
(2007) 05 GAU CK 0027

Gauhati High Court

Case No: None

Pratima Das and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: May 15, 2007

Citation: (2007) 3 GLT 675

Hon'ble Judges: Brojendra Prasad Katakey, J; Amitava Roy, J

Bench: Division Bench

Judgement

B.P. Katakey, J.

This appeal is directed against the judgment and order dated 15.03.2004, passed by the learned single Judge in Writ Petition (C) No. 9089 of 2003 whereby and where under the learned Single Judge dismissed the writ petition filed by the appellants refusing to set aside the order dated 31.10.2003, passed by the Child Development Project Officer (I/C), Raha ICDS Project, Raha, Nagaon, (herein after referred to as "the CDPO, (I/c), Raha ICDS Project") terminating their engagement as Anganwadi Workers with effect from the date of issuance of such orders. The fact relevant for the purpose of the present appeal is narrated below:

(i) Pursuant to the advertisement dated 17.08.2001 issued by the CDPO (I/c), Raha ICDS Project inviting applications for engagement as Anganwadi Workers and Helpers, the written and viva-voce test for selection of candidates were conducted on 07.10.2001 and 14.10.2001, respectively, by the Selection Committee constituted by the Government of Assam vide Notification dated 18.07.2001, wherein the appellants (8 in numbers) as well as private respondent Nos. 4 to 11 (also 8 in numbers) alongwith others appeared in such selection. The CDPO (I/c), Raha ICDS Project, Raha, thereafter prepared a list of candidates indicating marks obtained by each of them in the written as well as viva voce test, which does not bear the signature of the members of the Selection Committee consisting of 5 (five) members apart from the Chairman and Vice-Chairman, but bears the signature of the CDPO (I/c) only, who was the convener of such Selection committee. The Selection

Committee, however, vide its proceeding dated 09.03.2002 approved a list of selected candidates wherein the names of the present appellants have been shown as selected alongwith others but the names of present respondent No. 4 to 11 do not find place in the select list. The appellants alongwith others were thereafter engaged as Anganwadi Workers vide order dated 12.03.2002 and accordingly they joined in the said capacity in the respective centres under Raha ICDS.

(ii) The present respondent Nos. 4 to 11 alongwith 12 others, unmindful of preparation of the aforesaid select list, filed a writ petition being W.P.(C) No. 2365/02 praying for a direction to the respondent authorities to publish the select list, for engagement as Anganwadi Workers, pursuant to the written as well as viva-voce test held on 07.10.2001 and 14.10.2001 respectively, in terms of the advertisement dated 17.08.2001 and to make appointment pursuant to such select list, contending inter alia that though the process of selection for engagement as Anganwadi Workers has been initiated, the authority without publishing select list engaged some persons. In the said writ petition the present appellant Nos. 2 and 8 have been impleaded as respondents apart from two others, namely, Smti Jeutimoni Devi and Smti Bijoya Das, who according to the writ petitioners in the said writ petition were engaged as Anganwadi Workers without publication of the select list. In the said writ petition, the respondent Nos. 2 and 3, namely, the Director of Special Welfare, Assam, as well as the CDPO (I/c) Raha ICDS Project, on the basis of the aforesaid list of candidates prepared by the CDPO (I/c) bearing the marks obtained, filed the affidavit admitting that some persons, who were not selected have been appointed, even though 9 (nine) out of 20 (twenty) petitioners, namely, respondent Nos. 4 to 11 in the present appeal and another Smti Jhanehi Bordoloi were selected but except said Smti Jhanehi Bordoloi, the others were not appointed. The learned single Judge by order dated 28.05.2003, relying on the affidavit filed by the Director of Social Welfare, Assam,, as well the CDPO (I/c) Raha ICDS Project, Raha, disposed of the said writ petition by directing the Director of Social Welfare, Assam, and the CDPO (I/c) Raha ICDS Project, Raha to engage the said writ petitioners (respondent Nos. 4 to 11 in Writ appeal No. 168/2004) as Anganwadi Workers, if required by removing such of the persons who have been engaged without being selected. However, the learned single Judge has directed the authorities to issue notice to those non-selected persons before terminating their engagement and thereafter proceed to act in accordance with law.

