dated 14.05.2012, was contended to be so issued upon considering the enquiry report and after hearing the parties involved.

16. Mr. Mahmud, learned counsel for the respondent no. 6 had further clarified that this Court having vide order dated 12.06.2015, directed the respondent authorities not to issue consequential order, following the said order dated 14.05.2015, accordingly, the respondent no. 6 herein was not so engaged on regular basis but, was so engaged on temporary basis and the services of the respondent no. 6 was extended from time to time. Mr. Mahmud, learned counsel for the respondent no. 6 has further submitted that the petitioner herein, not being resident of Niz Dhing village, she had

not fulfilled the eligibility criteria as spelt out in the advertisement dated 07.09.2007 and would not be eligible for consideration for engagement as Anganwadi Helper in the said Anganwadi centre.

17. Mr. Mahmud, learned counsel for the respondent no. 6 has further referred to a notification dated 31.08.2007, by which the eligibility norms and guidelines for selection of Anganwadi Helper/worker under various ICDS projects of the State was laid down by the competent authority and contends that the candidate for the post of Anganwadi Helper/worker, is required to be a local woman residing in the same village, where the Anganwadi centre is located. Mr. Mahmud, learned counsel for the respondent no. 6, has further submitted that the eligibility criteria and selection of candidates in pursuance to the advertisement dated 07.09.2007, for the post of Anganwadi Helper in the said Anganwadi centre has to be considered in terms of the norms as set out in the notification dated 31.08.2007. Accordingly, Mr. Mahmud, in the above premises submits that the petitioner herein not being a resident of the village wherein, the Anganwadi centre in question is located, she must be held to have not satisfied the eligibility criteria as mandated for engagement against the post in question and accordingly, the interference with such engagement as made by the order dated 14.05.2015, would not call for any interference by this Court.

18. Mr. K. R. Patigiri, learned counsel for the respondent no. 7 has contended that the respondent no. 7 was placed at Serial No. 1 on merits. However, she being given to understand that she was placed at Serial No. 2 on the basis on merit, she did not raise any objection in the matter. However, on coming to learn that the engagement of the petitioner was cancelled by

holding her to be an outsider, the respondent no. 7 had approached the respondent no. 5 for her engagement as Anganwadi Helper in the said Anganwadi centre. Mr. Patgiri, has further submitted that the petitioner herein being a resident of Ward No. 10, which falls within the jurisdiction of Dhing Town Committee and the concern Anganwadi centre so situated at Niz Dhing Revenue village, under the Niz Dhing Gaon Panchayat area, she is not eligible to be considered for engagement as Anganwadi Helper in the said Anganwadi centre. Mr. Patgiri, learned counsel further submits that the respondent no. 7 being so placed on merits, at Serial No. 1, in the select list as published for the post of Anganwadi Helper in the said Anganwadi centre, it is the respondent no. 7, who is now mandated to be so engaged against the said post in question. Accordingly, prays that this Court would be pleased to issue appropriate directions to the respondent authorities to engage the respondent no. 7 in terms of her merit position.

19. I have heard the learned counsels to the proceeding and also perused the materials placed on record.

20. The facts involved and as noticed herein above, are not in dispute. The issue arising in the present proceeding is, as to whether the petitioner herein is eligible for being considered for engagement as an Anganwadi Helper in No. 22 Niz Dhing 2 Anganwadi centre.

21. The appointment of the present petitioner was assailed before the respondent no. 5 by the respondent no. 6 by instituting WP(C)/4743/2014 and the same was disposed of by this Court vide an order dated 02.05.2015.

22. A perusal of the order dated 02.05.2015, passed by this Court in the said writ petition, would go to show that the respondent no. 6 therein, had

projected that the petitioner herein being a resident of Ward No. 10 of Dhing Town Committee, she was not eligible to be so appointed in the said Anganwadi centre, which is situated at Niz Dhing village. Given the contentions raised by the parties in the said proceeding, a disputed question of fact having arisen, this Court had required the jurisdictional Deputy Commissioner to carry out an enquiry in the matter and thereafter, required the Director of Social Welfare, Assam to take appropriate action in terms of the said enquiry report.

