



GAHC010133402018

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

Case No. : WP(C)/4071/2018

GITANJALI KALITA
W/O. NAREN HAZARIKA, R/O. GASBARI, WARD NO.8, MORIGAON TOWN,
UNDER NO. 274 SUNARIGAON ANGANWADI CENTRE AREA, P.O.
MORIGAON, P.S. MORIGAON, DIST. MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SOCIAL
WELFARE DEPTT., DISPUR, GHY.

2:THE DIRECTOR OF SOCIAL WELFARE DEPTT.

ASSAM
UZANBAZAR
GUWAHATI
ASSAM

3:THE DISTRICT PROGRAM OFFICER

SOCIAL WELFARE DEPTT.
MORIGAON
DIST. MORIGAON
ASSAM

4:THE CHILD DEVELOPMENT PROJECT OFFICER

(CDPO) BHURBANDA ICDS PROJECT
MORIGAON
DIST. MORIGAON
ASSAM



5:THE SELECTION BOARD OF BHUBANDA ICDS PROJECT

BHURBANDA
DIST. MORIGAON
ASSAM
REP. BY ITS MEMBER SECRETARY CUM CDPO BHURBANDA ICDS
PROJECT
DIST. MORIGAON

6:MS. BIBHA GOSWAMI

W/O. SRI HARENDRA KR MAHANTA R/O. WARD NO.8
MORIGAON TOWN
P.S. MORIGAON
DIST. MORIGAON
ASSA

Advocate for the Petitioner : MR. A I UDDIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : **22.06.2022**

Date of Judgment : **09.08.2022**

JUDGMENT & ORDER

The writ jurisdiction of this Court has been sought to be invoked by the petitioner by questioning the legality and validity of an order dated 02.06.2018 passed by the Director, Social Welfare, Assam by which a direction has been issued to the CDPO, Bhurbandha ICDS Project to issue termination letter to the petitioner who was working as Angwandi Worker (AWW) in the Sunarigaon No. 24 Anganwadi Centre from her voluntary service, pursuant to which an order dated 13.06.2018 was passed of such termination. The aforesaid order has been passed in compliance of an order dated 01.10.2015 of this Court in WP(C)/2165/2013.



2. The case in hand has a chequered history. The projected case of the petitioner is that an advertisement was issued on 10.09.2009 for filling up of the post of AWW against the No. 274 Sunarigaon Anganwadi Centre (hereinafter Centre) in the district of Morigaon. The petitioner who claims to be a local resident applied for the same and was appointed vide an order dated 23.12.2009.

3. The aforesaid order of appointment dated 23.12.2009 was the subject matter of challenge in a writ petition WP(C)/471/2010 instituted by the respondent no. 6. This Court vide an order dated 20.05.2011 disposed of the said writ petition by directing the respondent no. 2 to consider the grievance within a period of two months. On such remand, the Director passed an order dated 30.11.2012 which according to the petitioner was never communicated to her and neither any notice preceding the same was issued to her. On the basis of the aforesaid order dated 30.11.2012, the CDPO, Bhurbanda ICDS Project issued an order dated 18.04.2013 whereby the petitioner was informed that her services as AWW has been terminated and she was asked to handover all necessary documents to the respondent no. 4.

4. This led to another round of litigation in the form of WP(C)/2165/2013 filed by the petitioner. It is the case of the petitioner that the impugned order was initially stayed by this Court vide an order dated 26.04.2013 and subsequently, the writ petition was allowed vide order dated 01.10.2015 by setting aside the impugned order dated 18.04.2013 holding the same to be *ex-parte* and remanded back the matter to the Director for re-examination. The aforesaid exercise was directed to be completed within a month.

5. The petitioner has alleged that no steps were taken to act in compliance with the aforesaid direction dated 01.10.2015 to dispose of the matter within the time frame of one month. However, after about two years, vide a notice dated 11.08.2017, the petitioner was directed to appear before the Director with all necessary papers in support of her claim of residence. Such meeting being ultimately held on 10.01.2018,



the petitioner has claimed of submitting certificates dated 04.09.2012 and 04.05.2017 issued by the local Gaonburah, certificates dated 04.05.2017 issued by the Ward Commissioner and Chief Worker of the Circle. The petitioner also claims to have submitted other relevant documents like Voter List and adduce oral evidence.

6. The petitioner has projected that by ignoring all the relevant documents, the respondent no. 4 had issued the order dated 02.06.2018 holding the petitioner to be an outsider and directed the CDPO to issue necessary orders pursuant to which the impugned the order dated 13.06.2018 was issued by the CDPO, Bhurbanda ICDS Project terminating the services of the petitioner as AWW of the Centre. As indicated above, it is the validity and legality of the aforesaid action of termination of the petitioner from her services which has been put to challenge in this writ petition.

7. I have heard Shri AI Uddin, learned counsel for the petitioner. I have also heard Ms. S. Baruah, learned Government Advocate, Assam, who has also produced the records. Ms. A. Devi, Legal Aid Counsel has appeared for the respondent no. 6. The materials placed before this Court have been carefully examined.

8. Shri Uddin, learned counsel for the petitioner has submitted that the impugned action of termination is not sustainable as the due process of law was not followed. Firstly, it is contended that the time framed by this Court while remanding the matter was grossly violated and no notice for appearance was served upon the petitioner. It is further submitted that the entire action is based on a survey report prepared by the respondent no. 3 in which the petitioner held to be an outsider and the said survey report was done behind the back of the petitioner. It is further contended that the documents produced by the petitioner were overlooked and irrelevant factors were taken into consideration before coming to the impugned conclusion.

9. Shri Uddin, learned counsel for the petitioner by relying upon a judgment passed by this Court in WP(C)/1436/2008 [**Smt. Hafijan Begum Vs. State of Assam**] has submitted that non-adherence to the principles of natural justice would

vitiating the action taken upon the petitioner. Reliance is also placed upon a notification dated 16.06.2012 wherein a distinction has been carved out between an AWC and a Mini AWC. By drawing the attention of this Court to the eligibility criteria, more specifically against Sl. Nos. (i) and (ii), the learned counsel has contended that for the Anganwadi Centre, the candidate has to be a local woman residing in the concerned Revenue Village and it is only for a Mini Anganwadi Centre that the candidate should be local woman residing in the locality. In this regard, reliance has also been placed by the petitioner on a decision reported in **2018 (1) GLT 816 [Sabita Begum Vs. State of Assam & Ors.]**

10. *Per contra*, Ms. Baruah, learned Government Advocate, Assam submits that the present litigation is an abuse of the process as the same is tried to be dragged in spite of the matter being brought to a final conclusion by the order of the Director which was passed in compliance with the earlier direction of this Court. By drawing the attention of this Court to the impugned order dated 02.06.2018 the learned State Counsel has submitted that the contention made on behalf of the petitioner of not giving an opportunity stands bellied. The impugned order clearly reflects that both the parties were called for hearing and their statements were recorded.

11. The State Counsel further submits that in the hearing before the Director an incorrect statement was made by the writ petitioner that she had applied for Fulbari Kalyanpur AWC but she was called for interview in respect of Sunarigaon No. 24 AWC where she was selected. By producing the records of the case which include the application of the writ petitioner, it would reveal that the application was meant for Sunarigaon No. 24 AWC. The State Counsel accordingly submits that the writ petition is liable to be dismissed.

12. Ms. A. Devi, learned Legal Aid Counsel, who has appeared for the respondent no. 6 submits that none of the grounds cited by the petitioner are tenable in law. Ms. Devi, learned counsel for the respondent no. 6 has submitted that the case projected



by the petitioner are factually incorrect and even the documents annexed to the writ petition cannot be taken into consideration. By referring to the affidavit-in-opposition filed on 26.11.2019, she has submitted that though the petitioner has claimed that the Ward Commissioner of the concerned Ward has given a certificate to the petitioner, the same Ward Commissioner has also issued another certificate dated 16.01.2010 certifying that the petitioner is a resident of Ward No. 8 Centre No. 23 and not a resident of Centre No. 24 Sunarigaon Centre.

13. The learned counsel for the respondent no. 6 submits that the decision of this Court in the case of **Hafijan Begum** (supra) is not applicable as there is no violation of the principles of natural justice in the present case. She further submits that the notification dated 16.06.2012 wherein the eligibility criteria for an AWW in an AWC and a Mini AWC were made different would not be applicable as the present selection is as per an advertisement of the year 2009 which was much prior to the said notification. For the same reason, the ratio laid down in the case of **Sabita Begum** (supra) would not be applicable.

14. Ms. Devi, learned counsel further submits that the petitioner has made an incorrect statement with regard to lack of opportunities before the survey was made. It is contended that in a survey, it is not practicable for each of the citizen to be present personally and only their details are to be informed to the authorities.

15. The rival contentions of the learned counsel for the parties have been duly considered and the materials placed before this Court including the original records have been carefully examined.

16. After hearing, it appears that the writ petition has been structured mainly on three grounds. Firstly, there has been allegations of violation of principles of natural justice while passing the impugned order dated 02.06.2018. However, the order itself records that the petitioner was called for hearing and statements of both the parties were taken. Therefore, the ratio laid down in the case of **Hafija Begum** (supra) is not

applicable as in that case, there was clear violation of the principles of natural justice. Secondly, it is contended that the case of the petitioner would be saved by the notification dated 16.06.2012 according to which, a candidate for the post of AWW in an Anganwadi Centre may be a local woman residing in the concerned Revenue Circle and it is only in the case of Mini AWW that there is a requirement to be a local women residing in the locality. However, the submission made on behalf of the respondent no. 6 is wholly incorrect as the aforesaid distinction would be effective only from the date of the notification whereas in the instant case, the recruitment started in the year 2009 when such notification was not even existing. Therefore, it is the prevailing law at that time of issuance of the advertisement that will govern and as per the same, the requirement was to be a local woman residing in the locality. The case of **Sabita Begum** (supra) is not applicable as it pertain to a selection process which was governed by the notification dated 16.06.2012.

17. The further contention is with regard to the application made for another AWC namely, Fulbari Kalyanpur AWC. However, on perusal of the records, the submission of the respondent no. 6 clearly appears to be incorrect, *inasmuch as* the application form would reveal that the Centre was mentioned as Sunarigaon No. 24 AWC.

18. Apart from the aforesaid findings which are against the petitioner, in the present petition, questions of facts have been raised which are also disputed. A Writ Court in exercise of extra-ordinary jurisdiction is not the appropriate Court for adjudication of such issues involving disputed questions of fact.

19. The Hon'ble Supreme Court in the case of **S.P., Forest Cell Vs. Kannans C.**, reported in **(2001) 9 SCC 209**, has laid down as follows:

“4. ...

As we have observed, the High Court committed error in going into the questions and recording findings which it should not have done in exercise of its power under Article 226 of the Constitution of India. Not only High Court has



decided disputed questions of fact but through its order has taken the property outside the reach of the criminal court. Accordingly, the said impugned orders are unsustainable in law. In fact the proper course open to the respondent was to move the criminal court under Section 451 of the Criminal Procedure Code in respect of the custody of the seized sandalwood. Admitted position is, the seized goods have been produced before the criminal court concerned, then for the custody of the same Section 451 of the Criminal Procedure Code is the proper course. This section empowers the criminal court to order for custody and disposal of property pending trial. Even if there be a dispute as in the present case whether the seized good is the property in the pending criminal case it is that criminal court alone which would be competent to adjudicate and decide the issue but not the High Court under its writ jurisdiction. In view of this, we find that the High Court has committed error in issuing the writ and granting the said relief to the respondent. Accordingly, the order of the learned Single Judge and the impugned judgment in writ appeal are hereby quashed."

20. In view of the aforesaid facts and circumstances, this Court is of the opinion that no enforceable rights of the petitioner have been violated and the impugned order dated 02.06.2018 by the Director, Social Welfare, Assam followed by the order dated 13.06.2018 passed by the CDPO, Bhurbanda ICDS Project appear to be in order. Consequently, the writ petition is held to be devoid of any merits and accordingly stands dismissed.

21. No order as to cost.

22. The original records are returned to the learned Government Advocate, Assam.

JUDGE

Comparing Assistant