

(2012) 09 AHC CK 0226

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 62004 of 2006

Smt. Saroj Sharma

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Sept. 21, 2012

Citation: (2013) 1 ADJ 210

Hon'ble Judges: Arvind Kumar Tripathi, J

Bench: Single Bench

Advocate: Sheo Ram Singh and Juned Alam, for the Appellant; R.K. Srivastava, Suresh Singh, V.K. Singh and C.S.C., for the Respondent

Final Decision: Disposed Of

Judgement

Arvind Kumar Tripathi, J.

Heard learned counsel for the petitioner, counsel for respondent No. 6 and learned Standing Counsel. The controversy in the present case is regarding the appointment on the post of Shiksha Mitra at village Pachrukha, Block Fazil Nagar, District Kushinagar in between petitioner and respondent No. 6, Smt. Seema Yadav.

2. The brief facts of the case are that merit list was prepared. All the three applicants the petitioner, respondent No. 6 and one Kalindi Gupta were found eligible and recommended according to their quality point mark for the post of Shikash Mitra, Kalindi Gupta was at Serial No. 1, respondent No. 6 Smt. Seema Yadav was at Serial No. 2 and petitioner was at Serial No. 3. The name of Kalindi Gupta was rejected on the ground that the domicile certificate found forged and fabricated and thereafter respondent No. 6, Smt. Seema Yadav, who was at Sl. No. 2 was selected. Since, she was married before appointment with one Yogendra Yadav, r/o. village Lakhraon, Gopalganj, District Gopalganj, (State of Bihar), hence the petitioner was entitled for appointment on the post of Shiksha Mitra in the institution at village Pachrukha, Block Fazil Nagar, District Kushinagar. However, in collusion with respondent No. 4, Graam Shiksha Samiti, Gram Panchayat Pachrukha, Block Fazil Nagar, District

Kushinagar, name of respondent No. 6 Smt. Seema Yadav was recommended for appointment as Shiksha Mitra. A representation was given against that appointment by the petitioner. Thereafter, writ petition No. 52772 of 2005 was filed before this Court, which was disposed of vide order dated 29.7.2005 with direction to decide the representation of the petitioner within three weeks. Thereafter, respondent No. 2, Collector/Chairman, District Education Committee, Kushinagar, District Kushinagar, decided the presentation by order dated 24.10.2005 and cancelled the appointment of respondent No. 6, Smt. Seema Yadav and the name of the petitioner was recommended for appointment as Shiksha Mitra. The petitioner was appointed by order dated 24.10.2005 and joined on the post of Shiksha Mitra. Respondent No. 6 preferred writ petition No. 6251 of 2006, which was dismissed on 10.2.2006 with observation that it would be open to the petitioner to approach the authority concerned for redressal of her grievance. Thereafter, the representation of respondent No. 6 was considered and the earlier order was recalled. Cancelling the appointment of the petitioner by impugned order dated 15.9.2006 (Annexure 10 to the petition) passed by Respondent No. 3. and restored the appointment of respondent No. 6 as Shiksha Mitra.

3. Learned counsel for the petitioner submits that the petitioner was continuously working as Shiksha Mitra, since respondent No. 6 was not eligible. She was married in Bihar before her selection and before her name was recommended. Since she seized to be resident of village Pachrukha, hence, she was not entitled to be appointed as Shiksha Mitra. The certificate filed with application for selection was found forged. An application was given before S.D.M., Kushinagar on which reply was given that the alleged certificate filed on behalf of Smt. Seema Yadav issued at Serial No. 6982 dated 28.12.2005 was forged one and at Serial No. 1 certificate was issued to one Vimal Devi, w/o. Jai Singh, r/o. Barwa Jangal, Tehsil Kasya, District Kushinagar. Hence impugned order is illegal and against the evidence on record and the same is liable to be quashed.

4. Learned counsel for respondent No. 6 submitted that even after marriage she was living alongwith her husband at her parental house and domicile certificate was issued by the S.D.M., Kushinagar dated 9.3.2006. She continued to be the resident of village Pachrukha. Rightly, impugned order was passed that she was entitled for appointment on the post of Shiksha Mitra and there is no illegality in the order.

5. Learned counsel for the petitioner further submits that the alleged certificate, was issued on 9.3.2006 and selection of the petitioner was of the year, 2005. Certificate filed earlier was found forged. She was not entitled for appointment and hence by the impugned order, respondent No. 4 committed an error to recall earlier order by which the petitioner was appointed. There was no power to recall the earlier order dated 24.10.2005.

6. Considered the submission of the learned counsel for the parties. After marriage no document has been filed to show that husband of respondent No. 6 was resident

of village Pachrukha, except the alleged domicile certificate dated 9.3.2006 issued by S.D.M., Kushinagar. This certificate was obtained subsequently, after selection proceeding was over and petitioner was appointed on 24.10.2005 and joined. Earlier certificate was found forged. When the order dated 24.10.2005 was passed by respondent No. 2 at that time, the said certificate was not in existence which was subsequently obtained on 9.3.2006. If, at the relevant time, respondent No. 6 seized to be resident after marriage she was not eligible to be appointed as Shiksha Mitra. There is no dispute that preference has to be given to the resident of that village. Even, if subsequently the person started living and working then that person will not be treated to be resident with back date.

7. In view of the aforesaid discussion, the impugned order dated 15.9.2006 passed by respondent No. 2 (Annexure 10 to the writ petition) is hereby quashed, The petitioner will be allowed to continue on the post of Shiksha Mitra and is entitled for the payment of salary in accordance with rules. Accordingly, the writ petition is hereby allowed.

No order as to costs.