

WP(C) 4357/2009

BEFORE

THE HON'BLE MR. JUSTICE AMITAVA ROY

The petitioner, common in both the petitions, has ventilated the same grievance and seeks the same relief.

I have heard Mr. P Sarma, learned counsel for the petitioner in WP(C) No. 4283/2009 and Mr. KK Phukan, his learned counsel in WP(C) No. 4357/2009.

The petitioner's pleaded case in brief, is that by notification No. SWD.64/2007/Pt.I/51, dated 21.08.2009 issued by the Under Secretary, Government of Assam Social Welfare Department, Dispur, the nominations of various social workers under the different ICDS projects of the State as members of Selection Committees for appointment of Anganwadi Workers and Anganwadi Helpers were conveyed. For the Dhakuakhana ICDS Project one Sri Kushal Borguhain and Sri Ananta Das (respondent No. 5) were nominated. According to the petitioner, on receiving complaints against the respondent No. 5, by a subsequent Notification No. SWD.64/2007/Pt.I/67, dated 27.08.2009 of the same authority, the respondent No. 5 was replaced by him. The said notification was also published in the issued dated 31.08.2009 of the Assam Gazette (Extraordinary). While the matter rested at that, by the impugned WT Message/Fax dated 22.09.2009, also by the said authority, the earlier notification dated 21.08.2009 was restored signifying the replacement of the petitioner by the respondent No. 5.

The State respondents have not filed any affidavit and have chosen to rely on the official records to justify the impugned action. The respondent No. 5 in his counter, while claiming himself to be a renowned social activist of his locality apart from narrating his achievements in his field of activity, has questioned the genuineness of the notification dated 27.08.2009. While endorsing the restoration of the notification dated 21.08.2009, whereby he had been nominated to be a member of the Selection Committee for appointment of an Anganwadi worker and helper for the Dhakuakhana ICDS Project, he has asserted that he in that capacity has already participated in the proceedings of the Selection Committee conducting the related interview on 05.10.2009. The answering respondent has, inter alia, pointed out that the petitioner has filed two writ petitions on the same cause of action being WP(C) No.4357/2009 and WP(C) No.4283/2009.

The learned counsel for the petitioner have argued that he (petitioner) having been consciously inducted as a member of the Selection Committee for the aforementioned project in place of the respondent No. 5 (respondent No. 4 in WP(C) No. 4357/2009), the impugned WT Message besides being per se, arbitrary, also lacks in authority seeking to override the nomination made by the Governor of the State. On the aspect of successive petitions on the same cause of action, they have maintained that they had been kept unaware of this development by the petitioner.

The learned State counsel on the basis of the records has submitted that the petitioner, as such, has no legal right to claim nomination in the Selection Committee and that the impugned WT Message restoring the earlier nomination for the project involved, is on valid and relevant considerations. The learned counsel for the private respondent has urged, further that the Selection Committee with him as a nominated member having, meanwhile, conducted the interview for the selection of Anganwadi worker and helper for the Dhakuakhana ICDS Project, no interference, as sought for, ought to be made.

The pleadings available in the official records have been scrutinised. Noticeably, the learned counsel for the petitioner have not asserted any right of his, recognized by law, to be included in the concerned Selection Committee in the capacity of a social worker. Admittedly, the petitioner's nomination vide notification dated 27.08.2009 had been in modification of the earlier one dated 21.08.2009 nominating the private respondent as a member thereof. The notification dated 27.08.2009 was as per the revised list drawn up by the Minister of Social Welfare & Jail, introducing several alternations in the list of nominees accompanying the earlier notification dated 21.08.2009. Intermittent chang

es on the basis of inputs and requests made by various authorities in the composition of Selection Committee of different projects are also discernible from the records. The impugned WT Message, however, does not appear to be a yield of any such request made by the Departmental Minister.

Though, the reason for the issuance of notification dated 27.08.2009 and the WT message dated 22.09.2009 vis-a-vis the Dhakuwakhana ICDS Project is not very clearly forthcoming, it at least does not appear that the restoration of the notification dated 21.08.2009 to be consequent upon any request made by any extra departmental authority. All these notifications significantly, have been issued in the name of the Governor of the State and, therefore, the validity of one cannot be certified over the other.

In view of the disclosures above, this Court, in the exercise of its power of judicial review is of the opinion that no such blatant legal infirmity is decipherable warranting interference with the impugned notification. This is more particularly, in absence of any legal right vested in the petitioner to claim nomination as a member of the Selection Committee involved. The fact that meanwhile, the Selection Committee with the private respondent as one of its nominated members, has conducted the process for which it had been constituted, also cannot be disregarded. These petitions, therefore, lack in merit and are, therefore, dismissed.

A very disturbing trend has been noticed as indicated hereinabove, in the process of the adjudication undertaken herein. The petitioner, who claims to be a social worker and insists for his nomination as a member of the Selection Committee for that distinction has indulged in the act of initiating multiple proceedings before this Court on the same cause of action. This too, as his learned counsels seek to submit by withholding this vital fact from them. As would be obvious from the order dated 21.10.2009 passed by this Court, the petitioner on being confronted with the above, had admitted his doings and has unconditionally apologised therefor. The conduct of the petitioner besides being wholly irresponsible is detrimental to the credibility and dignity of the institution exposing it to the risk of being brought to disrepute for the unscrupulous and casual adventures of a litigant unmindful of its majesty in law and the prejudicial consequence of shaking the confidence of the public in the justice administration system. This Court is, therefore of the unhesitant opinion that to curb such detestable and harmful activities deterrent and exemplary steps ought to be taken. The apology tendered, in the facts and circumstances of the case, is considered inadequate and inconsequential.

In the above view of the matter, a cost of Rs.25,000/- (Twenty five thousand) is imposed on the petitioner to be deposited by him within a period of 2 (two) weeks herefrom with the Registry of this Court. The Registry would ensure that this direction is implemented without fail.