

GAHC010165032022



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

Case No. : WA/267/2022

GITANJALI KALITA

W/O NAREN HAZARIKA, R/O GASBARI WARD NO-8, MORIGAON TOWN
UNDER NO-274 SUNARIGAON ANGANWADI CENTRE AREA, P.O.-
MORIGAON, P.S.-MORIGAON, DIST-MORIGAON, ASSAM, PIN-782105

VERSUS

THE STATE OF ASSAM AND 5 ORS.

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, SOCIAL WELFARE DEPARTMENT, DISPUR,
GUWAHATI, PIN-781006, ASSAM

2:THE DIRECTOR SOCIAL WELFARE DEPARTMENT ASSAM

UZANBAZAR GUWAHATI PIN-781001

**3:THE DISTRICT PROGRAM OFFICER SOCIAL WELFARE
DEPARTMENT**

MORIGAON DIST-MORIGAON ASSAM PIN-782105

4:THE CHILD DEVELOPMENT PROJECT OFFICER (CDPO)

BHURBANDA ICDS PROJECT MORIGAON
DIST-MORIGAON ASSAM PIN-782104

**5:THE SELECTION BOARD OF BHURBANDA ICDS PROJECT
BHURBANDA**

DIST-MORIGAON ASSAM

REPRESENTED BY ITS MEMBER SECRETARY CUM CDPO BHURBANDA
ICDS PROJECT DIST-MORIGAON ASSAM PIN-782104

6:MISS BIBHA GOSWAMI W/O SRI HARENDRA KR MAHANTA

R/O WARD NO. 8 MORIGAON TOWN P.S. AND P.O.-MORIGAON
DIST-MORIGAON ASSAM PIN-78210

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : GA, ASSAM

:::BEFORE:::

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 14-05-2024

Date of Judgment & Order : 14-05-2024

JUDGMENT & ORDER(ORAL)

(N. Unni Krishnan Nair, J.)

Heard Mr. Alhajj I. Uddin, learned counsel, appearing on behalf of the appellant. Also heard Ms. R. B. Bora, learned Junior Government Advocate, appearing on behalf of respondents No. 1 to 5; and Ms. A. Devi, Legal Aid Counsel, appearing on behalf of respondent No. 6.

2. The instant intra-Court appeal has been instituted by the appellant, herein, assailing the judgment & order, dated 09.08.2022, passed by the writ Court in WP(c)4071/2018, dismissing the said writ petition holding that no enforceable rights of the petitioner came to be violated on account of issuance of the order, dated 02.06.2018, by the Director, Social Welfare, Assam, towards removing the petitioner from her engagement as an Anganwadi Worker(AWW) in Sunarigaon No. 24 Anganwadi Centre, Morigaon.

3. The present case has a chequered history, wherein, the issue with regard to the selection and appointment of an Anganwadi Worker(AWW) in Sunarigaon No. 24 Anganwadi Centre, Morigaon, was under litigation before this Court since

the year 2010.

4. The respondent authorities, had, vide an Advertisement, dated 10.09.2009, invited applications from interested candidates, amongst others, for engagement as an Anganwadi Worker(AWW) in Sunarigaon No. 24 Anganwadi Centre, Morigaon. The appellant, herein, respondent No. 6 and other eligible persons had participated in the selection process that ensued in pursuance of the said Advertisement, dated 10.09.2009, and therein, on an inter-se comparison of the merits of the candidates so participating; the selection committee proceeded to recommend the name of the appellant, herein, for appointment as an Anganwadi Worker(AWW) against Sunarigaon No. 24 Anganwadi Centre, Morigaon.

Being aggrieved by the appointment of the appellant; the respondent No. 6, herein, by way of instituting a writ petition being WP(c)471/2010, assailed the same before this Court. The said writ petition came to be disposed of vide an order, dated 20.05.2011, remanding back the matter to the Director, Social Welfare, Assam, to look into the grievances of the petitioner therein and upon making an inquiry in the matter, to pass appropriate orders. It is contended that pursuant to the said directions; the Director, Social Welfare, Assam, had arrived at a conclusion that the engagement of the appellant, herein, to be not sustainable and accordingly, the same came to be interfered with.

The said interference so made by the Director, Social Welfare, Assam, led to the institution of a writ petition being WP(c)2165/2013 by the appellant,

herein, before this Court. The said writ petition was disposed of by this Court, vide the order, dated 01.10.2015, wherein, after noticing the issues coming on record, had required the Director, Social Welfare, Assam, to inquire into the matter again after providing for an opportunity of hearing to all the contesting parties and accordingly, a date was also fixed for the appearance of the parties including the appellant, herein, and respondent No. 6, herein. The order of termination of the appellant, herein, vide the order, dated 18.04.2013, was accordingly interfered with.

5. As projected in the writ petition; the said hearing was thereafter conducted by the respondent authorities and vide an order, dated 02.06.2018, the Director, Social Welfare, Assam, on consideration of the materials as brought on record in the inquiry so held; proceeded to hold that the engagement of the appellant, herein, was in violation of the Government guidelines for engagement of Anganwadi Worker and Helper and accordingly, a decision was arrived at to direct the Child Development Project Officer, Bhurbanda ICDS Project, Morigaon, to issue orders towards terminating the engagement of the appellant, herein.

6. The said conclusion as reached by the Director, Social Welfare, Assam, in the order, dated 02.06.2018, was so based on a survey report as produced in the matter, wherein, the name of the appellant, herein, was not found figuring in the list of beneficiaries covered by Sunarigaon No. 24 Anganwadi Centre, Morigaon. Accordingly, the Child Development Project Officer, Bhurbanda ICDS Project, vide an office order, dated 13.06.2018, proceeded to terminate the services of the appellant, herein. Being aggrieved; the appellant, herein, had

approached this Court by way of instituting a writ petition being WP(c)4071/2018. This Court, upon consideration of the issues arising in the matter, proceeded vide the judgment & order, dated 09.08.2022, to dismiss the said writ petition holding that no enforceable rights of the petitioner came to be violated and the order, dated 02.06.2018, passed by the Director, Social Welfare, Assam, as well as the order, dated 13.06.2018, passed by the Child Development Project Officer, Bhurbanda ICDS Project, Morigaon, was upheld. Accordingly, the present appeal has been instituted by the appellant, herein, assailing the said judgment & order, dated 09.08.2022.

7. The contentions of the parties to the proceeding have been noted and the same being recitation of the facts noted-above; the same is not reiterated herein.

8. On a perusal of the materials brought on record, more particularly, the contentions as available in the order, dated 02.06.2018, it comes to light that the decision as arrived at in the matter by the Director, Social Welfare, Assam, was so arrived at on the basis of an inquiry report submitted by the District Social Welfare Officer(DSWO), Morigaon, wherein it was held that the name of the appellant, herein, did not figure in the survey Register as prepared for the beneficiaries covered by Sunarigaon No. 24 Anganwadi Centre, Morigaon, and a further finding that the residence of the appellant, herein, was not situated within Sunarigaon No. 24 Anganwadi Centre area. Further, the Director, Social Welfare, Assam, had recorded a finding that the appellant, herein, during the hearing held, had made a statement that she had actually applied for the post

of Anganwadi Worker(AWW) against Fulbari Kalyanpur Anganwadi Centre but she was called for interview and subsequently, appointed against the post of Anganwadi Worker(AWW) in Sunarigaon No. 24 Anganwadi Centre, Morigaon. Basing on the said premises, the Director, Social Welfare, Assam, had proceeded to conclude that the name of the appellant, herein, not figuring in the said survey Register and her residence not being covered by Sunarigaon No. 24 Anganwadi Centre, Morigaon; the engagement of the appellant, herein, as an Anganwadi Worker(AWW) in Sunarigaon No. 24 Anganwadi Centre, Morigaon, was in violation of the Government guidelines as available for engagement of Anganwadi Worker and Helper. Accordingly, the Director, Social Welfare, Assam, vide the order, dated 02.06.2018, proceeded to direct the Child Development Project Officer, Bhurbanda ICDS Project, to issue an order of termination to Smt. Gitanjali Kalita removing her from the post of Anganwadi Worker(AWW) against the post of Anganwadi Worker(AWW) in Sunarigaon No. 24 Anganwadi Centre, Morigaon. In pursuance of the said order, dated 02.06.2018, passed by the Director, Social Welfare, Assam; the Child Development Project Officer, Bhurbanda ICDS Project, Morigaon, vide the office order, dated 13.06.2018, proceeded to terminate the engagement of the appellant, herein, as the Anganwadi Worker(AWW) of Sunarigaon No. 24 Anganwadi Centre, Morigaon.

9. During the hearing of the present proceeding; the appellant, herein, and the respondent No. 6, herein, have relied on the respective survey reports as brought on record by them in their respective pleadings. While the appellant, herein, has categorically disputed the survey report as brought on record by the respondent No. 6 which had formed the basis for the termination of her services; the respondent No. 6 has also disputed the survey report subsequently

placed on record by the appellant, herein.

10. The said survey reports being disputed by both the appellant, herein, and the respondent No. 6, herein; this Court is, therefore, not in a position to base its conclusions in the matter on the said survey reports and accordingly, the same are not taken into account.

11. A perusal of the order, dated 01.10.2015, passed by this Court in WP(c)2165/2013, basing on which the order, dated 02.06.2018, came to be passed by the Director, Social Welfare, Assam; it is seen that therein, this Court had noticed that in terms of the earlier directions passed by this Court in WP(c)471/2010; the Director, Social Welfare, Assam, vide an order, dated 02.04.2012, while opining that the allegation/claim made in the matter by the respondent No. 6, herein, was based on fact, had required the Child Development Project Officer, Bhurbanda ICDS Project, to place the matter before the Project Level Selection Committee to finalize the same. Thereafter, the Child Development Project Officer was directed to submit the decision of the Project Level Selection Committee to the Director, Social Welfare, Assam.

12. In terms of the directions as passed by the Director, Social Welfare, Assam, vide his order, dated 02.04.2012, it is seen from the records of the present proceeding, that the matter was placed before the Project Level Selection Committee. The Project Level Selection Committee in its meeting held on 30.08.2012; had considered a field inquiry report submitted by the Member Secretary of the Committee, in pursuance to an earlier decision of the

Committee, dated 01.08.2012, and on such consideration; proceeded vide resolution No. 1 as adopted in the said meeting; to note that Sunarigaon No. 24 Anganwadi Centre is located in the Revenue Village Gasbari under Ward No. 8 of Morigaon Town. It was further noted that Sunarigaon is a hamlet of Gasbari and as mentioned in the inquiry report; the house of the appellant, herein, was initially located at a distance of 500 mtrs. from the Anganwadi Centre in-as-much as the Anganwadi Centre at the relevant point of time, was running on the boundary between the villages of Gasbari and Sunarigaon. It was also recorded that the Anganwadi Centre having, thereafter, shifted to its own premises, which was now situated at a distance of 700 mtrs. from the house of the appellant, herein, and the same was within a walking distance of 10 to 12 minutes from the house of the appellant. Basing on the said conclusion, the Project Level Selection Committee vide resolution No. 2, proceeded to re-examine the merit list as prepared in pursuance of the interview held in the matter in the year 2009-2010 and on such examination; it was found that the respondent No. 6 was placed in 3rd position on merit in the said merit list while the appellant, herein, was discharging her duties comfortably as an Anganwadi Worker(AWW) and had also undertaken job training as an Anganwadi Worker(AWW). It was further noted that the appellant, herein, was discharging her duties with all responsibility as a Block Level Officer(BLO) for revision of electoral rolls. As directed, the resolutions as adopted in the matter was sent to the Director, Social Welfare, Assam, for further necessary action.

13. A perusal of the order, dated 02.06.2018, reveals that the Director, Social Welfare, Assam, had noticed its earlier order, dated 02.04.2012, requiring the Child Development Project Officer, Bhurbanda ICDS Project, Morigaon, to place

the matter before the Project Level Selection Committee for finalization of the same. Although the said order, dated 02.04.2012, including the direction as contained therein for placing the matter before the Project Level Selection Committee was noticed by the Director, Social Welfare, Assam, in the order, dated 02.06.2018; it is found that the Director, Social Welfare, Assam, had not given any credence to the resolutions as adopted by the Project Level Selection Committee in the matter and had, by ignoring the same, proceeded to arrive at the conclusion as available in the order, dated 02.06.2018.

14. It is seen that the Director, Social Welfare, Assam, for arriving at the conclusions as contained in the order, dated 02.06.2018, had recorded a finding that the appellant, herein, during the hearing, had made a statement to the effect that she had actually applied for the post of Anganwadi Worker(AWW) against Fulbari Kalyanpur Anganwadi Centre but she was called for interview and finally, appointed against the post of Anganwadi Worker(AWW) as available for Sunarigaon No. 24 Anganwadi Centre, Morigaon. Further, the Director, Social Welfare, Assam, had recorded a finding that the name of the appellant, herein, not figuring in the survey Register relied upon for the purpose and she accordingly, not being a resident within the area covered by Sunarigaon No. 24 Anganwadi Centre, Morigaon; her such appointment was in violation of the norms of the Government guidelines as available for enagement of Anganwadi Worker (AWW).

