
(2019) 05 GAU CK 0101
In the Gauhati High Court
Case No : Writ Petition (C) No. 1493 Of 2010

Mofida Khatun And Ors

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 27-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 GAU CK 0101

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : K.R. Patgiri, P. Pegu, R. Islam

Final Decision : Dismissed

Judgement

1) Heard Mr. K.R. Patgiri, learned counsel for the petitioners. Also heard Mr. P. Pegu, learned Government Advocate for the State respondents as well as Mr. R. Islam, learned counsel for the respondent Nos. 6 to 11.

2) In view of the nature of the grievance raised in this present writ petition, this writ petition stands admitted for hearing by issuing Rule returnable forthwith.

3) The matter has been heard at the instance of learned counsel appearing for the parties.

4) By filing this writ petition under Article 226 of the Constitution of India, the petitioners are challenging the selection list in respect of Anganwadi Workers/Helpers under the Chakchaka ICDS Project, Sorbhog, Barpeta district, which was published in the notice board of the said Chakchaka ICDS Project, Sorbhog, Barpeta district (respondent No. 5) on 23.12.2009. The selection and appointment of private respondent Nos. 6 to 11 has been challenged in this writ petition.

5) The recruitment and selection process was initiated vide advertisement dated 8.10.2009. The petitioners appeared for the interview on 7.11.2009 and

13.11.2009 in the office of the respondent No. 5. At that stage, the recruitment process was challenged by the some Panchayat elected functionaries against the exclusion of Panchayat functionaries in the selection process of Anganwadi Workers & Helpers in the Chakchaka ICDS Project, Sorbhog, Barpeta district by filing WP(C) 4856/2009 before this court. Pursuant to the order dated 22.12.2009, passed in MC 3512/2009, in the said writ petition, the said respondents were permitted to go ahead with the selection process, but they were directed not to give any appointment to Anganwadi Workers & Helpers. Accordingly, only the selection list dated 23.12.2009 was published in the notice board of respondent No.5.

6) The learned counsel for the petitioners has submitted that the selection list published on 23.12.2009 was not prepared as per guidelines and the same was vitiated with many irregularities and illegalities. It is submitted that the selection list did not contain the signature of approval from the Chairman of the Selection Committee and the same was only signed by the respondent No. 5 and other members of the Selection Committee. It has also been submitted that the 3% reservation for the physically disabled persons, was not followed in the present selection process because the petitioner No. 4 who is a physically challenged person, was not selected by the Sate respondents. It has also been submitted that the respondents, while selecting respondent No. 6, did not consider the expertise of petitioner No. 1 in dance.

7) The learned counsel for the petitioners has also questioned the allotment of marks as disclosed in the tabular-sheet and he has submitted that in the tabular-sheet, out of total 30 marks apportioned for viva-voce test, the selected candidates had obtained more than 50 marks. He has further questioned the allotment of marks on the ground that if marks allotted for education qualification was 100 and 30 for viva-voce test respectively, awarding of lower marks of 26, 27 and 32 etc vitiate the awarding of marks to the candidates. By referring to the marks shown to be allotted in tabular-sheet, it is submitted that the tabular-sheet is not prepared in accordance with the notification No. SWD.64/2007/pt.II/10 dated 19.9.2009. Hence, the learned counsel for the petitioner has prayed for setting aside the impugned selection list and to direct the authorities to appoint the petitioners as Anganwadi Workers & Helpers in their respective Centers under Chakchaka ICDS Project, Sorbhog, Barpeta district.

8) The learned Government Advocate has produced the individual assessment sheet for the post of Anganwadi Workers separately prepared by ex-member of the Selection Committee.

9) By referring to the affidavit-in-opposition, the learned Government Advocate has submitted that the Chairman and the members of the selection committee had approved the selection list in terms of grade and that the provision of 3% reservation policy for Physically Challenged person as Anganwadi Workers in the advertisement was also followed. It is submitted that the final selection list of the

candidates for the post of Anganwadi Workers under Chakchaka ICDS Project discloses that in respect of Anganwadi Centers 46 No. Nichuka Gaon Panchayat II/39, one candidate was selected under the physically handicapped quota. In this context, he further submits that the petitioner No. 4, for physically challenged, could not be appointed because of the fact that she was unable to move without support. In this connection, by referring to Clause-3(b)(ii) of notification dated 19.09.2009, it has been submitted that if a candidate possess poor health or suffers from some serious disease or ailment which makes her physically unfit for discharging the multifarious responsibilities of the job, the authorities have a right to reject such candidates.

10) It has been submitted that total marks for Anganwadi Workers is 130 i.e. 100 for education qualification and 30 marks from the members of the Selection Committee for Anganwadi Workers and 50 marks were allotted for Anganwadi Helpers, wherein average marks given by each members was to be counted as total marks obtained for personality test, other curricular activities, sound health etc. and accordingly, he has submitted that there is no illegality in the selection process.

