

GAHC010237692022



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

Case No. : WP(C)/7502/2022

ASMA KHATUN
D/O ABDUL MOTALLEB, R/O VILL- SILGHAGRI PT-I, P.S.-DHUBRI, DIST-
DHUBRI (ASSAM), PIN-783324

VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM, SOCIAL
WELFARE DEPARTMENT AND 3 ORS
DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF SOCIAL WELFARE
ASSAM
UJANBAZAR
GUWAHATI-781001

3:DISTRICT SOCIAL WELFARE OFFICER
DHUBRI
P.O.-DHUBRI
DIST- DHUBRI
PIN-783301

4:THE CHILD DEVELOPMENT PROJECT OFFICER
GAURIPUR ICDS PROJECT
DHARMASALA
DIST- DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. L R MAZUMDER, MR. A Z AHMED, MR. S BANIK, MR. A Z AHMED

Advocate for the Respondent : GA, ASSAM, MS. M D BORAH

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order (Oral)

Date : 08.08.2024

Heard Mr. L. R. Majumdar, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Senior Government Advocate appearing for the State respondents.

2. The challenge made in the present proceeding is to a process of recruitment, initiated for filling up of vacant post of Anganwadi Worker under the Gauripur ICDS project, vide issuance of notifications dated 08.07.2022 and 18.07.2022, by the Child Development Project Officer, Gauripur ICDS project, to the extent that the same restricts the consideration involved only to the incumbents working as Anganwadi Helpers under the said project, thereby depriving candidates like the petitioner from having her cases, considered for engagement against the said post on direct recruitment basis.

3. The facts requisite for adjudication of the issue arising in the present proceeding are noticed as under:-

The petitioner herein by contending that she fulfills the requisite eligibility criterias for engagement as Anganwadi Worker by way of direct recruitment, contends that under the Gauripur ICDS Project, 20(twenty) vacancies had arisen against the post of Anganwadi Worker w.e.f. 01.01.2022, on the incumbents therein, proceeding on retirement on reaching the age of superannuation.

As per the policy, coming into force in pursuance to the decision

arrived at in the matter, by the Government of India, Ministry of Women & Child Development and contained in a communication dated 06.10.2006, 25% of vacant post of Anganwadi Worker is mandated to be so filled up from amongst serving Anganwadi Helpers, who have a service length of minimum 10 years and possesses the requisite qualifications so prescribed.

The petitioner contends that around 20(twenty) vacancies against the post of Anganwadi Worker having arisen, the said posts were mandated to be so filled up in the ratio of "75%:25%" by way of direct recruitment and promotion. However, it is contended that all the posts so involved were reserved by the authorities of the said ICDS project to be so filled up by way of promotion/up-gradation of Anganwadi Helpers, working under the said ICDS project and accordingly, had issued the notifications dated 08.07.2022 and 18.07.2022 in this connection.

The notifications dated 08.07.2022 and 18.07.2022, having the effect of denying to candidates like the petitioner, herein, an opportunity for having their cases considered for engagement against the available vacant posts of Anganwadi Worker; and the purported violation of the ratio so prescribed for the direct recruitment as well as the promotion, the petitioner has instituted the present proceedings, assailing the said notifications dated 08.07.2022 and 18.07.2022.

4. Mr. L. R. Majumdar, learned counsel for the petitioner contends that the Government of India, by referring to the communication dated 06.10.2006, a reservation to the extent of 25% of post of Anganwadi Worker having been mandated to be made for promotion/up-gradation of Angawadi Helpers having the requisite qualification, the State respondents could not violated the said ratio as prescribed for direct recruitment, as well as for promotion/up-gradation and ought to have reserved 75% posts from amongst the vacancies so arising including the

vacant post of Anganwadi Worker as available in 69 No. Silghagri, Anganwadi Centre, for being so filled up by direct recruitment.

5. Mr. L. R. Majumdar, learned counsel, has further submitted that the communication dated 06.10.2006, having specified that the reservation of 25% post of Anganwadi Worker for promotion/up-gradation of Anganwadi Helper, being applicable to all existing vacancies of Anganwadi Worker, as well as to new vacancies arising in future in newly sanctioned Anganwadi Centres, the State respondents could not have reserved all the vacant posts of Anganwadi Worker arising in the year 2022, to be so filled up by way of promotion/up-gradation of Anganwadi Helper. The same, having violated the rights of the petitioner for having her case considered against such available vacant posts of Anganwadi Worker, including the post lying vacant in 69 No. Silghagri Anganwadi Centre, the notifications dated 08.07.2022 and 18.07.2022; to the extent that it reserves all the vacancies so arising for being so filled up by way of promotion/up-gradation of Anganwadi Helpers, requires interference from this Court.

6. Per contra, Mr. D. Nath, learned Senior Government Advocate submits that in pursuance to the decision of the Government of India, Ministry of Women & Child Development as available in the communication dated 06.10.2006, the Government of Assam in the Social Welfare Department had vide notification dated 04.03.2013, issued guidelines for implementation of the said decision in the same spirit and with the same objectives. Mr. Nath, by placing reliance on the said notification dated 04.03.2013 has contended that the Anganwadi Helpers, fulfilling the eligibility criterias as mentioned therein, would be eligible for promotion/up-gradation to the vacant post of Anganwadi Worker. Mr. Nath, further submits that such promotion/up-gradation shall be confined to the Anganwadi Centres, existing within the same revenue village. In other words, he contends that an Anganwadi Helper, working in a particular Anganwadi Centre existing within a revenue village

or ward of a Municipality or Town Committee, can be considered for promotion/up-gradation against a vacant post of Anganwadi Worker, subject to eligibility, so arising against any Anganwadi Centre situated within the same very revenue village or ward of a Municipality or Town Committee only.

7. Mr. Nath, learned Senior Government Advocate, further submits that the position with regard to the manner, in which the decision of the Government of India would be so implemented, has been categorically specified in the affidavit filed in the present proceedings by the Secretary to the Government of Assam, Women and Child Development Department and there from, it is clear that the quota as prescribed for direct recruitment, as well as promotion/up-gradation to the post of Anganwadi Worker, would to be so maintained ICDS project wise.

8. Mr. Nath, learned counsel further submits that under the Gauripur ICDS project, around 400 Anganwadi Centres are functional and accordingly, out of the 400 posts of Anganwadi Worker as existing in the said Anganwadi Centres, 100 posts are required to be so reserved for promotion/up-gradation of Anganwadi Helpers. It is contended that at the time of issuance of the impugned notifications dated 08.07.2022 and 18.07.2022, there were only 21 numbers of Anganwadi Helpers, who were so promoted/up-graded against the posts of Anganwadi Workers. Accordingly, insofar as the quota of promotion/up-gradation against the post of Anganwadi Worker under the said ICDS project is so concerned, there is a shortfall of 79 posts and accordingly, he contends that the vacancies so arising were reserved for being filled up by way of promotion/up-gradation of Anganwadi Helpers and accordingly, the same being within the quota so prescribed for such category, the notifications dated 08.07.2022 and 18.07.2022, would not call for any interference.

9. I have heard the learned counsels appearing for the parties and perused the materials available on record.

10. The petitioner in the present proceeding has presented a challenge to the notifications dated 08.07.2022 and 18.07.2022, to the extent that the same has the effect of reserving all the vacant posts of Anganwadi Workers available under the said ICDS project, for being so filled up by way of promotion/up-gradation of Anganwadi Helpers and thereby depriving candidates like her from having their cases considered for engagement against such post by way of direct recruitment.

11. As per the practice being followed prior to 2006, the posts of Anganwadi Workers were being so filled up by way of direct recruitment from amongst persons, fulfilling the laid down eligibility criterias. The incumbents in the post of Anganwadi Helper did not have an avenue for having their cases considered for further progression in their service and were required to continue to serve as Anganwadi Helpers on their engagement in such capacity.

12. Noticing such a position, the Government of India, Ministry of Women & Child Development, proceeded to take a decision for providing for the Anganwadi Helpers an avenue for progression in their service. The decision so arrived at, was communicated to all concerned vide a communication dated 06.10.2006, issued by the Joint Secretary to the Government of India, Ministry of Women & Child Development.

13. A perusal of the communication dated 06.10.2006, issued by the Joint Secretary to the Government of India, Ministry of Women & Child Development, would go to reveal that the decisions so arrived at, for providing an avenue of progression in their services to Anganwadi Helpers was to be implemented by reserving 25% posts of Anganwadi Workers to be so filled up from amongst the Anganwadi Helpers, who had put in a minimum of 10 years of satisfactory service and possessed the requisite qualifications as mandated for recruitment to the post of Anganwadi Workers, as laid down by the concerned State Government/Union Territory Administration. The said decision also mandated that the same would be

so applicable to all existing vacancies of Anganwadi Workers, as well as to new vacancies arising in future, in newly sanctioned Anganwadi Centres.

14. In pursuance to the said decision of the Government of India, as contained in the said communication dated 06.10.2006, the Government of Assam, in the Social Welfare Department, proceeded to implement the said decision in the same spirit and with the same objectives by prescribing guidelines for the purpose, vide issuance of the notification dated 04.03.2013.

15. The manner of consideration in terms of the guidelines as notified vide the notification dated 04.03.2013, mandates that an Anganwadi Helper working in a particular Anganwadi Centre situated in a revenue village and/or ward of Municipality or Town Committee, would be eligible for consideration of her case for promotion/up-gradation against a vacant post of Anganwadi Worker, arising in the same Anganwadi Centre she is so working and/or in an Anganwadi Centre situated within the same very revenue village, or ward of a Municipality or Town Committee, wherein the Anganwadi Centre where she is so engaged is so situated.

16. The notification dated 04.03.2013, having laid down the manner in which the promotion/up-gradation of Anganwadi Helpers is to be so effected; it is to be seen as to how the quota for promotion/up-gradation and direct recruitment against the post of Anganwadi Worker is to be maintained. As per the procedure put in place for recruitment against the post of Anganwadi Worker, 75% post is to be filled up by direct recruitment and 25% post is to be so filled up by way of promotion/up-gradation. The said position was clarified in the hearing by Mr. D. Nath, learned Senior Government Advocate by referring to the affidavit filed by the Secretary to the Government of Assam, Women & Child Development Department, by stating that the ratio of direct recruitment to promotion, in respect of the posts of Anganwadi Worker, in the ratio of 75%:25%, would be so reckoned ICDS project wise.

17. In other words, the said contention would go to mean that the posts of Anganwadi Workers existing within an ICDS project shall be so filled up in the ratio of 75% by way of direct recruitment and 25% by way of promotion/up-gradation from amongst Anganwadi Helpers working in various Anganwadi Centres under the said project.

18. The guidelines as laid down vide the notification dated 04.03.2013, when read with the clarifications as contained in the affidavit so filed in the matter by the Secretary to the Government of Assam, Women & Child Development Department, having demonstrated that the post of Anganwadi Worker so existing within an ICDS project, shall be filled up both by way of direct recruitment as well as way of promotion/up-gradation in the ratio of 75%:25%, in absence of a specific challenge being made to the notification dated 04.03.2013, the challenge as made in the present proceedings by the petitioner to the manner of recruitment as undertaken vide the notifications dated 08.07.2022 and 18.07.2022 cannot be countenanced.

19. The above conclusions having been drawn, the contention of the petitioner, herein, that 20 (twenty) vacancies having arisen against the post of Anganwadi Worker in various Anganwadi Centres, under Gauripur ICDS project, in terms of the decision of Government of India as contained in the communication dated 06.10.2006, only 25% of the said posts being so permissible to be reserved for promotion/up-gradation of Anganwadi Helpers, the notifications dated 08.07.2022 and 18.07.2022, would require an interference, inasmuch as, it reserves all the vacant posts even beyond the permissible 25% to be filled up by way of promotion/up-gradation of Anganwadi Helpers, is required to be so considered.

20. The Secretary to the Government of Assam, Women & Child Development Department, in the affidavit had categorically contended that under the Gauripur ICDS project, there is in existence 400 Anganwadi Centres, which would also mean

the existence of 400 posts of Anganwadi Workers. Accordingly, under the said ICDS project, 100 posts of Anganwadi Workers is permissible to be so reserved for promotion/up-gradation of Anganwadi Helpers. It is also brought on record in the said affidavit that out of the said 100 posts, only 21 posts have been so filled up by way of promotion/up-gradation of Anganwadi Helper and accordingly, further 79 posts of Anganwadi Helper is so permissible to be so filled up by promotion/up-gradation of Anganwadi Helpers.

21. It has already noticed hereinabove that the ratio between the direct recruitment and promotion/up-gradation against the post of Anganwadi Worker is to be maintained ICDS project wise. The notifications dated 08.07.2022 and 18.07.2022; having put up for recruitment only 17 posts of Anganwadi Workers, it has to be held that the same would be permissible given the fact that the quota as mandated for promotion/up-gradation against the post of Anganwadi Worker in the said ICDS project has not been fulfilled.

22. In view of the conclusions reached hereinabove and in absence of a challenge to the notification dated 04.03.2013 and the State having projected that the post of Anganwadi Worker would be filled up both by way of direct recruitment, as well as by promotion/up-gradation of Anganwadi Helpers, this Court is of the considered view that the contentions as raised by the petitioner, herein; in the present proceeding, in this connection, does not merit acceptance. Accordingly, the notifications dated 08.07.2022 and 18.07.2022 are mandated to be required to be taken to its logical conclusion. Accordingly, the interim directions as passed by this Court, restraining the respondent authorities from proceeding with the recruitment initiated vide the notifications dated 08.07.2022 and 18.07.2022 stands vacated.

23. Consequently, the writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there would be no order as to

costs.

JUDGE

Comparing Assistant