15. The learned single Judge with regard to the contention as made in the order, dated 02.06.2018, to the effect that the appellant, herein, had

purportedly made a statement during the hearing before the Director, Social Welfare, Assam, that she had applied for the post of Anganwadi Worker(AWW) against Fulbari Kalyanpur Anganwadi Centre but was selected and appointed as against the post of Anganwadi Worker(AWW) against Sunarigaon No. 24 Anganwadi Centre, Morigaon; had perused the records and on such perusal, it was found that the appellant, herein, had actually applied against the post of Anganwadi Worker(AWW) of Sunarigaon No. 24 Anganwadi Centre, Morigaon.

16. The learned single Judge vide the order, dated 09.08.2022, passed in WP(c)4071/2018, by considering the reasons as assigned by the Director, Social Welfare, Assam, in the order, dated 02.06.2018; had proceeded to dispose of the same by approving the reasoning as given in the said order, dated 02.06.2018. The conclusions as reached by the learned single Judge vide the order, dated 09.08.2022, passed in WP(c)4071/2018, being relevant, are extracted hereinbelow:

“16. After hearing, it appears that the writ petition has been structured mainly on three grounds. Firstly, there has been allegations of violation of principles of natural justice while passing the impugned order dated 02.06.2018. However, the order itself records that the petitioner was called for hearing and statements of both the parties were taken. Therefore, the ratio laid down in the case of Hafija Begum (supra) is not applicable as in that case, there was clear violation of the principles of natural justice. Secondly, it is contended that the case of the petitioner would be saved by the notification dated 16.06.2012 according to which, a candidate for the post of AWW in an Anganwadi Centre may be a local woman residing in the concerned Revenue Circle and it is only in the case of Mini AWW that there is a requirement to be a local women residing in the locality. However, the submission made on behalf of the respondent no. 6 is wholly incorrect as the aforesaid distinction would be effective only from the date of the notification whereas in the instant case, the recruitment started in the year 2009 when such notification was not even existing. Therefore, it is the prevailing law at that time of issuance of the advertisement that will govern and as per the same, the requirement was to be a local woman residing in the locality. The case of Sabita Begum (supra) is not applicable as it pertain to a selection process which was governed by the notification dated 16.06.2012.

17. The further contention is with regard to the application made for another AWC namely, Fulbari Kalyanpur AWC. However, on perusal of the records, the submission of the respondent no. 6 clearly appears to be incorrect, inasmuch as the application form would reveal that the Centre was mentioned as Sunarigaon No. 24 AWC.

18. Apart from the aforesaid findings which are against the petitioner, in the present petition, questions of facts have been raised which are also disputed. A Writ Court in exercise of extra-ordinary jurisdiction is not the appropriate Court for adjudication of such issues involving disputed questions of fact.

19. The Hon'ble Supreme Court in the case of S.P., Forest Cell Vs. Kannans C., reported in (2001) 9 SCC 209, has laid down as follows:

“4. ... As we have observed, the High Court committed error in going into the questions and recording findings which it should not have done in exercise of its power under Article 226 of the Constitution of India. Not only High Court has decided disputed questions of fact but through its order has taken the property outside the reach of the criminal court. Accordingly, the said impugned orders are unsustainable in law. In fact the proper course open to the respondent was to move the criminal court under Section 451 of the Criminal Procedure Code in respect of the custody of the seized sandalwood. Admitted position is, the seized goods have been produced before the criminal court concerned, then for the custody of the same Section 451 of the Criminal Procedure Code is the proper course. This section empowers the criminal court to order for custody and disposal of property pending trial. Even if there be a dispute as in the present case whether the seized good is the property in the pending criminal case it is that criminal court alone which would be competent to adjudicate and decide the issue but not the High Court under its writ jurisdiction. In view of this, we find that the High Court has committed error in issuing the writ and granting the said relief to the respondent. Accordingly, the order of the learned Single Judge and the impugned judgment in writ appeal are hereby quashed.”

