

(2022) 04 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2715 Of 2022

Samima Nasrin

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Citation : (2022) 04 GAU CK 0032

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A Roshid

Final Decision : Disposed Of

Judgement

1. Heard Ms. MR Devi, learned counsel for the petitioner, Mr. JK Parajuli, learned counsel for the respondents No. 1, 2 and 4 being the authorities in the Social Welfare Department of the Government of Assam and Mr. TC Chutia, learned Additional Senior Government Advocate for the respondent No. 3 being the Deputy Commissioner, Bongaigaon.

2. The petitioner participated in a selection process for appointment of Anganwadi Workers in various Anganwadi centres. The result thereof was declared as per the Memo No. DSW(ICDS)/E/65/2007 of the Directorate of Social Welfare, Government of Assam. In respect of the selection made for the Bongaigaon district, the name of the petitioner appeared at Serial No. 26 of the aforesaid select list against the Tilapara North Anganwadi Centre. The grievance raised is that all the other selected persons had been appointed in the meantime, but it is the petitioner alone who had been left out.

3. In the process, the petitioner submitted several representations before the authorities for ventilating her grievance. The representations ultimately culminated in the Government letter No. SWD-467/2009/Pt/183 dated 22.01.2016 requiring the Deputy Commissioner, Bongaigaon to submit a report. The Deputy Commissioner, Bongaigaon by his communication dated 22.07.2016

addressed to the Secretary to the Government of Assam in the Social Welfare Department submitted a status report as regards Tilapara North Anganwadi Centre for which the petitioner was duly selected. No further material is available to show any further progress that may have been made in the matter after 22.07.2016.

4. Mr. JK Parajuli, learned counsel for the respondents in the Social Welfare Department has raised a contention that this is a selection of the year 2007 whereas the writ petition is instituted in the year 2022. In other words, we have to understand that Mr. JK Parajuli, learned counsel has raised an objection that this writ petition is barred by delay and laches.

5. We are unable to accept the said contention of Mr. JK Parajuli, learned counsel inasmuch as, the law regarding delay and laches had been laid down by the Supreme Court in paragraph-7 of the pronouncement in *Union of India and others -vs- Tarsem Singh*, reported in (2008) SCC 648. The proposition of the Supreme Court is that a writ petition instituted in respect of service matter with an inordinate delay would not be maintainable. But at the same time, the Supreme Court had also laid down the proposition that if upon such application in spite of the delay having admitted and acted would not violate the legal right of any third party, in such situation, the application in spite of delay can also be considered.

6. In the instant case, we have made a query as to whether any other person had been appointed to the post where the petitioner is selected. The answer forthcoming is that no such person had been appointed. In other words, we have to understand that as no legal right accrued of any third person would be affected in the event this writ petition is entertained, the writ petition would be maintainable.

7. Accordingly, as per the proposition laid down by the Supreme Court in paragraph-7 of *Tarsem Singh* (supra), we are inclined to go into the merits of this writ petition. We also take note of that although it may be a selection of the year 2007, but the petitioner had been vigorously pursuing her remedies with the respondent authorities which ultimately resulted in the communication dated 22.07.2016 of the Deputy Commissioner, Bongaigaon addressed to the Secretary to the Government of Assam in the Social Welfare Department. At that stage, at least it was incumbent upon the Secretary to the Government of Assam in the Social Welfare Department to give a consideration to the status report and bring a finality to the claim of the writ petitioner. The Secretary having not done so, it would now not be available for the respondents to seek the benefits of equity to raise a contention that this writ petition is not to be entertained on the ground of delay and laches.

8. Considering the matter in its entirety, we direct the Secretary to the Government of Assam in the Social Welfare Department to bring the process of considering the grievance of the petitioner on the basis of her selection for the

post of Anganwadi Worker in 26 No. Tilapara North Anwangadi Centre to its logical end and in doing so, the communication dated 22.06.2016 of the Deputy Commissioner be also taken note of.

9. The reasoned order be passed by the Secretary to the Government of Assam in the social Welfare Department within a period of one month from the date of receipt of a certified copy of this order.

The writ petition is disposed of as indicated above.