
(2021) 09 GAU CK 0002

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1900 Of 2016

Smti Joonmani Pagag Gam

APPELLANT

Vs

E State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 01-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 34, 136, 226

Citation : (2021) 09 GAU CK 0002

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : K Das

Final Decision : Dismissed

Judgement

The extra-ordinary jurisdiction of this Court conferred by Article 226 of the Constitution of India is sought to be invoked by making a challenge to an order dated 02.07.2015 passed by the Director, Social Welfare whereby the claim of the petitioner for appointment as Anganwadi Worker in the Uttar Bagoriguri Mini Anganwadi Centre has been held to be not sustainable. Such order has been passed pursuant to an order dated 23.09.2014 passed by this Court in an earlier round of litigation instituted by the petitioner being WP(C) No.4957/2014.

2. The tussle is between the petitioner and the respondent No.5 with regard to appointment as Anganwadi Worker in the Uttar Bagoriguri Mini Anganwadi Centre. However, before going to the issue raised in this petition, it would be convenient to state the brief facts of the case.

3. The petitioner claimed to be a permanent resident within the newly created Uttar Bagoriguri Mini Anganwadi Centre under the jurisdiction of the Child Development Project Officer, Majuli ICDS Project, Jorhat. Pursuant to a recruitment drive to the post of Anganwadi Worker vide an advertisement dated 13.06.2013, the petitioner, who had the necessary qualification had applied for the same and claimed to have fared well. However, in alleged violation of the

Rules and guidelines, the respondent No.5 has been preferred over the petitioner for such appointment. It is the case of the petitioner that the said respondent No.5 is not a resident of the said locality, which is a requirement and therefore was not eligible for consideration for such appointment. With the aforesaid grievance, the petitioner has approached this Court by filing WP(C) No. 4957/2014. This Court upon hearing the parties had passed an order dated 23.09.2014 disposing of the writ petition by directing the Director, Social Welfare to make an enquiry into the grievance of the petitioner and dispose of her representation. The representation was accordingly considered and the Director came to a finding that the allegations of the petitioner regarding the domicile of the respondent No.5 was unfounded and accordingly the representation was rejected. As indicated above, it is the said order of the Director dated 02.07.2015 which is the subject matter of challenge in the present writ petition.

4. I have heard Ms. K. Devi, learned counsel for the petitioner. Also heard Shri T.C. Chutia, learned Additional Senior Government Advocate, Assam for the respondent Nos.1 to 4 and Shri J. Payeng, learned counsel for the respondent No.5. The materials before this Court have been carefully examined.

5. Ms. K. Devi, the learned counsel for the petitioner has submitted that the condition attached to the advertisement that an incumbent has to be a permanent resident of the Anganwadi Centre in question is a mandatory requirement and cannot be deviated from. This is more so, as the duties to be performed by an Anganwadi Worker requires such Anganwadi Worker to reside adjacent to the Centre. By drawing the attention of this Court to the application of the respondent No.5, it is submitted that the address of the respondent No.5 has been stated to be village Bagoriguri and not Uttar Bagoriguri which is a distinct village. Attention has also been drawn to a certificate issued by a Ward Member whereby the petitioner has been testified to be a resident of Uttar Bagoriguri whereas the respondent No.5 is a resident of Bagoriguri. Similar certificate of the President of the Gaon Panchayat and the Gaon Burah of No.2, Lat Namoni Jakaibowa have been relied upon. The petitioner has also annexed a certificate issued by the Office of the SDO (Civil) whereby the respondent No.5 has been certified to be a resident of Bagoriguri. Ms. Devi, learned counsel accordingly submits that the present is a fit case for interference.

6. The contesting respondents have filed affidavits-in-opposition. Shri T.C. Chutia, learned Additional Senior Government Advocate, Assam by referring to the affidavit-in-opposition dated 20.07.2016 submits that the impugned order has been passed by following the due process of law and by granting full opportunity to the petitioner including an opportunity of hearing. It reveals from the impugned order that an enquiry was conducted and report thereof was submitted by the Programme Officer, Divisional ICDS Cell, Jorhat vide letter dated 22.01.2015. The certificates issued regarding resident status by the Gaonburah both in favour of the petitioner and the respondent No.5 were taken into consideration, which states that the respondent No.5 belongs to Uttar

Bagoriguri village. The report of the CDPO dated 26.05.2015 was also taken into consideration, as per which the respondent No.5 was located in the said area. The eligibility of the respondent No.5 being established, the most relevant factor was the marks obtained by the two candidates. While the petitioner had obtained 37.5, the respondent No.5 had obtained 42 marks and was adjudged to be the first nominee.

