

GAHC010007822013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3326/2013

LUTFUR NEHAR,
W/O MD. BABOR ALI,
VILL- KALIADINGA PAM
P.O.KALIADINGA DIST. NAGAON, ASSAM.

VERSUS

1. THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
SOCIAL WELFARE DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SOCIAL WELFARE, ASSAM,
UZAN BAZAR, GUWAHATI-1.

3:THE DISTRICT SOCIAL WELFARE OFFICER,
NAGAON, ASSAM.

4:THE CHILD DEVELOPMENT PROJECT OFFICER,
JURIA ICDS PROJECT,
P.O. JURIA, DIST. NAGAON,
ASSAM, PIN- 782124.

5:AKKAS ALI,
GOVT. GAONBURAH V
ILL- KALIADINGA DIST. NAGAON, ASSAM.

6:ASMINA BEGUM
W/O ABED ALI VILL- KALIADINGA PAM WARD NO. 10
P.O. KALIADINGA,P.S. JURIA DIST. NAGAON, ASSAM

Advocate for the Petitioner : MS.K LAHKAR

Advocate for the Respondent :

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

25.01.2024

Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Mr. D. Borah, learned counsel appearing for respondent Nos.1, 2, 3 and 4. None appears for respondent Nos.5 and 6.

2. The petitioner, in the present proceedings, has presented a challenge to an order dated 18.05.2012, issued by the Director of Social Welfare, Assam, by which her claim for appointment as an Anganwadi Worker in respect of Kaliadinga Pam (Ward No.8) Anganwadi Centre under Juria ICDS Project of Nagaon District, was rejected.

3. The petitioner, in pursuance to an advertisement dated 07.09.2009 had submitted her application for engagement as an Anganwadi Worker against Kaliadinga Pam (Ward No.8) Anganwadi Centre.

4. The respondent authorities having not considered her case for such engagement and having selected the respondent No.6 for such engagement, the petitioner had, by way of instituting writ petition, being WP(C) No.5283/2009, approached this Court assailing such selection.

5. This Court, vide order dated 02.12.2009, on consideration of the matter, had remanded back the matter to the respondent authorities for finalization of the selection process in accordance with the guidelines holding the field. It was also provided that that no adverse order against the present respondent No.6 shall be passed without giving an opportunity of hearing to her.

Accordingly, the matter was considered by the Director of Social Welfare, Assam and upon hearing all the parties including the petitioner and the respondent No.6 herein, vide order dated 18.05.2012, proceeded to reject the claim made by the petitioner. In the said order, it was noted that both the petitioner as well as the respondent No.6 were residents of surveyed area of Kaliadinga Pam Anganwadi Centre.

6. The said order dated 18.05.2012 was assailed by the petitioner before this Court, by way of instituting writ petition, being WP(C) No.3952/2012. This Court vide order dated 21.08.2012, on consideration of the matter, dismissed the said writ petition.

The relevant portions of the order dated 21.08.2012 is extracted hereinbelow for ready reference:

“The matter relates to selection and appointment of Anganwadi Worker in Kaliadinga Pam Anganwadi Centre under Juria ICDS Project, Dist. Nagaon. Earlier the petitioner had filed writ petition being W.P.(C) No. 5283/2009 questioning the selection of the respondent No. 5 on the ground that she being not a resident of the Anganwadi centre area, could not have been selected for the said centre. The writ petition was disposed of by order dated 02.12.2009 directing the Director of Social Welfare Department to resolve the issue upon hearing the parties. Pursuant to the aforesaid order, the Director of Social Welfare Department passed the impugned order dated 18.05.2012 holding that both the incumbents, i.e. the petitioner and the respondent No. 5, are resident of the area covered by Kaliadinga Pam Anganwadi Centre under Juria ICDS project. To arrive at such findings, he has heard all the parties and also perused the reports furnished by the District Social Welfare, Nagaon. The prayer made in this writ petition is that irrespective of the said residential status, direction be issued to select and appoint the petitioner in place of the respondent No. 5.

On being asked as to whether the petitioner herself is a resident of the Anganwadi Centre area, learned counsel for the petitioner has referred to the recent certificate issued in her favour. The said certificate was issued on February, 2012, but the selection was held on

2009. Be that as it may, the fact finding authority having arrived at the finding on the basis of the materials available on record, that both the incumbents are resident of the Anganwadi Centre area, this Court exercising the its power under Article 226 of the Constitution of India, cannot sit on appeal over such findings. Moreover, the prayer made in this writ petition is not for setting aside the impugned order, but only to issue a direction to appointment the petitioner to the replacement of the respondent No. 5.

In view of the above, I do not find any merit in the writ petition. Accordingly, the writ petition is dismissed.”

7. The petitioner has, by way of instituting the present proceedings again presented a challenge to the order dated 18.05.2012. The order dated 18.05.2012, on being challenged in the proceedings in WP(C) No.3952/2012, this Hon'ble Court had examined the contentions raised with regard to such challenge and on examination of the matter, had concluded that both the petitioner as well as the respondent No.6 being residents of the surveyed area of the said Anganwadi Centre, this Court cannot sit on appeal over the findings of facts by the Director of Social Welfare, Assam and basing on the said conclusions, the writ petition came to be dismissed.

8. In the present proceedings, the petitioner has again presented a challenge to the very same order, i.e. dated 18.05.2012, which was the matter of challenge in the proceedings in WP(C) No.3952/2012.

However, the principle of *res judicata* is also settled to the extent if an issue which is directly and substantially in issue in a former litigation between the same parties and the same has been heard and finally decided by the Court, a subsequent litigation basing on the same issue would not be maintainable.

9. The order dated 18.05.2012, being the matter of challenge in earlier round of litigation in WP(C) No.3952/2012, and this Court having considered the

challenge to the said order, further litigation raising the same issue, would not be maintainable.

In such view of the matter, the present writ petition presenting a challenge to the very same order dated 18.05.2012 would be hit by the principle of *res judicata* inasmuch as, the said issue was an issue directly and substantially involved and the same had been finally decided in the proceedings in WP(C) No.3952/2012.

10. It is settled law that the principle of *res judicata* is squarely applicable to the proceedings under Article 226 of the Constitution of India. The general principle underlying the doctrine of *res judicata* is ultimately based on consideration of a public policy. One important consideration of public policy is that the decisions pronounced by the Court of competent jurisdiction should be final, unless they are modified or reversed by the appellate authorities and the other principle is that no one should be made to face the same kind of litigation twice over because such a process would be contrary to the consideration of a fair play. It is also a settled position of law that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected to the subject matter of litigation, and every matter coming into the legitimate purview of the original action both in respect of matters of claim advanced. Thus, the principle of constructive *res judicata* also squarely applies to the present writ proceedings.

11. Given the nature of challenge presented in the present proceedings and in view of the finality attained with regard to the decision of this Court rendered vide order dated 21.08.2012 in WP(C) No.3952/2012, it can be safely construed

that the present proceedings is hit by the principle of *res judicata* and accordingly, the same is not maintainable.

12. The petitioner's contention of having not brought on record documents relevant for consideration to the challenge to the order dated 18.05.2012 in the earlier round of litigation in WP(C) No.3952/2012, requiring institution of the present proceedings does not merit consideration inasmuch as, such a plea is hit by the principle of constructive *res judicata*.

13. In view of the conclusions reached hereinabove, the contentions raised by the petitioner does not merit acceptance and the same stands rejected.

14. The writ petition is without any merit and the same accordingly stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant