

GAHC010057752021



2022:GAU-AS:18855

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

Case No. : WP(C)/2192/2021

CHANDRAMA KALITA
D/O BIREN KALITA, W/O RAKESH SARKAR, VILL-KHUTABARI, P.O.-
BAGDOBA, DIST-GOALPARA, PIN-783123

VERSUS

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

2:THE DIRECTORM OF SOCIAL WELFARE DEPARTMENT
ASSAM
UZANBAZAR
GUWAHATI-1

3:THE DISTRICT SOCIAL WELFARE OFFICER
SOCIAL WELFARE DEPARTMENT
DIST-GOALPARA
ASSAM

4:THE SELECTION COMMITTEE FOR THE SELECTION OF ANGANWADI
WORKER
DUDHNOI ICDS PROJECT
RANGJULI
P.O.-RANGJULI
DIST-GOALPARA
ASSAM

5:THE CHILD DEVELOPMENT PROJECT OFFICER
DUDHNOI ICDS PROJECT
RANGJULI
P.O.-RANGJULI

DIST-GOALPARA
ASSAM

6:RINA DAS
W/O NARAYAN DAS
VILL-KHUTABARI
P.O.-BAGDOBA
DIST-GOALPARA
ASSAM
PIN-78312

Advocate for the Petitioner : MR H DAS, R BORUAH

Advocate for the Respondent : GA, ASSAM, I AMIN (r-6),MR M H AHMED (r-6),MS. N
SULTANA (R NO.6)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri H. Das

Advocate for the respondents : Shri TC Chutia, Addl. Sr. GA Assam
Shri MH Ahmed, R. - 8

Date of hearing : **17.12.2024**

Date of Judgment : **19.12.2024**

JUDGMENT & ORDER

The instant writ petition has a chequered history. The petitioner had filed this petition in the year 2021, challenging the selection and appointment of the respondent No. 6 as Anganwadi Worker for the Purani Kalitapura Anganwadi Centre at Dudhnoi under the CDPO, Dudhnoi ICDS Project. The primary ground of challenge was that the petitioner had secured more marks in the selection, in spite of which the respondent No. 6 was given the appointment on 06.08.2021. Such appointment was given by considering the fact that the respondent No. 6

belongs to the Scheduled Caste (SC) Community. The writ petition was allowed by this Court on 21.10.2022 as the private respondent No. 6 did not appear after repeated opportunities.

2. However, the respondent No. 6 had thereafter preferred a Rev.Pet./169/2022 stating that due to certain mistake in filing the Vakalatnama, the names of the learned counsel for the private respondent No. 6 were not reflected and therefore, they were prevented from appearing at the time of adjudication of the writ petition. Be that as it may, vide order dated 16.11.2022, the review petition was also dismissed. Against the dismissal of the review petition, the respondent No. 6 had preferred a writ appeal being WA/371/2022. The Hon'ble Division Bench, vide order dated 15.12.2022, had however allowed the appeal and remanded the matter for adjudication on merits by setting aside the order passed in review. It is, thereafter, that this matter has been listed for a fresh consideration.

3. The matter pertains to the selection and appointment of the post of Anganwadi worker in the aforesaid Center and a notice was published on 16.02.2019 in which both the petitioner and the respondent No. 6 had participated. It is the case of the petitioner that while she had obtained 59.6 marks in the selection, the respondent No. 6 had obtained 39.9. However, vide the impugned resolution dated 22.02.2019, the respondent No. 6 was selected and she was consequently appointed on 06.08.2021 as Anganwadi Worker. The primary consideration for such appointment was that the area in question was having majority population of SC community and the respondent No. 6 belonged to the SC Community and was therefore given the preference. It is the validity

and legality of the said appointment which is the subject matter of challenge in this writ petition.

4. I have heard Shri H. Das, learned counsel for the petitioner. I have also heard Shri TC Chuta, learned Additional Senior Government Advocate, Assam and Shri MH Ahmed, learned counsel for the respondent No. 6.

5. Shri Das, learned counsel for the petitioner has drawn the attention of the Court to the advertisement in question which was in the form of Notice. He has submitted that in the aforesaid notice dated 16.02.2019, there was no mention that the Centre in question was reserved for a particular category whereas all the eligibility criteria were notified which, the petitioner claims to have met. He submits that the only aspect of reservation was for Specially Abled Persons which was 3%. It is submitted that as per the impugned resolution which has been annexed in the affidavit-in-opposition, it appears that the prime consideration for such selection and appointment of the respondent No. 6 was with regard to the population pattern. The resolution had stated that in the area where the Centre was situated, 59% of the population belonged to Scheduled Caste and therefore a candidate belonging to the Scheduled Caste is required to be appointed.

