

GAHC010222422021



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

Case No. : WP(C)/413/2022

JIBONI MILI PAGAG
W/O RAJU PAGAG, R/O VILL- BALI JAKAIBOWA, P.O.-JAKAIBOWA, P.S.-
GARAMUR, DIST- MAJULI, ASSAM

VERSUS

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

2:DEPUTY COMMISSIONER
MAJULI
ASSAM

3:DIRECTOR
SOCIAL WELFARE OFFICE
MAJULI
ASSAM

4:DISTRICT SOCIAL WELFARE OFFICER
MAJULI
ASSAM

5:CHILD DEVELOPMENT PROJECT OFFICER
KAMALABARI
MAJULI

6:SMTI. RUMI PEGU
D/O MONI KANTA PEGU
R/O VILL- JENGRAIMUKH
P.O.-JENGRAIMUKH

DIST- MAJULI
PIN-785104
ASSA

Advocate for the Petitioner : MR J PAYENG

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 24/01/2024

Heard Ms. A. Payeng, learned counsel for the writ petitioner. Also heard Mr. D. Bora, learned Government Advocate, Assam, appearing for the official respondents. None has appeared for the respondent no. 6.

The controversy raised in this writ petition pertains to the selection and appointment of the respondent no. 6 in the post of Anganwadi Worker at Bali Jakaibowagaon Anganwadi Centre in the district of Majuli. The facts of the case, in a nutshell, are that on 16/10/2020, the Child Development Project Officer (CDPO), Majuli i.e. the respondent no. 5 herein had issued an office circular inviting applications for filling up of 1(one) post of Anganwadi Worker in Bali Jakaibowagaon Anganwadi Centre and 6 (six) posts of Anganwadi Helper in six other Anganwadi Centers mentioned in the circular. However, the post of Anganwadi Helpers are not relevant for the purpose of this case.

The petitioner herein was amongst the 3 (three) applicants for the post of Anganwadi Worker of Bali Jakaibowagaon Anganwadi Centre. After the selection process was concluded, results were published by the authorities. The respondent no. 6 herein had secured the 1st position by obtaining 40 marks whereas, the petitioner herein had emerged in the 3rd position with 32.6 marks. Another candidate, viz. Bornali Mili secured 32.8 marks and stood second in the selection process.

Since the petitioner was a candidate belonging to the category of Persons with Disability (PwD), the Selection Committee had initially recommended the name of the petitioner for appointment in the post of Anganwadi Worker in deference to clause-7 of the circular dated 16/10/2020, which provided that preference was to be given to the female candidates having a certificate of dance, music, sports & medicals. However, on assessment of the materials on record, the

Director of Social Welfare Department, Assam, had pointed out that since there was only one post of Anganwadi Worker, hence, the question of reserving 3% of the posts of being filled up by PwD candidate did not arise. As a matter of fact, there was no mention of any reservation of posts in the circular dated 16/10/2020 for any category including the PwD category.

Taking note of the said aspect of the matter, the Selection Committee reconsidered the matter and ultimately decided to recommend the name of the respondent no. 6 for appointment as Anganwadi Worker of Bali Jakaibowagaon Anganwadi Centre. Consequently, the respondent no. 6 was appointed as Anganwadi Worker in the said Centre.

The petitioner has assailed the selection and appointment of the respondent no. 6 primarily on two counts. Firstly, that the respondent no. 6 had applied only for the post of Anganwadi Helper of Bali Jakaibowagaon Anganwadi Centre but she was appointed as Anganwadi Worker without there being any valid application made by her to that effect. Secondly, the writ petitioner being a candidate belonging to PwD category, preference ought to have been given to her, in which event, she would have been appointed in place of the respondent no. 6.

In so far as the first ground is concerned, I find from the counter affidavit filed by the respondent no. 5 that on 30/10/2020, although the respondent no. 6 had initially applied for the post of Anganwadi Helper, yet, on realizing her mistake, at around 3.30 p.m. on the same date, the respondent no. 6 had submitted a petition addressed to the respondent no. 5 clarifying that she was an applicant for the post of Anganwadi worker of Bali Jakaibowagaon Anganwadi Centre. The said application submitted by the respondent no. 6 had been accepted by the respondent no. 5. Be it mentioned herein that only the vacancy of Anganwadi Worker was advertised for the Bali Jakaibowagaon Anganwadi Centre

The statement made by the respondent no. 5 in the counter affidavit, has not been controverted by the petitioner by filing any rejoinder. If that be so, it cannot be said that the respondent no. 6 had not applied for the post of Anganwadi Worker of Bali Jakaibowagaon Anganwadi Centre.

Secondly, although clause-7 of the circular dated 16/10/2020 mentions that preference is to be given to the candidates of certain categories including those having medical certificate, yet, the same did not clearly mention the criteria to be followed for giving such preference.

There is no doubt or dispute about the fact that the advertisement notice dated 16/10/2020 did not make any reservation of vacancies for the category of PwD candidates. Considering the fact that there was only one vacancy of Anganwadi Worker at Bali Jakaibowagaon Anganwadi Centre,

which was advertised, the single vacancy could not have been reserved for any category.

Law is well settled that there cannot be reservation in case of a single vacancy. Therefore, the question of reserving the vacancy of Anganwadi Worker for PwD category candidate did not arise in the eyes of law. Moreover, law is also well settled that preference, in matters of public employment, can be given only when two candidates are found to be equal in terms of merit and where the criteria for giving preference is also clearly spelt out in the advertisement notice dated 16/10/2020, which has not been done in the present case.

In the present case, as has been noted above, the authorities have appointed the respondent no. 6, who stood first in order of merit. Therefore, the question of giving preference to the writ petitioner over the respondent no.6, even under clause-7 of the circular dated 16/10/2020 would not arise, in the eyes of law.

For the reasons stated herein above, this Court is of the view that there is no merit in the writ petition, the same is accordingly dismissed.

The records produced by the learned Government Advocate be returned back.

JUDGE

sukhamay

Comparing Assistant