

GAHC010208652023



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

Case No. : WP(C)/5453/2023

JAHANARA AHMED
W/O- FAKARUDDIN AHMED,
RESIDENT OF VILL- MOHIA,
P.O.- CHANDMAMA,
DIST- BARPETA (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-06.

2:THE DIRECTOR
SOCIAL WELFARE DEPARTMENT
ASSAM
UZANBAZAR
GUWAHATI-01.

3:THE DISTRICT SOCIAL WELFARE OFFICER
BARPETA
ASSAM
PIN- 781301.

4:THE CHILD DEVELOPMENT PROJECT OFFICER
RUPASHI ICDS PROJECT
KALGACHIA
BARPETA
ASSAM

PIN- 781319.

5:JAHANARA PARBIN
W/O- ABDUR RAHMAN

RESIDENT OF VILL- MOHIA

P.O.- CHANDMAMA

DIST- BARPETA (ASSAM)

PIN- 781321

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/4619/2022

JAHANARA AHMED
W/O- FAKARUDDIN AHMED
RESIDENT OF VILL- MOHIA
P.O. CHANDMAMA
DIST- BARPETA (ASSAM).

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THE STATE OF ASSAM AND 4 ORS.
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RESIDENT OF VILL- MOHIA
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DIST- BARPETA (ASSAM)
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Advocate for : MS. R CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 04.06.2024

Heard Mr. A. R. Bhuyan, learned counsel for the petitioner. Also heard Mr. C. S. Hazarika, learned Government Advocate appearing for the State respondents Nos. 1 to 4 and Mr. H. R. Ahmed, learned counsel for the respondent No. 5.

2. In brief, the case of the petitioner is that she is working as Anganwadi Helper at 105 Mohia Anganwadi Centre since the year 2002.

3. In the year 2016, the post of Anganwadi Worker of the same Anganwadi Centre fell vacant in terms of the Notification dated 04.03.2013, issued by the Social Welfare Department, Government of Assam. The petitioner claims that she is otherwise eligible to be considered for promotion and/or to be upgraded to the post of Anganwadi Worker. However, as the respondent No. 5 was transferred and appointed

in the post of Anganwadi Worker at the said 105 Mohia Anganwadi Centre, the petitioner had approached this Court earlier by filing a writ petition and this Court by an order dated 27.03.2019, passed in WP(C) 7561/2017, had directed the Director, Social Welfare Department (respondent No. 2) to consider the claim of the petitioner.

4. The Director, Social Welfare Department, pursuant to the order of this Court, directed the Child Development Project Officer (CDPO for short), Rupshi to cancel the transfer order dated 08.07.2016 and to take necessary steps for up-gradation of Anganwadi Worker from Anganwadi Helper in the said Anganwadi Centre as per the Government Rules. Accordingly, the transfer order dated 08.07.2016 in respect of one Abida Begum was cancelled.

5. Accordingly, the CDPO, Rupshi (respondent No. 4) issued an advertisement dated 21.12.2017, seeking applications from eligible Anganwadi helpers for filling up the post of Anganwadi Worker under Mohia Revenue village.

6. The petitioner then approached this Court again and this Court by order dated 05.02.2018, passed in I.A.(Civil) 135/2018, in connection with WP(C) 7561/2017, stayed the operation of the advertisement dated 21.12.2017 and granted liberty to the respondent authorities to upgrade the petitioner as Anganwadi Worker in terms of letter dated 27.07.2017, issued by the Director of Social Welfare.

7. Thereafter, the CDPO, Rupshi (respondent No. 4) in a report vide letter dated 18.02.2019, pointed out that the eligibility for the post of Anganwadi Worker is Class- IX as per the Government Notification dated 04.03.2013. However, the petitioner had submitted an application with

Class- VIII passed certificate during selection and she had produced Class- IX passed certificate before the Office only on 10.08.2017. It was reported that the petitioner has also submitted certificate dated 26.07.2001, issued by the Principal, Peradhara Higher Secondary School, Larukuchi, Nalbari (annexed to the writ petition) and later on had also submitted a different certificate dated 04.02.2002, issued by the Headmaster of Paschim Kazeswar High School, Larukuchi, Nalbari. During verification made by the respondent No. 4, the Headmaster of Paschim Kazeswar High School had denied issuing certificate dated 04.02.2002 to the petitioner and in this regard, the respondent No. 4 had relied on a declaration given by one former Headmaster and the issuing authority of Class- IX passed certificate of the petitioner as well as the current Headmaster of the said school and accordingly, the respondent No. 4 had arrived at a conclusion that the petitioner lacks the requisite eligibility qualification to hold the post of Anganwadi Worker as per Notification dated 04.03.2013.

8. The said order dated 27.01.2020 is under challenge in WP(C) 4619/2022. It is also projected that in the said writ petition, the respondent No. 5 has been appointed to the post of Anganwadi Worker, whose appointment is also assailed in this writ petition.

