

Smt. Lilavati Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Aug. 12, 2008

Acts Referred: Constitution of India, 1950 " Article 226

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sudhir Agarwal, J.

Heard Sri M.C. Umrao, learned Counsel for the petitioner, learned Standing Counsel for the respondent Nos. 1, 3 &

4, Sri C.N. Tripathi for the respondent No. 2, Sri Manish Chandra for the respondent No. 6, Sri M.R. Goswami for the newly impleaded

respondent Shivdas Singh & Sri V.K. Singh for the respondent No. 5.

2. With the consent of the learned Counsel for the parties this writ petition is being decided finally at this stage under the Rules of the Court.

3. Aggrieved by the order dated 20th December, 2007 passed by the District Magistrate, Allahabad cancelling selection of the petitioner for the

post of Shiksha Mitra, she has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by filing the present

writ petition.

4. The brief facts in the present dispute are that the selection for the post of Shiksha Mitra in various Primary Schools was notified by the District

Basic Education Officer vide memorandum dated 26th October, 2005, which included the second post of Shiksha Mitra in the Primary School,

Kapasi Kalan, Block Koraon, District Allahabad. As per the resolution passed by the respondent No. 5 on 14.5.2005 the said vacancy was to be

filled in by a general female candidate. It approved the name of one Smt. Archana Singh, who joined the institution in the year 2005. In 2006 the

first post of Shiksha Mitra fell vacant due to selection of Sri Santosh Kumar the incumbent working on the said post as assistant teacher in B.T.C.

Grade. Consequently, the respondent No. 4 vide notification dated 20th June, 2007 notified the said vacancy along with some other vacancies of

Shiksha Mitra. The petitioner and several other candidates applied whereupon the respondent No. 5 vide resolution dated 3rd July, 2007

recommended petitioner's name having secured highest quality point marks i.e. 61.87%. The petitioner sent for training and thereafter she joined

the aforesaid post. One Sri Shivdas Singh filed Writ Petition No. 44221 of 2007 contending that one post was already filled in by a woman

candidate and if this post is also filled in by the same candidate it would amount to 100% reservation for women, which is not sustainable in law.

The said writ petition was finally disposed of on 19th July, 2007 directing the District Magistrate to look into the grievance of Sri Shivdas Singh

and pass appropriate orders.

5. The District Magistrate, accordingly, has decided the representation of Shivdas Singh by the impugned order holding that the second post has

already been filled in by a women candidate, therefore, the first post cannot be treated to be reserved for a women candidate and accordingly has

cancelled petitioner's selection and aggrieved thereto the present writ petition.

6. Learned Counsel for the petitioner contended that as per the Government order dated 1st July, 2000 it is provided that if there are two posts in

a primary school in a Gram Panchayat, the first one shall be filled in by the category of which the Gram Pradhan of that Panchayat belongs to and if

it is not reserved, then the second post shall be reserved.

7. It is also contended that since in the Gram Sabha Kapasi Kalan one Smt. Saroj Singh elected as a Gram Pradhan, who was a female O.B.C.,

therefore, the first vacancy in the primary school in question was liable to be filled in by a female O.B.C. candidate. Since the vacancy in question

was against the first post and Smt. Archana Singh was selected against the second post, it cannot be said that the appointment of the petitioner was

illegal and the approach of the District Magistrate is clearly erroneous and contrary to the said Government order.

8. Sri Goswami, learned Counsel appearing for the contesting respondent, Sri Shivdas Singh contended that both the posts could not have been

filled in by whom candidates and that is contrary to the law laid down by the Hon'ble Single Judge of this Court in Smt. Kalyani Devi v. State of

U.P. and Ors. in Writ Petition No. 6946 of 2006 decided on 14th February, 2006, which was confirmed by the Division Bench of this Court in

Special Appeal No. 202 of 2006 decided on 4.4.2006 and, therefore, the order passed by the District Magistrate does not warrant any

interference.

9. Learned Standing Counsel has also supported the order of the District Magistrate on the reasoning contained therein.

10. I have heard learned Counsel for the parties and perused the record.

11. It is not in dispute that the post in question as is evident from the advertisement dated 20th June, 2007 "Annexure No. 9 to the writ petition"

was advertised as the first post at Primary School, Kapasi Kalan. The vacancy, which was advertised earlier on 26.10.2005 wherein Smt.

Archana Singh was selected was admittedly advertised as second vacancy.

12. As Per the Government order dated 1st July, 2000, it is also not in dispute that the first post in of Shiksha Mitra in the Primary Schools shall be

filled in by a candidate, who belong to the category of which the Gram Pradhan of that Village is. This is what has also been held by the division

Bench in Kalyani Devi (supra) where referring to the Government Order dated 1.7.2000 the Court observed as under:

In the Government Order bearing No. 129(1)/15-5-2000-282/98 dated 1.7.2000. It is provided as follows (Seen page 89 of the paper book

before us): (i) Out of the Shiksha Mitras in the School, 50% will be women; (ii) Where the Pradhan is of General Category/Scheduled Caste/Other

Backward Class, the first post of Shiksha Mitra, shall go to a similarly classified person and (iii) If the first post is reserved, then the second post

will be unreserved.

In the Schools in question the first reservation, following the caste of the Pradhan, had to be Other Backward Class.

13. The petitioner has pleaded in paragraph 14 of the writ petition that the Gram Pradhan of Gram Sabha Kapasi Kalan, Smt. Saroj Singh is a

woman O.B.C. Candidate and the said averment has not been disputed in paragraph 9 of the counter affidavit filed by the contesting respondent,

Sri Shivdas Singh. That being so, the post in question being the first one, as per the Government Order dated 1.7.2000 is liable to be filled in by a

O.B.C. woman candidate and, therefore, the selection and appointment of the petitioner cannot be said to be illegal or contrary merely because in

making appointment on the second post, there is some variation. That by itself would not make the present selection, which is admittedly against

the first post of Primary Schools, Kapasi Kalan as illegal or bad.

14. The District Magistrate in referring to relying on Kalyani Devi (supra) for cancelling the appointment of the petitioner has failed to consider this

aspect of the matter. In my view, the law laid down in Kalyani Devi (supra) as such is not applicable in the present case, inasmuch as, the post in

question being the first in the Primary School concerned was liable to be filled in by the category of the Gram Pradhan of the Gram Sabha. The

same has thus rightly been filled in by selecting the petitioner, who is O.B.C. woman candidate. Something which was not while appointing a

Shiksha Mitra to the second post, for that the appointment of the petitioner cannot hold bad.

15. Moreover, the judgment of this Court in Kalyani Devi (supra) while providing that there cannot be a reservation to the extent of 100% for

female cannot be read as if it makes a reservation in respect to general category to the extent of remaining 50%. The intention of the division Bench

is quite clear that by reservation both the posts in a particular institution cannot be confined only to woman candidates and one post must be

available to other candidates. However, if against the unreserved post, a woman qualify on her own merit, she cannot be refused selection only on

the ground that she is a woman candidate as that would amount to making reservation in favour of remaining 50% candidates.

16. This aspect has been considered at length by a division Bench of this Court in Sanjeev Kumar Singh v. State of U.P. and Ors. 2007 (2) ALJ

86 wherein after referring and following the law laid down by the Apex Court in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,

R.K. Sabharwal and others Vs. State of Punjab and others, Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, and Union of India and Anr. v. Satya

Prakash and Ors. 2006 (4) SCC 524, this Court held that when a post is reserved it means that only the candidates belong to that category would

be eligible to apply but when a post is unreserved, the candidates, who belong to reserved category as well as unreserved category both can apply

and against a unreserved post even the reserved category candidate can compete and get selected if he/she secure higher position in merit then

other general category candidate. An unreserved post is open to all the candidates of every category irrespective of their class whether general or

reserve.

17. In this view of the matter, the writ petition succeeds and is allowed. The impugned order dated 22.12.2007 (Annexure No. 13 to the writ

petition) passed by the District Magistrate, Allahabad is quashed. No order as to costs.