
(2018) 09 GAU CK 0028
In the Gauhati High Court
Case No : Civil Writ Petition No.369 Of 2016

Gitanjali Talukdar Choudhury

APPELLANT

Vs

State Of Assam And 4 Ors.

RESPONDENT

Date of Decision : 12-09-2018

Acts Referred:

Citation : (2018) 09 GAU CK 0028

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : SK Das, N Goswami

Final Decision : Disposed Off

Judgement

1. Heard Mr. SK Das, the learned counsel for the petitioner and Mr. N Goswami, the learned State counsel for the respondent Nos. 1 to 4. Also

heard Ms. N Nasreen, the learned counsel for the respondent No.5.

2. The respondent No.4 has filed an affidavit-in-opposition on 28.07.2016, while the respondent No.5 has not filed any affidavit till date. Ms. N

Nasreen, the learned counsel submits that despite all efforts, the respondent No.5 has failed to make any communication to her and therefore the

affidavit-in-opposition could not be filed. Be that as it may, considering the nature of the controversy, this Court proposes to dispose of the writ petition

at this stage with the consent of the parties.

3. Case of the writ petitioner in brief is that pursuant to an Advertisement issued by the respondent No.4 on 08.11.2012, the petitioner participated in

the selection process held on 18.12.2013 for the posts of Mini Anganwadi Worker in 53 No. Subha Hindu Supa Mini Anganwadi Centre. Despite the

selection held in the year 2012, no merit list was published by the respondent

authorities and when the petitioner enquired about the merit list, she was informed that a fresh selection was going to be done. However, to her surprise, she came to learn that by manipulating the draft merit list, the petitioner was substituted with the respondent No.5 and thereafter, the same was sent for approval of the Director of Social Welfare. The petitioner also came to learn that in the selection process, she was placed at the first position while the respondent No.5 was placed in the second position. Despite the same, the respondent No.5 was appointed as Mini Anganwadi Worker against the Centre concerned. The petitioner being aggrieved filed several applications under the Right to Information Act, for the marks given to the respective candidates and information about the family survey of the Mini Anganwadi Centre area.

4. Consequently, the petitioner was furnished with merit list along with the marks allotted to each candidate including the comparative statements for the posts of Mini Anganwadi Worker. On perusing the same, the petitioner found herself to have secured the highest mark i.e. 17.5 marks while the respondent No.5 scored 16.25 and was placed in the second position. However, in the merit-cum-selection list, the respondent No.5 was selected as Mini Anganwadi Worker by placing her in the first position with a remark "Scheduled Tribe dominating population". The petitioner being aggrieved is before this Court.

5. Mr. SK Das, the learned counsel appearing for the petitioner submits that the marks obtained by the petitioner in the selection process is undisputed and the family survey of the Mini Anganwadi Centre area was clearly manipulated. He submits that in the original survey, against the family serial No.19, the name of the respondent No.5 and the other family members are not to be found. However, after it was manipulated, the name of the respondent No.5 alongwith the name of her in-laws are shown against the family serial No.19. He therefore, submits that the manipulation has been made with an ulterior motive only to accommodate the respondent No.5 as Mini Anganwadi Worker against the Centre concerned. In support of his submissions, the learned counsel draws the attention of the Court to the Annexures appended both in the writ petition as well as in the affidavit "in-reply" filed by the petitioner.

6. Mr. N Goswami, the learned State counsel by referring to the affidavit "in-

opposition filed by the respondent No.4 on 28.07.2016 submits that the petitioner might have obtained higher marks in the overall assessment made by the Selection Committee but as the Mini Anganwadi Centre is located in an area where the majority of the population belongs to the ST Category, the respondent No.5 came to be selected and appointed to the post. He submits that such was also the condition stipulated in the Advertisement dated 08.11.2012 for the post of Mini Anganwadi Worker. Mr. N Goswami, the learned State counsel further submits that amongst the instructions that he has received, a copy of the area survey report has also been furnished wherein the name of the respondent No. 5 is shown against the family serial No.102. He also submits that the same is readily available for perusal by this Court.

7. From a perusal of the conflicting stand taken by the rival parties, it is seen that there are disputed question of facts involved and therefore, the same will not permit a writ Court to adjudicate the dispute. Therefore, I am of the considered view that a proper verification should be conducted by an appropriate authority in the Social Welfare Department who shall examine all the relevant documents and afford the rival parties an opportunity of hearing and thereafter, pass an appropriate order on the basis of the findings.

8. In that view of the matter, the writ petition is disposed of with a direction to the Director of Social Welfare Department (respondent No.2) to conduct verification on the claim of the parties by examining all the relevant records maintained by the Department. In conducting such verification, the respondent No.2 shall give an opportunity to both the petitioner and the respondent No.5 to present their case along with supporting documents, if any. Upon such verification and examination, the Director of Social Welfare shall pass appropriate orders.

9. It is made clear that if the respondent No.5 is not found to be included in the family survey list of the Mini Anganwadi area Centre concerned conducted by the Departmental authorities, her appointment shall have to give way to the appointment of the writ petitioner, inasmuch, as the petitioner undisputedly scored the highest marks in the selection process.

10. The entire exercise as directed shall be carried out and completed by the respondent No.2 within a period of 6(six) weeks from the date of receipt of a certified copy of this order.

11. No cost.