
(2009) 08 GAU CK 0082
In the Gauhati High Court
Case No : Writ Petition (C) No. 2803 of 2009

Samsun Nehar Barbhuiyan	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 14-08-2009

Acts Referred:

Citation : (2010) 4 GLR 620 : (2010) 1 GLT 578

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : R. Dhar and R. Begum, for the Appellant; A. Verma and A.M. Barbhuiya, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—In challenge is the order dated 9.7.2009 passed by the Director of Health Services (FW), Assam, whereby, the respondent No. 5 herein, has been transferred as Auxiliary Nurse and Midwife ("ANM") at Sonai Primary Health Centre ("PHC") under the establishment of the Joint Director of Health Services, Cachar, Silchar.

2. I have heard Mr. R. Dhar, learned Counsel for the petitioner and Ms. A. Verma, learned Standing counsel, Health and Family Welfare Department, Assam for the official respondents. Also heard Mr. A.M. Barbhuiya learned Counsel for the respondent No. 5.

3. The private respondent having filed his affidavit and the official records pertaining to the impugned order having been produced, the parties were heard on merit, and this petition is being disposed of at the motion stage.

4. The parties are locked in the tussle for their posting at the Sonai PHC from some time before and, therefore, the factual backdrop in brief is indispensable.

The petitioner after appointment as ANM was initially posted at Lalpani, Lakhipur under the establishment of Addl. Chief Medical and Health Officer (FW) Cachar

and was transferred thereafter in the same capacity to Harina Sub-Centre Sonai PHC. On her representations dated 17.11.2006 and 19.6.2007 seeking transfer to the Sonai PHC, the order dated 14.11.2008 was passed to that effect against an anticipated vacancy to arise due to the impending superannuation of Smt. Purabi Deb Roy on 30.11.2008. The said order was, however, cancelled on 28.11.2008. Aggrieved by the same, the petitioner had approached this Court with WP(C) No. 5161/2008, which was disposed of on 19.12.2008. As in course of the hearing of the petition, it transpired that the respondent No. 5 herein (also impleaded as the respondent No. 5 therein), had represented as well, for her posting to Sonai PHC, this Court by its order of the even date required the concerned departmental authority to pass appropriate orders on a consideration of the representations made by both of them by exercising sound discretion after taking into account all relevant facts and circumstances. As in spite of the said order, according to the petitioner, the respondent authorities did not dispose of the representations and instead contemplated to transfer respondent No. 5 to the Sonai PPC, she instituted the instant proceeding. She having learnt that by the order dated 9.7.2009 (passed before the institution of the present proceeding), the respondent No. 5, in fact, had been transferred to the Sonai PHC has brought the above fact on record by an additional affidavit impugning the validity thereof. Therein, the petitioner has further averred that meanwhile one Smt. Mumtaj Begum Barbhuiya had also filed WP(C) No. 171/2009, wherein, she (petitioner) and the respondent No. 5 were impleaded as the respondent Nos. 6 and 7 and that the said petition was disposed of on 21.1.2009 in the same lines as WP(C) No. 5161/2008, reiterating the direction to the concerned departmental authority to consider the respective claims of the contenders and pass appropriate orders. Incidentally, Smt. Mumtaj Begum Barbhuiya had also vied for the Sonai PHC. The impugned order dated 9.7.2009 has been assailed to be illegal and mala fide with an intention to accommodate the respondent No. 5.

5. The respondent No. 5 in her counter, has stated that after her appointment as ANM in the year 1995, she had served in the districts of Dhubri, Nagaon and Hailakandi and since the year 2001 is posted at Boromoni (Bhagabazar) Sub-Centre of Dholai PHC. While mentioning that her place of posting is 22 kms. away from her residence at Kajidohor, Cachar, the answering respondent has asserted that the petitioner since the year 1995 has been serving at Harina Sub-Centre of Sonai PHC and is residing in a Government quarter, which is less than 5 kms. from her work place. The respondent No. 5 has averred that in order to mitigate her day-to-day inconvenience caused by the distance between her residence and the place of posting and the attendant family problems that she has been facing since 2001, she had submitted a representation for her posting at Sonai PHC. One Smt. Mumtaj Begum Barbhuiya, ANM, Dhanahari Sub-Centre of Sonai PHC had also applied for such posting. While admitting that by order dated 14.11.2008, the petitioner had initially posted at Sonai PHC and that WP(C) No. 5161/2008 and WP(C) No. 171/2009 had been disposed of by this Court with a direction to the departmental authorities to pass appropriate orders

on a consideration of the rival claims, the answering respondent has asserted that the impugned order is valid, having been passed on the relevant consideration that while she had been working under the Dholai PHC, the two others were already posted under the Sonai PHC. The respondent No. 5 has further stated that pursuant to the impugned order, she has joined at Sonai PHC on 16.7.2009 and is functioning there since then. She has also pointed out that meanwhile her post at Boromoni Sub-Centre of Dholai PHC has been filled up by Smt. Purnima Nath transferred from Jashnabad Sub-Centre of Lala PHC, Hailakandi.

6. Mr. Dhar, has argued that in the face of the unequivocal directions of this Court to the official respondents to decide the issue of posting at Sonai PHC on a consideration of the representations submitted by the petitioner, the respondent No. 5 and Mumtaz Begum Barbhuiya, the impugned order, which on the face of the records does not evidence any such endeavour, is per se, illegal and is liable to be set aside. In the alternative, the learned Counsel has contended that if the distance to the Sonai PHC is the determining factor, as the impugned order demonstrates, the petitioner ought to have been preferred her place of residence being only 1 kilometer away therefrom compared to 3 kilometers of the respondent No. 5. Mr. Dhar, has urged that the concerned departmental authority having exercised his discretion arbitrarily, the impugned order is opposed to the letter and spirit of the directions of this Court and is liable to be adjudged null and void.

7. The learned standing counsel with reference to the Official records, has argued that as the impugned order has been passed on a comparative assessment of the claims of the incumbents involved, the same is unassailable.

8. Mr. Barbhuiya has supplemented, contending that as the respondent No. 5 had been posted under Dholai PHC since 2001 and had been commuting from her place of residence, which is about 22 kilometers away from her working place, the impugned order has been rightly passed. The respondent No. 5, meanwhile having joined at Sonai PHC and there being no vacancy at Boromoni (FW) Sub-Centre under Dholai PHC, wherefrom she had been transferred, any interference with the order impugned would be highly prejudicial to her, he urged.

9. The rival pleadings and the arguments advanced have received the due attention of this Court. The background of the present controversy narrated hereinabove, manifests competing claims of the petitioner, respondent No. 5 and Mumtaz Begum Barbhuiya for being posted at Sonai PHC. The fact that the petitioner and Mumtaz Begum Barbhuiya are presently posted at Harina Sub-Centre and Dhanahari Sub-Centre of Sonai PHC respectively and have been so for several years, is not in dispute. The parties are not in issue that since 2001, the respondent No. 5 has been serving at Boromoni under Dholai PHC, which is about 22 kilometers away from her residence at Village Kajidohor, Cachar.

10. A plain reading of the order impugned would demonstrates that the authority

concerned was fully informed of the orders of this Court as well as the purport thereof and the same was passed on a comparative evaluation of the merit of their representations vis-a-vis the issue of posting at Sonai PHC. The official records disclose that the departmental authority concerned while preferring the respondent No. 5, took note of the fact that she had been working under the Dholai PHC, which is far away from her village compared to the other two contenders, who were already serving under the Sonai PHC. The records also contain a public complaint resisting the petitioner's possible posting at the Sonai PHC on the ground of her disagreeable conduct and nature. The records reveal that the consideration tilted in favour of the respondent No. 5 because of the distance between her place of residence and her working place under Dholai PHC so as to provide succour to an incumbent, who had journeying to and fro and rendering her services without any blemish over the years. The reference of distance of three kilometers from her residence to the Sonai PHC has to be construed in this perspective as is endorsed by the official records. In other words, the choice of the respondent No. 5 is not to be tested on the touch stone of the distance of the residence of the contenders from the place of work simpliciter as is suggested by the petitioner. In the contemplation of the authority concerned, the predicament and hardship highlighted by the respondent No. 5 when compared with the grounds offered in the representations of the other two rendered her more deserving for the post. The departmental authority being the best judge to decide the most purposeful and acceptable arrangement conducive to administrative exigency and organizational efficiency, he has to be permitted a free play in the exercise of his discretion and unless the same is vitiated by gross transgression of fundamental norms of fairness, reasonableness and transparency, no interference in exercise of judicial review is warranted. On a scrutiny of the materials on record, there is no such vitiating infirmity. The fact that the respondent No. 5 meanwhile has joined at Sonai PHC and that her post at Boromoni by Smt. Purnima Nath is also a matter of record.

11. On a totality of considerations as hereinabove, the challenge made, in the opinion of this Court, lacks in merit and is, therefore, negated. The petition fails and is dismissed. No costs.