6. The learned counsel has assailed the aforesaid decision by submitting that unless a Centre is notified to be a Scheduled Caste / Scheduled Tribe / Tea Tribe population Centre by the appropriate authority, no reservation can be made subsequently. In this connection, he has drawn the attention of the Court to the Notification dated 25.01.2019 of the Social Welfare Department, Government of

Assam wherein the policy for appointment of various posts including Anganwadi Worker has been laid down. It is submitted that under the selection procedure, the selection of Anganwadi Worker has to be made strictly on the basis of the marks obtained in the Higher Secondary Examination. The pattern as to how the marks are to be allotted by the Members of the Selection Committee has also been laid down. In the said procedure, it has also been stated that for Anganwadi Centres which are located in villages / locality having more than 40% of SC / ST or Tea Tribe population, the selection of Anganwadi Worker / Helper is to be made from amongst the said majority Community. It is however stated that list of such Centres must be published at the time of the advertisement made by the Child Development Officer inviting applications from such candidates.

7. Shri Das, learned counsel for the petitioner has submitted that in the Notice published on 16.02.2019, there was no indication that the Centre was reserved for the SC candidates. He submits that the very fact of considering the candidature of the petitioner who is an unreserved candidate would fortify his contention that the Centre was an unreserved Centre. He has submitted that the resolution to appoint the respondent No. 6 is wholly without jurisdiction by which the rules of the game have been changed after the selection was over. He accordingly submits that the impugned appointment of the respondent No. 6 be interfered with and a direction be given to appoint his client in accordance with law.

8. In support of his submission, Shri Das, learned counsel for the petitioner has relied upon the following decisions:

- i. AIR 2008 SC 2103 [Hemani Malhotra Vs. High Court of Delhi]***
- ii. (2008) 3 SCC 512 [K. Manjushree Vs. State of Andhra Pradesh and Anr.]***
- iii. (2009) 4 SCC 555 [Mohd. Sohrab Khan Vs. Aligarh Muslim University and Ors.]***

9. All the aforesaid cases have been cited to bring home the contention that the rules of the game cannot be changed at a subsequent stage after the game has begun.

10. *Per contra*, Shri Ahmed, learned counsel for the contesting respondent No. 6, has justified the selection and appointment of his client. It is submitted that the advertisement which was by way of a Notice was published on 16.02.2019 whereas the policy is of 15.01.2019 i.e. of a prior date. He has submitted that the petitioner has not raised any dispute that the population of the locality / centre is dominated by Scheduled Castes. He questions the eligibility of the petitioner and submits that the petitioner has no *locus* to make the instant challenge.

11. The learned counsel for the respondent no. 6 has also drawn the attention of this Court to the Notification dated 15.01.2019, more specifically, the part pertaining to the selection procedure. It is submitted that it is specifically laid down that the Selection Committee shall select the candidates for the post of Anganwadi Worker considering the clauses mentioned in the said Notification. He has also relied upon a certificate issued by the concerned Panchayat whereby it has been stated that in the area in question the population of Scheduled Caste is 75% and the general population is 25%. He submits that

under such circumstances, the selection and appointment of his client is fully justified and in consonance with the policy. He has also submitted that even assuming but not admitting that the selection and appointment of his client is interfered with, the petitioner will not gain anything as the area has been certified to be dominated by the SC population. In support of his submission, he has relied upon the judgment of **(2006) 9 SCC 507 [Malik Majhar Sultan and Anr. Vs. U.P. Public Service Commission and Ors.]**. In the said decision, it has been laid down that the advertisements for recruitment has to be in accordance with the Rules.

12. Shri Chutia, learned Additional Senior Government Advocate, Assam, has submitted that the appointment was made as per the resolution of the Selection Committee which had taken into consideration the population pattern. He, however, candidly admits that in the Notice for recruitment, there was no specification / mention that the Centre in question was reserved for any category.

13. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

14. There is no dispute that the recruitment of Anganwadi Workers has to be done as per the notification dated 25.01.2019 and in the instant case, the notice for recruitment was of subsequent date i.e. 16.02.2019. The said Notification holding the field lays down the selection procedure. For ready reference, the relevant part of the said selection procedure is extracted hereinbelow:

“2) **Selection Procedure**

i) *Selection of candidate for the post of **Angawadi Worker** and Worker in Mini Anganwadi Centre shall be made **strictly on the basis of marks***

obtained in HS examination and selection of candidate for Anganwadi Helper shall be made strictly on the basis of marks obtained in the HSLC/AHM examination. In case of class IX (nine) pass candidate for Anganwadi helper, selection to be made on the basis of marks obtained in the Annual Examination of class IX (nine) issues by the concerned Head Master / Principal. The Selection Committee will verify the Educational Qualification Certificate, other certificates produced by the candidates, make assessment of overall Health Status of the candidate. There shall be no individual marks for the members for selection of Anganwadi Worker, Anganwadi Helper and Worker in Mini Anganwadi Centre.

(...)

ii) For the Anganwadi Centres / Mini Anganwadi Centres located in the village / locality having more than 40% of the SC, ST or Tea Tribe population, the selection of Anganwadi Worker / Helper / Worker in Mini Anganwadi Centre shall be made from amongst the said majority community. **Lists of such Centres must be published at the time of advertisement made by the Child Development Officer, inviting applications from such candidates.**

iii) As per Govt. Notification No.SWD.449/2007/29 dt.12-9-2007, 3% posts shall be reserved for differently able candidates.

...

The Selection Committee shall select the candidates for the post of Angawadi Worker, Worker in Mini Anganwadi Centre and Helper considering the clause mentioned above in point 2."

15. From the aforesaid Clause of the Notification, it is seen that the selection has to be done strictly on the basis of the marks obtained in the Higher

Secondary Examination so far as Anganwadi Worker is concerned. The Notification further lays down the aspect of reservation depending upon the population pattern. It has been laid down that if the Centre / locality has more than 40% of population of a particular category, **such Centres are to be notified in the advertisement itself** (emphasis added).

16. In the instant case, the Notice dated 16.02.2019 did not even have a passing reference that the Centre was reserved for any category. When there was no such stipulation, it has to be understood that the Centre was an unreserved one wherein the candidatures of all the candidates irrespective of their category are to be treated at par. The stipulation in the Notification makes it clear that the jurisdiction and powers to declare any centre to be of SC, ST or Tea Tribe population is vested on the Department and such categorization has to be made in the advertisement by the Child Development Officer which has not been done in the instant case. On the other hand, vide the impugned resolution, the Selection Committee has taken note of the population pattern. In the considered opinion of this Court, the Selection Committee is not vested with powers or jurisdiction to earmark / declare a particular Centre to be reserved for a particular community and this power is within the domain of the Department through the CDPO. The notification, as observed above, also provides that it is at the time of the advertisement itself that such reservation is to be announced.

17. The respondent No. 6 had also relied upon a Certificate made by the Panchayat on the population pattern. However, a close look at the said Certificate would show that the same is dated 11.08.2021 whereas the recruitment in question is of the year 2019 and therefore the Certificate would not have any relevance in the adjudication of the present dispute. In any case, unless a Centre is notified to be reserved for a particular category by the

appropriate authority, the Selection Committee cannot, on its own declare a Centre to be reserved for a particular community.

18. Much stress has been laid by the learned counsel for the respondent no. 6 regarding the population pattern and also by relying on the Certificate given by the Panchayat. The aforesaid contentions are subjective in nature and this Court cannot embark into matters which involve factual disputes. The aspect of the nature of the population and the power to declare a particular Centre for a reserved category is within the domain of the Department and in the instant case, as observed above, there is no reference at all in the Notice for recruitment that there was any reservation for the Centre in question. This Court has also noticed that the candidature of the petitioner was not outrightly rejected on the ground that she did not belong to the SC category and rather the same was considered. It is also not in dispute that while the petitioner had secured marks of 59.6, the respondent No. 6 had secured marks of 39.9. As mentioned above, the selection procedure provides that the selection has to be made strictly on the basis of the marks.

19. The case laws cited by the learned counsel for the petitioner clearly lays down that the rules of the game cannot be changed after the game has begun. In the instant case, when no reservation regarding the Centre was notified when the recruitment had started, the same could not have been brought into effect, that too by a decision by the Selection Committee which was not within their jurisdiction.

20. In this connection, it would be gainful to refer to a recent judgment dated 07.11.2024 in the case of ***Tej Prakash Pathak and Anr. Vs. State of Rajasthan and Ors.*** reported in ***2024 INSC 847*** which was delivered by a larger Bench of the Hon'ble Supreme Court consisting of Five Judges in a

reference inasmuch as, the law laid down in the case of **K. Manjushree** (supra) was doubted. It has been laid down as follows:

“42. We, therefore, answer the reference in the following terms:

(1) ...

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

...”

21. So far as the case of **Malik Mazhar Sultan** (supra) referred to by the learned counsel for the respondent No. 6 is concerned, the same would have no application inasmuch as, in the instant case there is no conflict of the advertisement and the Notification. The Notification gives full power and jurisdiction to the appropriate authority to notify a particular Centre to be for an exclusive community like SC, ST or Tea Tribe population and in appropriate cases such a reservation is made. However, in the instant case, there being no

such reservation as would be evident from the Notice dated 16.02.2019, the selection and the appointment of the respondent No. 6 in spite of securing less marks is wholly unjustified. The impugned selection and appointment of the respondent No. 6 is accordingly set aside. Consequently, the authorities are directed to make the appointment of the candidate who was nominated against serial No. 1 strictly in accordance with law. Such appointment be made expeditiously and in any event, within a period of 2(two) months from today.

22. The writ petition accordingly stands allowed.

JUDGE

Comparing Assistant