23. The guidelines as brought into force, vide the notification dated 31.08.2007, mandates that a candidate for the post of Anganwadi Worker and/or Anganwadi Helper should be a local women residing in the same village, where the Anganwadi centre is located. The emphasis in the said notification pertaining to the eligibility of a candidate for engagement as Anganwadi Helper is on the situs of her residence, which is mandated to be in the same village where the Anganwadi centre is located. The contentions of the petitioner in the present proceeding, reveals that she is a resident of Ward No. 10 of Dhing Town Committee. The certificate of the Gaon Bura also certifies the petitioner to a resident of Ward No. 10. In the report as submitted by the jurisdictional Circle Officer in pursuance to the enquiry carried out by him, the petitioner is also stated to be a resident of Ward No. 10 of Dhing Town Committee. The said materials coming on record, including the contention of the petitioner, herein, that her residence is situated in Ward No. 10 of Dhing Town Committee, it is to be seen as to whether by such situs of residence of the petitioner, she would be eligible to apply for the post of Anganwadi Helper, which is in the advertisement dated 07.09.2007, is disclosed to be situated within the jurisdiction of Niz Dhing

Gaon Panchayat.

24. It is an admitted position that the Gaon Panchayat cover areas situated within a village. Accordingly, applying the eligibility criteria as laid down in the notification dated 31.08.2007, requiring the candidate applying for the post of Anganwadi Helper to be a resident of the same village, where the Anganwadi centre is located, the petitioner herein, admittedly, being a resident of Ward No. 10 under Dhing Town Committee, she cannot be held to be a resident of the Revenue Village in question, covered by the Niz Dhing Gaon Panchayat. Accordingly, the petitioner is to be held to have not satisfied the eligibility criterias as mandated for engagement against the post of Anganwadi Helper of the said Anganwadi centre.

25. The above conclusions having drawn by this Court with regard to the eligibility of the petitioner, herein, to be considered for engagement as Angwanwadi Helper in the said Anganwadi centre; and she being held to not possessed the eligibility criterias for the purpose, the order dated 14.05.2015, as issued by the Director of Social Welfare, Assam, removing the petitioner herein, from her engagement as Anganwadi Helper of the said Anganwadi centre, would not call for any interference by this Court.

26. Having concluded as above, this would bring the Court to examine the contentions raised by the respondent no. 7, herein. The respondent no. 7 although was placed at Serial No. 1 of the select list as published in the matter, in pursuance to the advertisement dated 07.09.2007, it is seen that the petitioner had not asserted her right in the matter for being engaged as Anganwadi Helper in the said Anganwadi centre till after issuance of the impugned order dated 14.05.2015 by this Court.

27. The said select list, being so published in the year 2007 and it being implemented in the manner noticed herein above, the validity of the select list had expired, on appointments being made there from. The select list in question could not have subsisted w.e.f. 2007 till 2015 and accordingly, the contention of the respondent no. 7 for being engaged as an Anganwadi Helper in the said Anganwadi centre in terms of her placement at Serial No. 1, in the said select list as published in the year 2007, cannot be acceded to.

28. In view of the above contentions, the impugned order dated 14.05.2015; having been so issued basing on the consideration of the actual residential status of the petitioner, as well as the respondent no. 6, herein, the same would not call for any interference by this Court and the removal of the petitioner from her engagement as Anganwadi Helper in the Anganwadi centre in question is accordingly, upheld.

29. Having upheld the order dated 14.05.2015, the interim directions passed by this Court vide the order dated 12.06.2015, stands vacated.

30. The respondent authorities are directed to continue with the engagement of the respondent no. 6 (Musstt. Anjuwara Begum) as an Anganwadi Helper in No. 22 Niz Dhing 2 Anganwadi centre under Niz Dhing Gaon Panchayat, as per the procedure in place in this connection.

31. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant