

Assam schedule VII, Form No.132.
High court form No.(J)2.

HEADING OF JUDGMENT IN ORIGINAL SUIT.Dhubri

IN THE COURT OF MUNSIFF NO 2, DHUBRI

Title Suit No.02/2010

Present: B. Medhi,

Munsiff no 2, Dhubri

Plaintiff..... **1. Manowara Khatun**

D/O- Late Kachimuddin Sk.

R/O, Vill- Palash kandi, P.S.& Dist –Dhubri

--VS--

Defengdant..... **1. Nur Mafila Bibi**

W/O- Abdul Kalam

R/O, Vill- Borobila, P.S.& Dist- Dhubri

2. The Child Devt Officer, cum member Secretary, Selectuion committee, Gauripur I.C.D.S. Dharmasala

3. Dist. Social Welfare Officer,cum member selection committee, Anganawadi worker, gauripur I.C.D.S. Dharmasala, PS.& Dist-Dhubri

4. The Medical Officer, I/C Dharmasala PHE, cum member selection committee, Anganawadi worker, gauripur I.C.D.S. Dharmasala, PS.& Dist- Dhubri

5. Sri Abu Taher Bepari,member selection committee, Anganawadi worker, gauripur I.C.D.S. Dharmasala, PS.& Dist-Dhubri

6. The S.D.C., Dhubri, cum member selection committee, Anganawadi worker, gauripur I.C.D.S. Dharmasala, PS.& Dist-Dhubri

7. The State of Assam, represented by the collector, Dhuri, PS.& Dist- Dhubri

given under my hand and seal on this 30th of January of 2014 in the presence of,

1. Sri Mahiruddin Ahmed ,Learned advocate for the Plaintiff.
2. Kazi M. Hussain, Md. A.B. Akhand Learned Adocate for the Defendant.

JUDGEMENT

This is a suit for declaration, cancellation, selection and appointment and also for the for mandatory injunction.

Brief fact of the case:

The plaintiff has filed the suit stating inter Alia that defendant number two the child development officer of, Gauripur Dharmasala made an advertisement in the month of September 2009 inviting application from deserving candidates residing in Palashkandi village for filling up the post of Anganawadi worker of 258 Palashkandi Anganawadi centre under Hawrapar gaon panchayat. The plaintiff alleges that the defendant number two in the aforesaid advertisement expressly mentioned that only the candidates residing in Palashkandi village would be eligible and entitled to apply for appointment in the concerned post. The plaintiff further claims that she appeared in the interview for the selection of Anganawadi worker as the lone candidate from Palashkandi village. The plaintiff alleges that the defendant number one also appeared in the interview but she was from outside the area of Palashkandi village. However as per the allegation of the plaintiff appointment letter was issued in name of defendant number one in spite of the fact that her name does not appear in the selection list rather in the selection least number 49 on the name of Rashid Khatun appears. Therefore the plaintiff claims that the said appointment in the concerned post is out and out illegal and arbitrary. And hence she has filed the suit.

After filing of the suit of was registered and sommons was served upon the defendants. The defendants appeared and filed their written statements.

Defendant number one in her written statement has stated that she is a permanent resident of Palashkandi village as per record and certificate issued by president of Gaon panchayat. She has admitted that in the selection list the name of Rashida Khatun had appeared but she claims that Rashida Khatun is a selected candidate of another Anganawadi Centre i.e. 261 no. Kishmat Hasdaha and due to computer type mistake her name appeared in 258 A.W.C. of Palashkandi village. Accordingly she claims that defendant number one has already joined the service have been working there since 23.12.2009. Hence she claims that the plaintiff is not entitled to any relief and the suit be dismissed.

The defendant number 2 to 7 in the written statement has almost stated the same thing to that of defendant number one. Therefore for the sake of brevity I avoid describing those in details.

My learned predecessor after going through the plaint and the written statements was pleased to frame the following issues.

1. Whether the suit is maintainable?
2. Whether there is a cause of action for the suit?
3. Whether the selection of defendant number one as Anganawadi worker to the post of 258 Palashkandi village Hawrapar GP is illegal, arbitrary, and ultra virus to the departmental guidelines and provisions of?
4. Whether the plaintiff is entitled to Decree as prayed for?
5. To what relief/reliefs the plaintiffs are entitled to?

The plaintiff has filed evidence in chief of as many as two witnesses. And the defendants have none.

Decision, discussion and reasons thereof:

Issue number one: whether the suit is maintainable?

The defendants have pleaded that the suit is not maintainable in their written statements. But neither in nor evidence nor in the argument they

could show why the suit is not maintainable. On perusal of the case record I found nothing to hold that the suit is not maintainable.

Hence this issue is decided in the positive in favour of the plaintiff.

Issue number two: whether there is a cause of action to the suit?

Cause of action is a bundle of facts or combination of the facts which gives right to seek judicial remedy or relief against the other. It is a bundle of facts the plaintiff is required to prove in other to get relief in his favour. In the present case the plaintiff has alleged that defendant number one has been illegally selected for the post of Anganawadi worker 258 A.W.C. of Palashkandi village. On the contrary they should have selected the sole candidate of Palashkandi village, the plaintiff, for the post. The defendants on the other hand pleaded that the selection was not illegal as the defendant number one also hailed from of Palashkandi village as per the certificate given by Gaon Panchayat. Thus there is a clear case alleged by one party and denied by the other hand the plaintiff has to prove the allegation in other to get the relief. Hence I hold that there is a cause of action to the suit.

Thus this issue is decided in the positive in favour of the plaintiff.

Issue number three: Whether the selection of defendant number one as Anganawadi worker to the post of 258 Palashkandi village Hawrapar GP is illegal, arbitrary, and ultra virus to the departmental guidelines and provisions ?

This is the core issue and the whole dispute. The plaintiff filed evidence in chief of PW1 and PW2 in support of the case. However plaintiff never bother to bring PW1 and PW2 for their cross examination in spite of getting the repeated chances. Therefore the evidence is provided by them cannot have any legal standing.

I have perused the documents provided by them as exhibits in their evidence in chief. To my utter surprise all those documents are Photostat copies without having been mentioned to be proved in original. Therefore those documents also cannot be taken into consideration. Thus plaintiff failed to prove by their evidence what they had been alleging. Thus without

any material evidence I cannot hold that the appointment of defendant number one to be illegal, arbitrary, and ultra virus of the departmental guidelines and provisions.

Hence this issue is decided in the negative against the plaintiff.

Issue number four: whether the plaintiffs are entitled to relief as prayed for?

In view of decision taken in issue number three I am of the considered opinion that the plaintiffs are not entitled to any relief as prayed for.

Hence this issue is decided in the negative against the plaintiff.

Issue number five: to what other relief/reliefs the plaintiff is entitled to?

In view of the nature of the suit and in view of the fact that plaintiff has failed to prove none of their claim I am of the considered opinion that plaintiff is not entitled to any other relief/reliefs.

ORDER

The plaintiffs are not entitled to get any relief. The suit is dismissed on contest. Parties shall bear their own costs.

Prepare a decree accordingly.

Given under my hand and seal on this 30th day of January 2014.

APPENDIX

Witnesses of Plaintiff: None

Witnesses of Defendant: None

Exhibits of the Plaintiff: None

Exhibits of the Defendant: None