7. The respondent No.4 has also filed an affidavit-in-opposition dated 22.03.2021, wherein it is clarified that the same Gaonburah on one occasion has certified the respondent No.5 to be a resident of Uttar Bagoriguri and the other occasion as of Bagoriguri. The comparative statement of marks allotted to the petitioner and the respondent No.5 has been annexed to this affidavit-in-opposition, which makes it clear regarding the higher marks obtained by the respondent No.5.

8. Shri J. Payeng, learned counsel for the respondent No.5 submits that the instant petition is without any substance inasmuch as the petitioner having failed to compete with the respondent No.5 in the interview is trying to find fault with the respondent No.5 regarding her residential status. The learned counsel has clearly denied the allegation that the respondent No.5 is not a resident of Uttar Bagorigur but a resident of Bagoriguri.

9. The rival contentions of the learned counsel for the parties have been duly considered as the records handed over to this Court by the learned State Counsel have been duly perused.

10. This Court in exercise of powers under Article 226 of the Constitution of India is primarily to examine the decision making process namely, whether the decision was arrived at by taking into consideration the relevant factors or as to whether irrelevant and extraneous factors were taken into consideration. This Court would also examine as to whether there was proper application of mind or as to whether the decision was arrived at in a mechanical manner. In a given case, interference can also be made if a decision is vitiated by bias and nepotism or when mala fide writ large on the face of it. With the above parameters, let us examine the impugned decision which is in the form of the order dated 02.07.2015. This Court is also reminded of the restrictions under Article 226 that no roving enquiry can be made by a writ court and the said observation also finds place in the earlier order dated 23.09.2014 passed by this Court in the earlier writ petition being WP(C) No.4957/2014 instituted by the petitioner, which is extracted hereinbelow-

"This court exercising writ jurisdiction cannot make a roving enquiry to find out the residential status of the parties."

11. In the above conspectus, let us examine the impugned order dated 02.07.2015 passed by the Director, Social Welfare. A perusal of the aforesaid order would reveal that the same has been passed after taking the following factors into consideration.

(i) Enquiry report dated 25.01.2015 of the Programme Officer, Divisional ICDS Cell, Jorhat, which talks about the inconsistent stand of the Gaonburah regarding the residential status of the respondent No.5 with further statements of local people that the residence of the respondent No.5 is Uttar Bagoriguri.

(ii) Contradictory certificate regarding the residential status of the respondent No.5 issued by the same Gaonburah, Shri Lalit Mili.

(iii) Certificate issued by the Circle Officer, Majuli Revenue Circle dated 31.03.2015 certifying the respondent No.5 to be a resident of Uttar Bagoriguri village.

(iv) Further report submitted by the CDPO dated 26.05.2015 revealing that the Uttar Bagoriguri Mini Anganwadi Centre is located in the Northern side of the Bagoriguri village and the residents of the respondent No.5 is located in the same area.

(v) Sketch map

(vi) Comparative statements of marks which reveals that the respondent No.5 secured the 1st position.

Over and above the aforesaid factors which were taken up for consideration, both the contesting parties were given a personal hearing.

12. In the opinion of this Court, the aforesaid factors which were taken into consideration are relevant and germane to the issue to be decided and the findings have been accordingly arrived at. Under such circumstances, this Court is unable to agree with the petitioner in her challenge to the said order. As already stated above, it is only the decision making process which a writ court is entitled to examine and if it is found that the decision has been arrived at by taking the relevant factors into consideration, this Court would be loath to interfere with such action.

13. It is a settled law that the jurisdiction of the writ court is ordinarily confined to examine the decision making process. The Hon'ble Supreme Court in a recent case of Pravin Kumar Versus Union of India and Others reported in (2020) 9 SCC 471 has reiterated the aforesaid proposition. For ready reference, the relevant paragraph of the said decision is extracted hereinbelow-

"25. Learned counsel for the appellant spent considerable time taking us through the various evidences-on-record with the intention of highlighting lacunas and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by Constitutional Courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial Review seeks to ensure fairness in treatment and not fairness of

conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of outcome.[Government of Andhra Pradesh vs. Mohd Nasrullah Khan, (2006) 2 SCC 373, 11.]"

14. In view of the aforesaid facts and circumstances and by giving due regard to the settled law holding the field, this Court is of the view that no case for interference is able to be made out by the petitioner and accordingly, the writ petition stands dismissed.

15. No order as to cost.

16. The original records are handed over back to Shri T.C. Chutia, learned Additional Senior Government Advocate, Assam.