11) The learned counsel for the private respondents has relied on his affidavit-in-opposition as well as the additional affidavit and written submission made by the learned Government Advocate, and he has submitted that since issuance of letter of engagement in the year 2010 to the respondent Nos. 6 to 11, they were continuously working in their respective Anganwadi Centers and as there was no illegality in this selection process, this writ petition has to be dismissed.

12) It appears that out of the 6 writ petitioners, the petitioner Nos. 1, 3, 4, 5 & 6 had applied for the post of Anganwadi Worker and the petitioner No. 2 had applied for the post of Anganwadi Helper and the private respondent Nos. 6, 8, 9, 10 and 11 were selected for appointment as Anganwadi Worker and the respondent No.7 had been appointed as Anganwadi Helper. The individual assessment sheet for the post of Anganwadi Workers & Helpers, as produced, shows that the said sheet contained the necessary particulars as indicated in the notification dated 19.9.2009. Therefore, the documents which has been annexed with the affidavit-in-reply as well as in affidavit-in-opposition of respondent No. 2 appears to be truncated version of the form prescribed in notification date 19.9.2009. Hence the final assessment sheet is not the truncated form of the selection list and, as such, the Selection List cannot be set aside on that count alone.

13) On perusal of the final selection list of the candidates for the post of Anganwadi Workers, out of 10 Anganwadi Workers selected under Chakchaka ICDS Project, one was appointed under the 3% reservation for physically handicapped female person. As the reservation policy envisages 3% reservation for physically challenged persons, this court finds that there is no violation of the reservation policy applicable in the appointment process on account of violation of reservation policy under the category of physically challenged female person.

14) On perusal of the assessment sheet for the post of Anganwadi Workers, the comparative marks obtained by the 6 petitioners and the respondent Nos. 6 to 11 is shown below in the tabular form.

Petitioners No. 1 to 6.

Sl. No

Name

Post

100 Marks

50 Marks

1

MOFIDA KHATUN

AW

36

7

2

NUR JAHAN KHATUN

AH

8

3

BINAPANI ROY

AW

31

5

4

RAWSHANARA BEGUM

AW

34

6

5

ASMA KHATUN

AW

40

4

6

TAHMINA KHATUN

AW

47

3

Respondents No. 6 to 11.

Sl. No

Name

Post

100 Marks

50 Marks

1

NUR NEHAR AHMED

AW

31

5

2

SOIMONA KHATUN

AH

30

3

NILIMA DAS

AW

35

29

4

NURJAHAN BEGUM

AW

44

26

5

SUFIA BEGUM

AW

34

29

6

MAMTAZ KHATUN

AW

47

27

15) The individual assessment sheet in respect of petitioner No. 1 discloses that her qualification on dance was taken note of and mentioned in the said assessment sheet. The petitioner No. 1 had scored 7 in the viva-voce test out of 30 marks, whereas the 2 (two) other candidates above her had got 5 marks each in the viva-voce test.

16) One of the grievances of the petitioner No. 4 is that 3% reservation policy for physically challenged women was not followed. In this regard, the respondent No. 2 as well as the respondent Nos. 6 to 11 has stated that the petitioner No. 4 could not be appointed due to higher degree of disabilities as she could not move without support. In this regard, it is seen that there are many prescribed clauses as to the role and responsibilities of the Anganwadi Workers, which indicates maintenance of child cards for children, to carry out quick survey of all the families, especially mothers and children, to organize non-formal pre-school activities, to organize supplementary nutrition feeding for children, to provide health and nutrition education etc. and to make home visits, to assist the PHC staff in the implementation of health component of the programme viz. immunization, and to assist in implementation of Kishori Shakti Yojana (KSY), etc. Hence the nature of works and responsibilities of Anganwadi workers, as envisaged, a right was given under Clause 3(b)(ii) of the notification dated 19.9.2009, to the State respondents No. 1 to 5 to reject the candidature of the petitioner No. 4, for not being able to walk without support, coupled with the fact that the State respondents have appointed another physically challenged person under the physically handicapped quota. Accordingly, the rejection of the candidature of the petitioner No. 4 cannot be said to have vitiated the entire

selection process. Similarly, in respect of the petitioners No. 1 to 3, 5 and 6, the records of selection i.e. the Individual Assessment Sheet as produced by the learned Government Advocate reveals that the private respondents had secured higher marks compared to the petitioners. Hence, the selection process and appointment of the respondents No. 6 to 11 does not call for any interference from this court.

17) Accordingly, this court is not inclined to interfere with the selection process of the Anganwadi Workers and Helpers and the appointments of respondent Nos. 6 to 11 is not interfered with.

18) Accordingly, the writ petitioners are not found to be entitled to any relief.

19) The writ petition stands dismissed and, accordingly the rules stands discharged.

20) There shall be no order as to cost.