



GAHC010207042016

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

Case No. : WP(C)/5546/2016

MISS MAYA SAIKIA
D/O. LT. RAMESH SAIKIA, VILL. SIMLITOLA, P.O. SIMLITOLA, DIST.
GOALPARA, ASSAM, PIN. 783130.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HEALTH
SERVICE DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-36.

3:THE MISSION DIRECTOR OF NATIONAL HEALTH MISSION
ASSAM
CHRISTIAN BASTI
GUWAHATI-05.

4:THE MEMBER SECRETARY
DISTRICT HEALTH SOCIETY and JOINT DIRECTOR OF HEALTH SERVICES
GOALPARA
P.O. and DIST. GOALPARA
ASSAM
PIN. 783101.

5:PALLABI DAS
W/O. ABHIJIT BANIKYA
VILL. MORNOI
P.O. MONROI
DIST. GOALPARA



ASSAM
PIN. 783101

Advocate for the Petitioner : MR.D A KAIYUM

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri SH Rahman, Adv.

Advocate for the respondents : Ms. A. Bora, SC-NHM

Date of hearing : **24.04.2024**

Date of Judgment : **24.04.2024**

JUDGMENT & ORDER

Heard Shri SH Rahman, learned counsel for the petitioner. Also heard Ms. A. Bora, learned Standing Counsel, NHM. No representation on behalf of the respondent no. 5.

2. It is the selection and appointment of the respondent no. 5 as ASHA Supervisor which is the subject matter of challenge in this writ petition.

3. Pursuant to an advertisement dated 07.03.2015 for appointment of ASHA Supervisor, the petitioner along with the respondent no. 5 and other eligible candidates had offered their candidatures. In the selection so held in June, 2015, the respondent no. 5 has been selected.

4. Shri Rahman, learned counsel for the petitioner has submitted that the challenge is based on the stipulation in the advertisement. By referring to the

said advertisement, it is submitted that under the "Desirable Criteria", a candidate should be from the same Block / District of the concerned district. It is submitted that while the Block in which the appointment has been made is the Rangjuli Block in the district of Goalpara, the respondent no. 5 is from the Matia Development Block and therefore she could not have been appointed. It is submitted that such appointment is in violation of the stipulation of the advertisement. The learned counsel accordingly submits that the appointment of the respondent no. 5 is liable to be interfered with and the petitioner be directed to be considered for such appointment.

5. Ms. Bora, learned Standing Counsel, NHM has submitted that the premises on which the writ petition has been structured and presented is fallacious. By referring to the affidavit-in-opposition filed on 08.09.2017, it is submitted that in the selection held, while the respondent no. 5 was one of the selected candidates, the petitioner was placed in the second position in the Waiting List. The learned Standing Counsel further submits that the basis of the challenge is on a "Desirable Criteria" wherein it has been stipulated that preferably candidates should be from the same Block / District. It is submitted that though the respondent no. 5 belongs to the Matia Development Block, there is no dispute that the said Block is also within the district of Goalpara and therefore there is no violation as such. In this connection, she has referred to the averments made in paragraphs 6 and 8 of the affidavit-in-opposition. Ms. Bora accordingly submits that there is no merit in the writ petition and the same is required to be dismissed.

6. Though the respondent no. 5 had entered appearance through counsel and had also filed an affidavit-in-opposition on 15.11.20416, there is no representation of the said respondent no. 5.

7. The rival contentions advanced by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

8. The entire basis of the present challenge regarding selection and appointment of the respondent no. 5 is a clause in the advertisement. For the sake of clarity, the said clause is extracted hereinbelow-

“Desirable Criteria:-

1. ...
2. *Preferably, the candidate should be from the same Block / District of the concerned district.*
3. ...”

9. The expression used in the aforesaid clause are ‘desirable’ and ‘preferably’. In the considered opinion of this Court, such clause would come into operation only when two candidates secure the same marks and the said condition is not an essential condition. That apart, the interpretation made on behalf of the official respondents that even otherwise the respondent no. 5 who admittedly belongs to the same district of Goalpara appears to be in consonance with the aforesaid clause. In this connection, one may gainfully refer to the case of ***Sher Singh v. Union of India*** reported in ***(1984) 1 SCC 107*** wherein the Hon’ble Supreme Court has laid down as follows:

“7. ... The expression ‘preference’ amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other. It signifies that other things being equal, one will have preference over the others. ...”

10. It is also on record that the respondent no. 5 was selected and placed against the Sl. No. 3 in the select list by virtue of which she was appointed and



on the other hand, the present petitioner was placed in the second position in the Waiting List. This Court is of the considered view that the basis on which the present challenge has been structured is incorrect interpretation of the clause of the advertisement which otherwise would also not come to the aid of the petitioner.

11. The writ petition is accordingly dismissed.

12. No order as to cost.

JUDGE

Comparing Assistant