

GAHC010205432024



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

Case No. : WA/421/2024

MOFIDA KHATUN @ MAFIDA KHATUN
S/O LATE TIPSON BORUAH, R/O CHAPAKHOWA, P.O.-CHAPAKHOWA, P.S.-
SADIYA, PIN-786157, DIST-TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SOCIAL WELFARE
ASSAM
UZANBAZAR
GUWAHATI-1.

3:THE DISTRICT SOCIAL WELFARE OFFICER
BARPETA
DIST. BARPETA

4:THE CHILD DEVELOPMENT PROJECT OFFICER
BHABANIPUR ICDS PROJECT
HOWLY
BARPETA

5:MOFIDA KHATUN
W/O ABDUL KALAM

RESIDENT OF ROUMARI
PS JAMARHAT
PO MAJGAON
DIST BARPETA

ASSAM

For the Appellant(s) : Mr. Wasim Raja.
For the Respondent(s) : Mr. K.U. Ahmed for R-5
Mr. D.K. Sarmah, Addl.Sr.
Government of Assam for R-1 to
4.

Linked Case : I.A.(Civil)/3856/2024

MOFIDA KHATUN @ MAFIDA KHATUN
W/O- ABDUL ALIM
VILL.- ROUMARI NO. 2
P.S. HOWLY
P.O. MAJGAON
P.S. JAMARHAT
DIST. BARPETA.

VERSUS

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DIST BARPETA
ASSAM

Advocate for : WASIM RAJA

Advocate for : appearing for THE STATE OF ASSAM AND 4 ORS

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

11.12.2024

(Vijay Bishnoi, CJ)

This appeal is filed by the appellant being aggrieved with the Order dated 07.06.2024 passed by the learned Single Judge in WP(C) No. 3620 of 2022.

2] The above referred writ petition was filed by one Mofida Khatun (respondent No. 5 herein) challenging the selection of the appellant as an Anganwadi Worker under Bhabanipur ICDS Project. The respondent, Mofida Khatun, has challenged the selection of the respondent No. 5 on various grounds.

3] During the course of hearing, learned Single Judge has perused the selection record produced by the Government Advocate and has found certain discrepancies in the said record.

4] The discrepancies are noted by the learned Single Judge in the impugned

Order dated 07.06.2024, which are reproduced hereunder:-

“5. Pursuant to the order dated 31.07.2023, the learned Government Advocate has produced the records relating to the selection relating to Anganwadi center under the establishment of CDPO Anganwadi ICDS project, Howly. The selection records has been produced and the same has been perused. On a perusal of the said records, it is noticed that in the said record, four sheets of comparative statement are available.

(i) First sheet of comparative statement relating to 54 no. Rowmari - 4 Anganwadi center contains signature of three persons, being the Child Development Project Officer, Bhabanipur ICDS project, namely Bina Rani Devi, Smti Lakshmi Devi (Sup) and Afruja Begum (MSG). In respect of row no. 2, instead of remarks by the three member committee, the signature of the respondent no. 5 by the ball point pen has been made. It is surprising that access was given to the respondent no. 5 to the comparative statement so as to enable her to put her signature. However, the signatures of the petitioner or the other candidate was not taken.

(ii) The second comparative statement of the same Anganwadi Center contains the signature of Bina Rani Devi (CDPO). The remarks of the selection committee is entered in a pencil. The first entry relates to the petitioner. Although the pencil remark of “good” is distinct, the pencil writing of excellent has been erased but the visible impression of the erased remark is “excellent”. Against row 2 in respect of the respondent no. 5, the remarks is “Good.Excellent”. Therefore the comparative statement with the signature of Bina Rani Devi CDPO is held to be a tampered document.

(iii) In respect of third comparative statement which bears the signature of Lakshmi Gayan, Supervisor of Majgaon, in respect of the petitioner, the official entry by pencil was “excellent”. There was a half-hearted attempt to erase the said remark and therefore, the original remark of “Excellent” is clearly visible after incomplete erasure, and a pencil remark of “good” has been entered. However, in respect of the respondent no. 5 it contains two remarks of “good.excellent”. However, all the entries are made in pencil.

(iv) In the fourth statement which is signed by Afruja Begum (MSG) President, the remarks are made in pencil. However, there is no apparent eraser mark.

6. Although, the Court is not an expert in examining a handwriting but a visual appearance of the remarks made in the comparative sheet no. 2, 3 & 4 appear to be very similar, thereby a visual impression as if all the remarks made in pencil were written by one person. The same is also evident from the fact that the term “Exeellnt” is the spelling used for the word “excellent” and the same mistake has been made in all the three comparative statement nos. 2, 3 & 4. Therefore, the Court is inclined to hold that the selection process of Anganwadi worker of 54 No. Rowmari-4 Anganwadi Center is vitiated by apparent tampering of the comparative statement and it is evident that the tempering has been done to favour the candidature of the respondent No. 5.”

5] As seen, the learned Single Judge was of the view that the selection of the appellant as Anganwadi Worker is vitiated by apparent tampering of the comparative statement. The learned Single Judge further observed that the tampering had been done to favour the candidature of the appellant.

6] While observing this, the learned Single Judge has set aside the selection of the appellant as Anganwadi Worker of the aforesaid Anganwadi Centre and directed the Director of Social Welfare Assam and the District Social Welfare Officer of the concerned area to conduct a fresh selection process for filling the post of Anganwadi Worker at the concerned Anganwadi Centre.

7] Learned counsel for the appellant has assailed the impugned order passed by the learned Single Judge, firstly, on the ground that the notice of the writ petition had not been served upon the appellant and no opportunity of hearing was granted to her to present her case before the learned Single Judge.

8] It is also submitted that even if the learned Single Judge found some tamperings in the selection record, the only option available was to issue notices to the persons, who were responsible for the said tamperings to show cause that under what circumstances the said tamperings were done. However, without issuing show cause notice to those persons, the learned Single Judge has taken upon itself and come to the conclusion that since there was a tampering and therefore, the selection process is vitiated.

9] The learned counsel for the appellant has therefore submitted that the impugned order passed by the learned Single Judge is not liable to be sustained and is liable to be set aside.

10] Heard learned counsel for the appellant and perused the material available on record.

11] So far as the contention of the appellant to the effect that the notices of the writ petition had not been served upon her is concerned, we have taken note of the proceedings of the Lawazima Court dated 14.09.2022, wherein it is specifically mentioned that the registered notice issued to the appellant on 04.06.2022 was prepaid and properly addressed with the correct pin code, and therefore, the service of notice upon the appellant was deemed to be effected.

12] We do not find any infirmity in the said note of the Lawazima Court and it has rightly treated the service of notice upon the appellant as complete.

13] Be that as it may, once the learned Single Judge has found serious discrepancies in the selection process, while exercising equitable jurisdiction, if a direction is issued to undertake a fresh exercise for selection of Anganwadi Worker on the concerned Anganwadi Centre, the said direction cannot be said to be unreasonable or illegal.

14] In the above facts and circumstances of the case, we do not find any reason to interfere with the impugned order of the learned Single Judge, hence, this writ appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant