

(2010) 01 AHC CK 0108

Allahabad High Court

Case No: None

Smt. Sangeeta Devi

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Jan. 22, 2010

Acts Referred:

- Uttar Pradesh Panchayat Raj Act, 1947 - Section 12F

Citation: (2010) 2 AWC 1941

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Amreshwar Pratap Sahi, J.

Heard learned Counsel for the petitioner, and learned standing counsel for respondent Nos. 1 to 3 and Sri Anuj Kumar, who has accepted notice on behalf of respondent No. 4.

2. The petitioner's candidature has been rejected on the ground that she is the daughter-in-law of a Member of the Gram Panchayat namely Om Shanker and, therefore, she is disqualified from being appointed as Gram Rozgar Sewak in terms of the relevant Government order that is applicable to the petitioner. There is no dispute about the aforesaid proposition that in the event on the date when the petitioner applied was the daughter-in-law of a sitting Member of Gram Panchayat then she would be disqualified.

3. The dispute in the present case is that the petitioner applied on 28.3.2008 and she contended that her father-in-law, who was a Member of Gram Panchayat, had already resigned a day earlier on 27.3.2008. For this, the petitioner relied on the

resignation letter of her father-in-law which is Annexure-5 and which bears an endorsement of the Chairman of Zila Panchayat accepting the same and placing it before the District Panchayat Raj Officer for appropriate action.

4. The impugned order recites that as on the date when the resolution was passed for appointing the petitioner, the resignation letter had not been produced and the resolution recites that the petitioner happens to be the daughter-in-law of the Member Sri Om Shanker. Relying on the said record, the District Magistrate arrived at the conclusion that the resignation of Om Shanker, therefore, falls within a zone of doubt and accordingly, the petitioner was treated to be disqualified. The impugned order, therefore, rejects the representation of the petitioner on the aforesaid ground.

5. Learned standing counsel contends that the petitioner had been unable to prove that her father-in-law had ceased to be a Member of Gram Panchayat and, therefore, the conclusion drawn by the District Magistrate does not suffer from any infirmity.

6. Having perused the documents on record, it appears that the resignation letter of Om Shanker was presented on 27.3.2008 but not before the District Panchayat Raj Officer. The said resignation was presented before the Chairman of Zila Panchayat. According to the provisions of Section 12F of the Uttar Pradesh Panchayat Raj Act, 1947 read with Rule 60 under the Rules framed thereunder, and the Schedule appended thereto, the prescribed authority is the District Panchayat Raj Officer to entertain such resignation. According to the aforesaid provision, once such resignation is tendered, the , Member will be deemed to have vacated the office forthwith. The question, therefore, is as to whether the application of Om Shanker had reached the hands of District Panchayat Raj Officer on 27.3.2008 or not.

7. The impugned order does not proceed to make any inquiry keeping in view the aforesaid provisions and about the aforesaid fact of the resignation having been tendered before the District Panchayat Raj Officer. In this view of the matter, the impugned order is insufficient on that score and accordingly, the impugned order is hereby set aside.

8. The writ petition is allowed and the order dated 7.11.2009 is quashed. The matter is remitted back to the District Magistrate to enquire into the fact as to whether the resignation of Om Shanker had been placed before the District Panchayat Raj Officer on 27.3.2008 or not. In the event it is found that the resignation letter was placed before the District Panchayat Raj Officer on 27.3.2008, then such benefit would accrue in favour of the petitioner and she would not be disqualified. However, if the said resignation was not placed before the District Panchayat Raj Officer on 27.3.2008 then the petitioner's application for being appointed as Gram Rozgar Sewak would not be maintainable as she would stand disqualified.

9. Accordingly, the writ petition is disposed of subject to aforesaid observation and with a direction to the District Magistrate to pass a fresh order as expeditiously as possible preferably within 8 weeks from the date of production of a certified copy of this order before him.