(iii) The appellants in the present Writ Appeal No. 168/2004 along with another, namely, Smti Kalpana Sangmaji also filed a writ petition being Writ Petition (C) No. 5257/2003 apprehending termination of their engagement as Anganwadi Workers and though an interim order dated 15.07.2003 was initially passed in the said writ petition directing the respondent authorities not to oust the writ petitioners from service, if they are working, but on the basis of the application filed by the subsequently impleaded respondents, (who are also the respondents in this appeal) the said interim order was modified vide order dated 29.03.2003 passed in Misc.

Case No. 983/2003 by observing that the writ petitioners in the said writ petition will be entitled to protection only if they were engaged after due selection pursuant to any advertisement issued by the competent authority and further observing that the interim order passed will not be a bar to comply with the order passed in Writ Petition (C) No. 2365/2002 directing appointment of the writ petitioners herein.

(iv) The CDPO (I/c) Raha ICDS Project, Raha, thereafter vide order dated 31.10.2003, pursuant to the order dated 28.05.2003 passed in W.P.(C) No. 2365/02 as well as in Misc. Case No. 983/2003 arising out of W.P.(C) No. 5257/03, terminated the engagement of the present appellants as Anganwadi Workers with effect from the date of issuance of such office order. On the same day i.e., on 31.10.2003, the CDPO (I/c), Raha ICDS Project, Raha, also issued another office order engaging the respondent Nos. 4 to 11 in the present writ appeal as Anganwadi Workers in Raha ICDS Project.

(v) The said order of termination came to be challenged by the appellants in Writ Petition (C) No. 9089/2003 with further prayer for their reinstatement on the ground that no notice, as directed by the learned single Judge vide order dated 28.05.2003 passed in W.P.(C) No. 2365/2002, has been issued before terminating their engagement as Anganwadi Workers and also on the ground that they were selected by the Selection Committee in its proceeding dated 09.03.2002 and were engaged as Anganwadi Worker pursuant to such selection. It has further been contended that the respondent Nos. 4 to 11 were not selected. The learned single Judge upon hearing the learned Counsel for the parties vide order dated 15.03.2004, by taking into account the affidavit-in-opposition filed by the State respondents, refused to interfere with the order of termination of engagement dated 31.10.2003, on the ground that they were terminated to accommodate the selected persons as per merit position in the select list. The said order passed by the learned single Judge has been assailed by the appellants in the present appeal on the ground on which the termination has been challenged in the writ petition.

2. During the course of hearing of the present appeal on 01.12.06 as it revealed from the contention of the learned Counsel appearing for the contesting parties that both the parties namely the appellants as well as the private respondents claimed to be selected for engagement as Anganwadi Workers, on the basis of the advertisement dated 17.08.2001 and the record produced before the Court reveals the existence of two sets of documents, one bearing the signature of the CDPO (I/c) Raha ICDS Project only, purportedly containing the marks obtained by each of the candidates in written as well as viva-voce test, without the signature of any of the members of the Selection Committee and the other containing the signatures of some of the members of the Selection Committee including its Chairman, which list contains the names of the present appellants, the Court on 08.12.2006, because of such discrepancy, after recording the factual position has directed the Commissioner & Secretary to the Government of Assam, Social Welfare Department

to conduct an enquiry on the following issues:

(i) Whether pursuant to the advertisement dated 17.08.2001 any Selection Committee was constituted for the purpose of selecting candidates for engagement as Anganwadi Worker/Helpers in Raha ICDS Project?

(ii) Whether any written test and/or viva-voce test was held for selection of such candidate for engagement as Anganwadi Workers/Helpers in Raha ICDS Project?

(iii) Whether any select list was duly prepared by the competent authority after due selection and whether such select list was accepted by the Government and acted upon?