20. In view of the aforesaid facts and circumstances, this Court is of the opinion that no enforceable rights of the petitioner have been violated and the impugned order dated 02.06.2018 by the Director, Social Welfare, Assam followed by the order dated 13.06.2018 passed by the CDPO, Bhurbanda ICDS Project appear to be in order. Consequently, the writ petition is held to be devoid of any merits and accordingly stands dismissed.”

17. A perusal of the conclusions as reached by the learned single Judge in the matter, would reveal that such conclusions were solely based on the reasonings as advanced by the Director, Social Welfare, Assam, in his order, dated

02.06.2018. The learned single Judge basing on the survey report as relied upon by the Director, Social Welfare, Assam; proceeded to conclude that the appellant, herein, was not a resident of the area covered by the Anganwadi centre, in question.

18. The learned single Judge although had noticed the contentions as made by the Director, Social Welfare, Assam, in his order, dated 02.06.2018, did not take into account the earlier direction of the Director, Social Welfare, Assam, passed vide the order, dated 02.04.2012, to place the issue involved before the Project Level Selection Committee. However, the resolutions as adopted by the said Committee were not recommended. Accordingly, the decision as arrived at in the matter by the learned single Judge being solely based on a survey report which was disputed by the appellant, herein, and which was further contended to have never been furnished to the appellant, herein; the conclusions as arrived at in the matter, more particularly, with regard to the eligibility of the appellant, herein, to be appointed as an Anganwadi Worker(AWW) against such post in Sunarigaon No. 24 Anganwadi Centre, Morigaon; in our considered view, stands vitiated.

19. Further the contention as recorded in the order, dated 02.06.2018, to the effect that the appellant, herein, had purportedly made a statement during the hearing held before the Director, Social Welfare, Assam, that she had actually applied for the post of Anganwadi Worker(AWW) against Fulbari Kalyanpur Anganwadi Centre but she was called for the interview and subsequently, appointed against the post of Anganwadi Worker(AWW) post figuring in

Sunarigaon No. 24 Anganwadi Centre, Morigaon, having been found to be an incorrect one and the same having been disputed by the appellant, herein, in the proceedings; the learned single Judge could not have held the said revelation made from the record, against the appellant, herein, when the said statement purportedly made by her before the Director, Social Welfare, Assam, was seriously disputed by the appellant, herein.

20. The above being the position and also noticing the fact that the Project Level Selection Committee as far back as on 30.08.2012, had basing on an inquiry report as submitted by the Member Secretary of the Selection Committee after carrying out a field inquiry in the matter, noted that the residence of the appellant, herein, figured within the coverage area of Sunarigaon No. 24 Anganwadi Centre, Morigaon, and the Committee having also not recalled the recommendations as made by it in the matter earlier i.e. the recommendation as made in favour of the appellant, herein, for appointment against the post of Anganwadi Worker(AWW) of Sunarigaon No. 24 Anganwadi Centre, Morigaon; the said aspect of the matter not having been considered by the authorities and the reliance placed on admittedly disputed materials brought on record including the purported survey reports; the order, dated 02.06.2018, stood vitiated and accordingly, the learned single Judge having arrived at a conclusion in the matter solely basing on the disclosures as made in the order, dated 02.06.2018; the conclusions as arrived at by the learned single Judge in the judgment & order, dated 09.08.2022, in WP(c)4071/2018, cannot be sustained and accordingly, the same stands interfered with. Consequently, the order, dated 02.06.2018, also stands interfered with.

21. In view of the conclusions as reached by this Court hereinabove in the matter; it is hereby directed that the Director, Social Welfare, Assam, would now issue appropriate orders towards reinstating the appellant, herein, as an Anganwadi Worker(AWW) against Sunarigaon No. 24 Anganwadi Centre, Morigaon, forthwith, and permit the appellant, herein, to continue in her such services in terms of her initial order of appointment, dated 23.12.2009.

22. It is further directed that in the event, pursuant to the passing of the judgment & order, dated 09.08.2022, in WP(c)4071/2018; either, the respondent No. 6 and/or any other person have been engaged against the said post of Anganwadi Worker(AWW) as available in Sunarigaon No. 24 Anganwadi Centre, Morigaon; such engagement shall be terminated and the appellant, herein, would be allowed to continue against the said post in terms of her initial order of appointment, referred to above.

23. With the above directions and observations, this intra-Court appeal petition stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant