
(2005) 09 GAU CK 0032
In the Gauhati High Court
Case No : WP (C) No. 8197 of 2001

Saleha Khatun

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 13-09-2005

Acts Referred:

Citation : (2006) 2 GLR 365

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : H. Rahman, N. Barua, I. Deka and I. Ahmed, for the Appellant; P.K. Mushahary, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—Heard Mr. H. Rahman, learned Counsel for the petitioner and Mr. P.K. Mushahary, learned Senior Government Advocate, Assam appearing for the official respondents.

2. The writ petitioner was appointed as an Anganbadi worker in the Child Development Project at Boko by order dated 19.7.1979. The petitioner appeared in a selection for the purpose of promotion to the higher post of Anganbadi Supervisor and claims to have been placed at serial No. 5 of the merit list prepared. According to the petitioner, the aforesaid merit list was prepared in the year 2001 and all the other 34 candidates whose names were included in the said merit list including those placed below the petitioner in order of merit were appointed but somehow the petitioner was left out. In these circumstances the petitioner has instituted the present writ application wherein an order was passed by this Court on 5.12.2001 requiring the Director of Social Welfare, Government of Assam to place before the Court the reasons for not appointing the petitioner. During the pendency of the writ petition, by an order dated 15.6.2004 purportedly acting pursuant to the order of this Court 5.12.2001, the petitioner was appointed as an Anganbadi Supervisor in the office of the Child Development Project Officer, Tepattari I.C.D.S. Project in Bongaigaon district. The

aforesaid appointment has been sought to be cancelled by another order dated 24.1.2005 passed in pursuance of an order dated 11.1.2005 passed by this Court in a writ proceeding registered and numbered as W.P.(C) No. 4932 of 2004. The aforesaid two orders, i.e., the order dated 15.6.2004 appointing the petitioner and the order dated 24.1.2005 terminating the petitioner's service, have been placed before the Court by filing a Misc. Case, i.e., Misc. Case No. 873 of 2005.

3. The claim of the petitioner to have participated in a selection and further to have been placed at serial No. 5 of the merit list has been admitted in the affidavit dated 19.6.2005 filed by the Director of Social Welfare wherein a further statement has been made that appointment will be granted to the petitioner as soon as there is an available vacancy.

4. The appointment of the petitioner made by order dated 15.6.2004 was one of the 87 appointments, by way of promotion which were challenged before this Court in the proceeding registered and numbered as W.P.(C) No. 4932 of 2004. This Court by its order dated 11.1.2005 took note of the fact that the aforesaid appointments, by way of promotion, were not in accordance with the prevailing norms and none of the said appointments were made by following any acceptable practice. Accordingly, this Court had directed the process of appointments by way of promotion to the aforesaid 87 posts to be redone by considering the cases of all eligible persons.

5. The claim of the petitioner, as espoused in the writ petition, is on the basis of the selection held in the year 2001 and her position in the merit list prepared pursuant to such selection. Her claim for appointment is on the further basis that the 34 other persons included in the select list including those placed below her had been appointed. It is the aforesaid claim of the petitioner that has to be adjudicated in the present writ petition. If the petitioner was a selected candidate and persons placed below her were appointed, a claim which is not being disputed by the respondents in the affidavit filed, the rights of the petitioner should have been honoured by the department to her in an irregular manner as has been found by the Court in its order dated 11.1.2005 passed in W.P.(C) No. 4932/2004. In a situation where the claim of the petitioner being what has already been noticed, the subsequent actions of the authority in appointing the petitioner by order dated 15.6.2004 and thereafter cancelling the petitioner's appointment by order dated 24.1.2005 will not be relevant at all. It is the entitlement of the petitioner to be appointment on the basis of her selection and merit position that had to be considered and that is the only issue that has to be dealt with by the Court in the present case, notwithstanding the subsequent events that have taken place.

6. As already held, the Director in the affidavit filed has admitted the petitioner was placed at serial No. 5 of the merit list. As to why the 34 other persons included in the same merit list including those who were placed below the petitioner in order of merit were appointed and the petitioner was excluded has not been indicated by the Director in his affidavit save and except a solitary

statement to the effect that the petitioner would be appointed as and when there is an available vacancy. The non-availability of vacancy is not a relevant question in a situation where persons below the petitioner in order of merit had been appointed. In such a situation the correct course of action for the Director would have been to find out a regular vacancy in the post of Supervisor and appoint the petitioner on the basis of her merit position in the select list or in the alternative to cancel the appointment of any one of the persons placed below the petitioner in order of merit and appoint the petitioner against such post. The aforesaid course of action having been indicated by the Court to be the correct course of action in the facts of the present case, the inevitable order that his writ petition would call for is a direction to the Director of Social Welfare to act accordingly and appoint the petitioner in the manner indicated above.

7. Writ petition is allowed as indicated above.