(iv) Which of the select lists, one bearing the signature of the CDPO, ICDS Project, Raha or the other signed by some of the members of a Selection Committee, available on record, was duly prepared or none of the list so prepared were valid?

3. The Secretary to the Government of Assam, Social Welfare Department after conducting a detailed enquiry vide covering letter dated 8th January, 2007, submitted a report to this Court with the following findings:

i) The Mark-Sheet prepared by the then CDPO i/c, Raha ICDS Project, Mrs. Nilima Mahanta has absolutely no validity as it was not signed by other members of the Selection Committee,

ii) Since the Selection Committee did not approve the Mark-Sheet complied by the then CDPO i/c Raha ICDS Project, it had obviously no basis for finalizing the select list. Minutes of the Selection Committee meeting held on 9.3.2002 to finalise the select list does not make any mention of the grounds on which selection of candidates was made. Hence, the select list approved by it does not appear to have any validity,

iii) The whole conduct of the Selection Committee is dubious and as admitted by then CDPO, i/c, Raha ICDS Project and the Programme Officer, Divisional ICDS Cell, Nagaon, who were members of the Selection Committee, they had no scruples in dancing to the tune of the Chairperson.

4. This Court vide order dated 21.02.2007 upon taking the said report submitted by the Secretary to the Government of Assam, Social Welfare Department, on record, has directed to furnish the copy of the said report to the learned Counsel for the parties including the State counsel and accordingly the same was furnished to the learned Counsel for all the parties between 23rd February, 2007 to 26th February, 2007. No objection has been filed by any of the parties against the said report submitted by the Commissioner & Secretary to the Government of Assam, Social Welfare Department.

5. We have heard Mr. A.M. Mazumdar, the learned senior counsel appearing on behalf of the appellants and Ms. B. Goyal, the learned State counsel appearing on

behalf of the respondent Nos. 1 to 3 as well as Mr. U. Bhuyan, the learned Counsel appearing on behalf of the respondent Nos. 4 to 11. We have also perused the relevant records of the Government produced before this Court including the records of the enquiry conducted by the Commissioner & Secretary to the Government of Assam, Social Welfare Department.

6. From the facts narrated above, it, therefore, transpires that the appellants claimed to be selected for engagement as Anganwadi Workers in the proceeding of the selection held on 09.03.2002 pursuant to the selection process undertaken in the basis of the advertisement dated 17.08.2001. The private respondent Nos. 4 to 11 have also claim that though they secured more marks than the appellants in the written as well as viva-voce test, their names did not appear in the Select list approved by the selection Committee in its meeting dated 09.03.2002 because of the insistence of the then Chairman of the Selection Committee to include the names of the appellants in the select list though they got lesser marks than some of the candidates, hence such select list cannot be legal and valid and be the basis for claiming appointment by the appellants. The records produced before this Court as well as the enquiry report submitted by the Commissioner & Secretary to the Govt. of Assam, Social Welfare Department also reveal that a list of candidates appeared in the interview was prepared by then CDPO (I/c) Raha ICDS Project, who was the convener of the Selection Committee indicating marks purportedly secured by each of them in the written as well as viva voce test which though was signed by the in-charge CDPO, Raha ICDS Project, however, not signed by any of the members of the selection Committee and was not approved by the Selection Committee and instead the said Selection Committee finalized a select list in its meeting held on 09.03.2002 without giving any reason for selection of candidates and without preparing any mark-sheet containing the marks obtained by each of the candidates in the written as well as viva-voce test having the signatures of the members of the Selection Committee, which is the basis for preparation of the select list. The Secretary to the Govt. of Assam, Social Welfare Department upon taking into consideration the entire facts as revealed from the records, as well as from the statement made by the then CDPO (I/c), Raha ICDS Project and of the Programme Officer of Raha Divisional ICDS Cell, Nagaon, has observed that neither the compiled mark-sheet prepared by the CDPO (I/c), Raha ICDS Project nor the select list approved by the Selection Committee are valid and acceptable documents for selection of Anganwadi Workers in Raha ICDS Project.

7. Being confronted with the records as well as the report submitted by the secretary to the Govt. of Assam, Social Welfare Department, Mr. Mazumdar, the learned senior counsel for the appellants has submitted that the authorities may be directed to initiate a fresh process of selection for engagement of Anganwadi Workers in Raha ICDS Project against the posts earlier held by the appellants and subsequently by the private respondents, further directing to give due weightage to the period of service rendered by them as well as by the private respondents in the

said selection.

8. Mr. Bhuyan, learned Counsel for the private respondent Nos. 4 to 11, on the other hand, has submitted that it is evident from the statement of the then CDPO (I/c), Raha ICDS Project recorded during the enquiry by the Secretary that the private respondents secured higher marks in the test, consisting of written and viva-voce, than the appellants but instead of inclusion of their names, the names of the appellants were included in the select list prepared by the Selection Committee in its meeting held on 09.03.2002 though they got lesser marks than the private respondents, therefore, the learned single Judge has rightly refused to set aside the order of termination of engagement of the appellants dated 31.10.2003. Mr. Bhuyan has further submitted that though the Secretary in its report has concluded that neither the compiled mark-sheet nor the select list approved by the Selection Committee are valid and acceptable, the engagement of the private respondents as Anganwadi Workers for the aforesaid reason, may not be interfered with by this Court, for the reason stated above.

9. The learned standing counsel for the State, Ms. Goyal, supporting the findings recorded by the Secretary to the Govt. of Assam, Social Welfare Department in his report, has submitted that it being an admitted position of fact that the select list finally approved by the Selection Committee does not contain the names of the respondent Nos. 4 to 11, their engagement, in the absence of any select list containing their names, is not legal and valid. Similarly the engagement of the appellants were also not valid as it is evident from the record that the Selection Committee does not give any reason for making selection of the candidates, including the appellants and the Selection Committee did not prepare any list containing the marks obtained by each of the candidate in the written as well as viva-voce. The mark-sheet, submitted by the learned State counsel, prepared by the CDPO (I/c), who was the convener of the Selection Committee and not a member, in the absence of the signatures of the members of the Selection Committee, cannot be accepted. The learned State counsel, therefore, submits that necessary direction may be issued to the respondent authorities to initiate a fresh process of selection against the said 8 (eight) numbers of post of Anganwadi Workers under Raha ICDS Project, without directing the authority to give weightage to the service rendered by the appellants/or the respondents, their engagement being without any valid selection and also without disturbing other persons, who have been engaged as Anganwadi Workers on the basis of the said select list, as they are not party to the present proceeding and their engagement have not been questioned by any body.

10. The records relating to the selection of candidates as Anganwadi Workers pursuant to advertisement dated 17.08.2001 issued by the CDPO (I/c), Raha ICDS Project, reveals the existence of a list of candidates appeared in written as well as viva-voce test signed by the CDPO (I/c) Raha ICDS Project only, reflecting the marks purportedly obtained by the candidates. It appears from the records of selection

that the Selection Committee in its meeting dated 09.03.2002 has approved a list of candidates selected, wherein the names of the present appellants figured but the names of the private respondent Nos. 4 to 11 did not find place, though from the list prepared by the CDPO (I/c) Raha ICDS Project it appears that the private respondents have secured higher marks than the appellants. The said list prepared by the CDPO (I/c), Raha ICDS Project having been signed by the CDPO (I/c), who was the convener of the Selection Committee, not a member and not being signed by the members of the Selection Committee constituted by the Government vide order dated 18.07.2001 cannot, however, be accepted and the entries made in the said list relating to the marks obtained also cannot be accepted in the absence of the signature of the other members of the Selection Committee. It is not comprehensible how the convener can allot marks to the candidates for viva voce test, when such mark is to be allotted by each of the members of the Selection Committee. The record of selection does not contain any such mark-sheet containing the marks allotted by each of the members of the Selection Committee. Moreover, the Selection Committee in its proceeding dated 09.03.2002 did not select the respondent Nos. 4 to 11, for which their names do not find place in the select list approved by it. Similarly, the records produced before this Court as well as the enquiry report submitted by the Secretary, Social Welfare Department also reveals that the Selection Committee in its proceeding dated 09.03.2002 did not assign any reason whatsoever for inclusion of names of the appellants and there is no basis for preparation of such a list, in the absence of the mark-sheet, as discussed above. Therefore the selection of the appellants also cannot be treated as valid so as to claim engagement or to be engaged as Anganwadi Workers. For claiming engagement, the basic requirement is the existence of a legally valid select list prepared on the basis of the selection process undertaken. Hence, the claim of the appellants that they were validly appointed on being selected cannot be accepted. The claim of the respondent Nos. 4 to 11, on the face of their non-inclusion in the select list approved by the Selection Committee also cannot be accepted on the same ground, in view of the admitted position that their names did not find place in the select list approved by the Selection Committee in its meeting dated 09.03.2002.

