
(2011) 04 GAU CK 0055

In the Gauhati High Court

Case No : Writ Petition (Civil) No(s). 6544 and 6591 of 2010

Pranita Das and Anr.

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 5 GLR 352

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : Mr.D.Das, Ms.M.Bordoloi, Mr.K.K.Mahanta and Mr.R.Islam for the petitioner., Mr.B.K.Sarma, Ms.P.Chakraborty, Mr.B.Islam and Mr.K.Bhattacharjee for the respondents., Advocates appearing for Parties

Judgement

1. Heard Mr. D. Das, learned senior counsel assisted by Ms. M. Bordoloi, learned counsel for the petitioners in WP(C) No.6544/2010 as well as Mr. K.K. Mahanta, learned senior counsel assisted by Mr. R. Islam, learned counsel appearing for the petitioners in WP(C) No. 6591/2010. I have also heard Ms. P. Chakraborty and Mr. B.K. Sarma, learned standing counsel, Social Welfare Department as well as Mr. B. Islam and Mr. K. Bhattacharjee, learned counsel appearing for the private respondents. Since both the writ petitions pertain to the same impugned order, they have been heard together and are being disposed of by this common judgement and order.

2. The matter pertains to selection of Anganwadi Workers/Anganwadi Helpers, which was conducted earlier in which the petitioners were allegedly selected. The said selection having been cancelled by the impugned order dated 26.11.2010, the petitioners have filed the writ petitions assailing the said order. For a ready reference, the impugned order dated 26.11.2010 [Annexure IX in WP(C) No.6544/2010], is quoted below:

"GOVERNMENT OF ASSAM

SOCIAL WELFARE DEPARTMENT

DISPUR, GUWAHATI6

No.SWD. 116/2010/33 Dated, Dispur, the 26th November, 2010

SPEAKING ORDER

Perused the hon"ble Gauhati High Court order dated 4.11.2010 passed in WP(C) No. 5432/2009 Miss Kuhinoor Khatun and Others v. State of Assam and Others. Hon"ble Court has directed the Government in the Social Welfare Department to take a final decision in the selection of Anganwadi Workers/Anganwadi Helpers under Barkhetri ICDS project on the basis of the reports submitted by the Enquiry Committee constituted by the Government in this regard.

Perused the enquiry report submitted by the Enquiry Committee headed by the Joint Director, Social Welfare, Assam. After going through the enquiry report, the Government feels that irregularities and anomalies have been committed by the concerned officers in the process of selection of Anganwadi Workers/Anganwadi Helpers. Moreover, the observations of the said committee have been already reflected in the hon"ble Court order dated 4.11.2010. It appears from the report that the Selection had not been carried out as per the guidelines issued by the Government of Assam in case of selection of Anganwadi Workers/Anganwadi Helpers.

In view of the above, it is decided to conduct fresh interviews of Anganwadi Workers/Anganwadi Helpers in respect of Anganwadi Centres, sanctioned during the 3rd phase expansion of ICDS in Barkhetri ICDS Project from the eligible candidates who had applied earlier for engagement as Anganwadi Workers/Anganwadi Helpers.

Therefore, the Government is of the view that the selection has been faulty and hence the select list prepared by the then selection committee is hereby cancelled. Further Selection Committee is reconstituted as per Sidelines in this regard, as per the following to complete selection of Anganwadi Workers/Anganwadi Helpers within 1 (one) month from the date of issue of this order.

Sd/

Commissioner and Secretary to
the Government of Assam,
Social Welfare Department, Dispur"

3. The aforesaid impugned order dated 26.11.2010 has been passed pursuant to the order dated 4.11.2010 of this court in WP(C) No.5432/2009 along with WP(C) No.5438/2009, WP(C) No. 1265/2010, WP(C) No. 1545/2010 and WP(C) No.1555/2010. Out of the aforesaid writ petitions, WP(C) No.5432/2009 and WP(C) No.5438/2009 were filed by the candidates selected for engagement as Anganwadi Workers/Anganwadi Helpers in different Anganwadi Centres. On the other hand, the writ petitions being WP(C) No. 1265/2010, WP(C) No.1545/2010

and WP(C) No.1555/2010 were filed challenging the entire selection process alleging that the selection, in fact, was a farcical one. One of the grounds urged in the writ petitions was that the select list was prepared even before the date of interview and subsequently manipulated by changing the date from 11.10.2009 to 15.10.2009. Another ground urged was that the selection was conducted in gross violation of the guidelines issued by the Government of Assam from time to time.

4. In the aforesaid proceeding, it was brought on record that in fact, an enquiry was conducted pertaining to the entire selection and the report of the enquiry, was also placed before the court. The said enquiry report is at Annexure VII prepared by the Deputy Director, Directorate of Social Welfare, Assam and Joint Director, Directorate of Social Welfare, Assam. The enquiry report was produced before the court and there was no objection whatsoever to the findings recorded in the said enquiry report. It is on the basis of the said enquiry report, this court by the aforesaid order dated 4.11.2010 directed the Government in the Social Welfare Department to pass appropriate order. The operative part of the said order is quoted below:

"Since there are certain allegations pertaining to anomalies in selection and the Government of Assam deemed it fit and proper to direct an enquiry and the enquiry was conducted accordingly, the Government is to take the final decision in the matter, on the basis of the materials available on record and keeping in view the reports submitted by the committees appointed for that purpose, which, admittedly, has not been done. By communication dated 13th November, 2009, the selection process, that was conducted, has in fact been kept in abeyance till a final decision is taken by the Government in that regard.

That being the position, the present batch of writ petitions are disposed of with a direction to the Commissioner and Secretary to Government of Assam in Social Welfare Department to take a final decision in the matter on the basis of the reports submitted by the aforesaid committees, as well as on the basis of the materials available on record, and to pass a speaking order within a period of 15 (fifteen) days from the date of receipt of this order."

5. The aforesaid direction clearly reveals that the direction issued to the Government to pass appropriate order in the matter, was on the basis of the aforesaid report submitted by the Committee as well as the materials available on record. Pursuant to the said order, the Commissioner and Secretary to the Government of Assam in the Social Welfare Department having passed the impugned order dated 26.11.2010, now the petitioners have come up with the plea that the enquiry report is not sustainable. It will have to be borne in mind that the said enquiry report was exhibited in the earlier round of litigation without any objection, whatsoever, from the petitioners.

6. On perusal of the enquiry report, it is clearly established that the committee which carried out the enquiry has gone into the details of the anomalies/

illegalities committed in the selection including the fact that the comparative statement was actually prepared on 11.10.2009, i.e., even before the selection was over. The said comparative statement was signed by 3 (three) members of the Committee, who are the Circle Officer, the CDPO and the Medical Officer, with clear indication of the date as 11.10.2009. As the enquiry committee found that the said date was subsequently manipulated/corrected as 15.10.2009 by simply writing the figure 5 over the 2nd figure of 11 to show that the comparative statement was prepared on 15.10.2009, it has rightly been observed by the enquiry committee that each manipulation leaves some lacuna behind every manipulation and that the 3 (three) members also left behind proof of their commission of the manipulation by failing to fully disfigure 11 and to make 15 appears fully correct/or genuine, without giving rise to any doubt in the mind of any one who sees and/or scrutinizes the same. Moreover, while doing so in each of the pages of the comparative statement so meticulously but yet 2 (two) of the members, namely, the Circle Officer and the CDPO forgot to change 11 to 15, which they put below their respective signatures in page No. 60 of the comparative statement, consequent upon which the date 11.10.2009 remained unchanged.

7. For a ready reference, the relevant portion of the enquiry report dealing with the above aspect of the matter is quoted below:

"5.9. The enquiry revealed another most striking defect made in the CS is that the CS was actually prepared on 11.10.2009 as is discernible from each of the dates put below each of the signatures of the three members of the Committee (the Circle Officer, the CDPO and the Medical Officer) which each of them subsequently corrected as 15.10.2009 by simply writing the figure 5 over the second figure of 11 to show it that the CS was prepared on 15.10.2009. But as each manipulator leaves some lacuna behind every manipulation, these three members too left behind proofs of their commission of the manipulation by failing to fully disfigure 11 and to make 15 appear fully correct or genuine without giving rise to any doubt in the mind of any one who sees or scrutinizes them. Moreover, while doing the manipulation in each of the pages of the CS so meticulously yet two of the members, namely, the Circle Officer and the CDPO forgot to change 11 into 15 which they put below their respective signatures in Page 60 of the CS of the Anganwadi Workers consequent upon which the date of 11.10.2009 remained unchanged as can be verified from the said page of the CS. But the most interesting aspect of this fact is that the aforesaid two nonofficial members have stated that the interview ended at 0500 p.m. of 14.10.2009 while the said 2 CSs expressly appeared from signatures of the aforesaid 3 members of the Committee (the Circle Officer, the CDPO and the Medical Officer respectively as Chairman, CDPO and one of the members of the Committee) on the body of each page of the CSs concerned that they actually finalized the CSs on 11.10.2009 (that is 3 days before the interview ended) which they subsequently tried to show that the CSs were finalized on 15.10.2009 by forging the date of 11.10.2009. This was the reason that they changed the date of

preparation of the said 2 CSs to appear that they were prepared on 15.10.2009 by manipulating the date by forging the overwriting the date of 11.10.2009 on which they actually had prepared the said Statements because the said Statements could not be prepared on any date before 15.10.2009. The said statements could not also be finalized on any date before 15.10.2009 because the interview was completed only at 500 p.m. of 14.10.2009. But the dates, though subsequently manipulated by over writing, below the signatures of the said three members as already stated above point to the precise fact that the 2 statements were actually finalized on 11.10.2009 which further indicates that the Statements were finalized 3 days before the interview was completed and 4 days before the Selection Committee met and finalize them on 15.10.2009. The Selection Committee, thus, ran the race by putting the cart before the horse which was an impossible task for any average and sane man and for the same reason we too find it extremely difficult to comprehend with any degree of certainty and reasonableness as to how the trio could do so. And it was such a Committee, which was headed by none other than the Circle Officer himself and upon whom Government placed great reliance on his honesty, integrity and efficiency required of a highly placed and responsible public servant."

8. Although the petitioners have put to challenge the enquiry report, nothing has been stated about the above manipulation. It is only one of the entire aspects of the matter. On perusal of the enquiry report, illegalities in conducting the selection is easily discernible. That being the position, it was within the competence and jurisdiction of the authorities to cancel the entire selection with direction to conduct a fresh selection on the basis of the available candidatures.

9. In the final observation made by the enquiry committee, it has been held that the CDPO and the other Office bearers and members of the Selection Committee utterly failed to carry out the responsibilities they ought to have discharged in the interest of public service. As per the said observation, the CDPO and the selection committee violated the norms and guidelines prescribed by the Government, as a consequence of which rampant discrepancies took place in the whole process of selection and appointment of Anganwadi workers/helpers. Another shocking revelation is that the list was finalized by only 3 (three) official members without letting the other two nonofficial members to know about the same. As noted above, the CS was prepared even prior to the completion of the interview. It is in that view of the matter, the enquiry committee in its observation has recorded that the selection committee acted with whims, arbitrariness, irresponsibility and without an iota of honesty and integrity.

10. Finally, the enquiry committee recommended in its report as follows:

"Thus, each and every office bearer and member of the Selection Committee stood undoubtedly responsible in one way or the other for making the whose process of the selection and appointments made on the basis of such a farcical exercise are only to be cancelled and the whole process should be done anew all over again with the office of the CDPO and the Selection Committee manned with

new faces known for their discipline, honesty and integrity."

11. Both Mr. Das and Mr. Mahanta, learned counsel appearing for the petitioners submit that the enquiry report has not been prepared properly and the same is vitiated by error of facts. On being pointed out as to what specific pleadings have been made against the enquiry report, they could not point out anything except the vague and indefinite submission made in the writ petition against the enquiry report. Further, as noted above, the said report was exhibited in the earlier proceeding in presence of the petitioners and there was no challenge to the same and/or objection whatsoever.

12. The very fact that the impugned order dated 26.11.2010 has taken note of the enquiry report and the aforesaid order passed by this court will go to show that the authority which has passed the impugned order duly applied its mind to the facts and circumstances of the case and thereafter has come to the conclusion that there should be a fresh interview for the assignment of Anganwadi Workers/Helpers. Such view of the appropriate authority cannot be said to be arbitrary and/or based on mala fide exercise of power.

13. Above being the position, I do not find any merit in the writ petitions and accordingly they are dismissed. Interim orders operating in both the writ petitions stand vacated.

14. There shall be no order as to costs.