9. The petitioner had subsequently filed WP(C) 5453/2023 to challenge the appointment order dated 29.03.2022 in respect of the upgradation of the respondent No. 5 as Anganwadi Worker for voluntary service at 105 No. Mohia (A) Anganwadi Centre from Anganwadi Helper.

10. The learned counsel for the petitioner by referring to the stand taken in the writ petition has submitted that the petitioner resides in a remote village and therefore, notwithstanding that the petitioner had

passed Class- IX in Paschim Kazeswar High School as per certificate dated 04.02.2002, in the year 1996-97. She had to be re-admitted in class- IX subsequently in Chandmama High School.

11. It is also submitted that the petitioner in a short span of time had been transferred from two schools, the same is not a ground to question the educational qualification of the petitioner. It is also submitted that the present certificate on which the petitioner is relying on was issued by the Board of Secondary Education, Assam in respect of High School Leaving Certificate Examination, 2018, which discloses that the petitioner is registered as a student of Chandmama High School and that the said certificate is valid for HSLC Examination, 2018, which was due to be commenced from 16.02.2018. Accordingly, it is submitted that the said document is a conclusive proof that the petitioner was a student of Class- IX and therefore, eligible to be up-graded to the post of Anganwadi Worker from the post of Anganwadi Helper.

12. The learned Government Advocate as well as the learned counsel for the respondent No. 5, by referring to the stand taken in their respective affidavit-in-opposition, have submitted that the respondent No. 4, after due enquiry, arrived at a conclusion that the Class- IX passed certificate dated 04.02.2002 was not being issued by the concerned Headmaster of Paschim Kazeswar High School was a fake document.

13. It was also submitted that the statement made in affidavit-in-opposition filed by the State respondents has not been specifically denied by the petitioner. It is also submitted that the respondent No. 5 in the meanwhile has joined in her new place of posting and in this regard reliance is placed on joining report dated 01.04.2022.

14. On a perusal of the order dated 27.01.2020 impugned in WP(C) 4619/ 2022, it appears that the petitioner, along with her application had submitted a Class- VIII passed certificate during her selection as Anganwadi Helper and that the office of respondent No. 4 was provided with her Class- IX passed certificate only on 10.08.2017. The respondent No. 4 has also held that the petitioner had submitted two different certificates, one dated 26.07.2001, issued by the Principal, Peradhara Higher Secondary School, Larukuchi, Nalbari, which has been enclosed to this writ petition and there is another certificate dated 04.02.2002, issued by the then Headmaster Paschim Kazeswar High School, Larukuchi, Nalbari.

15. As per the certificate issued by the Peradhara Higher Secondary School, which is a transfer certificate dated 26.07.2001, the petitioner had left the school on 31.12.1995 and she was reading in Class- IX and had not passed the examination for promotion to Class- X.

16. As per the contents of the certificate issued by the Headmaster of Paschim Kazeswar High School, the petitioner left the school on 31.12.1996 and she was reading in Class- IX and had passed her examination for promotion to Class- X. As per the certificate issued by the Board of Secondary Education, Assam in respect of High School Leaving Certificate Examination, 2018, the petitioner was registered for appearing the HSLC Examination, 2018 to be held from 16.02.2018, *ex-facie* appears to be a document which is created for the purpose of this writ petition. There is no explanation as to why the petitioner having passed out Class- IX as on 31.12.1995, would take admission again in Class- IX in a different school.

17. The learned counsel for the petitioner has referred to the statement made by the petitioner in paragraph 14 and 15 of the writ petition wherein it was stated that the petitioner was again admitted in Class- IX and that she could not continue her further studies after being promoted to Class- X.

18. In this regard, as the respondent No. 4 has already verified and had arrived in a conclusion that the petitioner had not been issued a certificate dated 04.02.2002 by the then Headmaster of Paschim Kazeswar High School. Therefore by creating a fake document, the same was used for the purpose of entering in service. The subsequent HSLC Examination, 2018 document, having been held to have been prepared only to produced it as an evidence in the writ petition being WP(C) 7561/2017 as well as WP(C) 4619/2022, though indicates the petitioner to be otherwise eligible, but her conduct of procuring a certificate from the concerned school disentitles the petitioner for a consideration to be upgraded to the post of Anganwadi Worker at the cost of service of respondent No. 5.

19. Therefore, both these writ petitions deserves to be and are hereby dismissed.

20. Be that as it may, this order shall not come in the way of the petitioner to produce all the relevant documents before the Director of Social Welfare, Assam by demonstrating that she was a regular student of the school, it would be open to the said authority to re-examine the educational documents of the petitioner vis-a-vis her explanation for changing schools and to make a fresh enquiry and to consider the claim of the petitioner for an up-gradation from Anganwadi Helper to Anganwadi Worker.

21. In this regard, the Court is inclined to grant 15 days time to the petitioner from the date of this order to produce all the testimonial before the CDPO, Rupshi (respondent No. 4), who on receipt of the same shall forward the documents to the Director of Social Welfare, Assam (respondent No. 2) (now renamed as Women and Child Development), Assam for consideration.

JUDGE

Comparing Assistant