11. The Commissioner & Secretary to the Government of Assam, Social Welfare Department, also, in his aforesaid report submitted pursuant to the order-dated 08.12.2006 passed in the Writ Appeal No. 168/2004 has concluded that neither the compiled mark-sheet prepared by the CDPO (I/c) Raha ICDS Project wherein the respondent Nos. 4 to 11 are shown to have been received more marks than the appellants nor the select list as approved by the Selection Committee in its proceeding dated 09.3.2002, can be accepted to be valid. It appears from the materials available on record, as discussed above, the finding recorded by the Commissioner & Secretary to the Govt. of Assam in his report, is based on materials available on record and hence acceptable, which we accordingly do.

12. That being the position, in our considered opinion, the learned single Judge has rightly refused to set aside the order of termination of engagement of the appellants dated 31.10.2003. The respondents Nos. 4 to 11, as discussed above, having also not been selected by the Selection Committee in its meeting dated 09.03.2002, their engagement as Anganwadi Workers after terminating the services of the appellants also cannot be treated to be legal and valid, which is accordingly set aside.

13. This leads us to the question as to whether the engagement of other persons who have been engaged as Anganwadi Workers pursuant to the said select list prepared by the Selection Committee in its proceeding dated 09.03.2002, who are not before us, is to be interfered with, in view of our aforesaid finding relating to the said list. It appears from the record that the process of selection was initiated vide advertisement dated 17.08.2001 for engagement of 348 persons as Anganwadi Workers and Helpers and on the basis of the aforesaid select list persons have been engaged in the said capacity in the year 2002, whose engagement on fixed honorarium basis have not been questioned by any body, except the dispute relating to the engagement of the appellants and respondents against 8 (eight) posts of Anganwadi Workers. That apart other persons are not before us. That being the position, we do not desire to set aside the engagement of other persons engaged as Anganwadi Workers and Helpers on the basis of the aforesaid select list, however, we keep it open to the authority to take appropriate action, if so advised, in accordance with law.

14. In view of the aforesaid position, we direct the respondent authorities to initiate a fresh process of selection in respect of 8 (eight) numbers of post of Anganwadi Workers against which initially the appellants and thereafter the private respondents Nos. 4 to 11 were appointed. The respondent authorities are directed to initiate and complete the said process within a period of 6 (six) months from today wherein, the appellants as well as of the private respondents shall be considered for selection, if applied for. It is also open to both the appellants and also the respondents to apply for condonation of upper age limit if, meanwhile, they have crossed the upper age limit for such engagement and in that event, the authority shall pass necessary order in that regard in accordance with law. However, we are not inclined to direct the authority to give any weightage to the period of the engagement of the appellants as well as respondents as Anganwadi Workers, in the fresh process of selection to be initiated, as their engagements are found to be not valid. Keeping in view the necessity for engagement of Anganwadi Workers for implementation of the ICDS Project, we further direct the authorities to allow the private respondents to continue in the said capacity, if they are still working as such, for the aforesaid period of 6 (six) months or till the process of selection as directed above, is completed, whichever is earlier.

The appeal is, accordingly disposed of No cost.