

Muneera Begum Vs. State and Others

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Court : Jammu and Kashmir

Decided On : Dec-30-2015

Judge : Mohammad Yaqoob Mir

Appeal No. : SWP No. 2882 of 2013 & MP No. 4216 of 2013

Appellant : Muneera Begum

Respondent : State and Others

Judgement :

1. Vide advertisement notice issued by Respondent No.4 bearing No: CEO/R/08/2780 -82 dated 01.05.2008, applications were invited for engagement of ReT Teachers in the schools upgraded under SSA which include two vacancies in PS Kumate, Education Zone Batote.
2. Tentative panel of the candidates was prepared. Petitioner figured at Sl. No.1 and the respondent No.5 at Sl. No.4. Respondent No.5 filed objections to the tentative panel complaining therein that petitioner is not a resident of village Dhandla (Kumate).
3. Two writ petitions SWP No.1408/2011 and SWP No.1174/2011 were also filed by one Dina Nath and Gh. Mohi -ud -din (Respondent No.5) , which have been disposed of vide judgment dated 25.10.2013 with the direction to Deputy Commissioner, Ramban to hold an enquiry so as to find out actual status of Respondent Nos.4 and 5 therein i.e. Muneera Begum (petitioner herein) and Surita Devi.
4. The Deputy Commissioner after enquiry has prepared a report dated 13.12.2013, wherein it is mentioned that Nikah of Mst. Muneera Begum was performed on 08.11.2007 but she moved to her husband's house situated in Dhandla (Kumate) on 20.06.2008 which means that she had not moved to her husband's house on the date of advertisement or up to the last date of receipt of application. Therefore, she could not be treated as resident of village Dhandla.
5. Regarding Mst. Surita Devi, it has been mentioned in the report that she has filed an affidavit before the police to the effect that she has withdrawn her candidature for the post. In addition thereto, in para -12 it has been concluded that Mst. Surita Devi was not living physically and actually in village Dhandla on the date of issue of advertisement notice. Whether Mst. Surita Devi was aggrieved of the report or not, that is not known and it is also not known as to whether she has challenged the report or not.
6. Mst. Muneera Begum petitioner being dissatisfied with the report dated 13.12.2013 of the Deputy Commissioner has by the instant petition sought its quashment .
7. In the afore -stated facts and circumstances it is clear that the petitioner had applied within time, her superior merit position is not disputed, only controversy is as to whether she can be treated to be a resident of village Dhandla from the date , Nikah has been performed.

8. It is customary at times on the date of celebration of the marriage i.e. carrying of Barat and bringing the bride to the house of the bridegroom, Nikah is performed on the same date or a day before. It is also customary that after Nikah is performed, then after some gap, formal marriage is celebrated by carrying the Barat so as to bring the bride to the house of the bridegroom.

9. In the instant case, it is now an admitted position that Nikah has been performed on 08.11.2007. When it is so, for all practical purposes, the marriage according to Religion to which parties to the marriage are subject is complete. From the date of performance of Nikah, the girl (bride) for all practical purposes becomes part and parcel i.e. member of the family of her husband. After Nikah ceremony, she cannot then marry to any other person. She has only formally to move to the house of the husband in a customary way.

10. Whether the petitioner after becoming daughter-in-law can be denied the right of claiming any benefit available to the resident of the village where she is married. The answer has to be no.

11. This issue has already been settled by the Division Bench of this Court in the case of Mushtaq Ahmed Bhat Vs. Parvaiza Akhter and Ors. reported in 2011 (1) SLJ P 229. Para 12 is relevant to be quoted:

12. So viewed, marriage between respondent No.1 and Shri Fayaz Ahmad Lone resident of Gundi Nauroz was concluded on 09.03.2008 when the Nikah ceremony between respondent No.1 and Shri Fayaz Ahmad Lone was held and Nikah Nama executed. In the circumstances the respondent No.1 acquired status of resident of village Gundi Nauroz on 09.03.2008 i.e. much before the advertisement notice in question was issued by respondent No.05 on 12.07.2008.

12. Applying the ratio of the judgment which almost had identical facts, there is no scope for taking a contrary view. Therefore, petitioner having contracted the marriage with Khursheed Ahmed Shan of village Dhandla. The marriage contract has been completed with the performance of Nikah ceremony much before the publication of the advertisement notice inviting applications for engagement of ReT Teachers. The petitioner had rightly applied as having become the resident of village Dhandla.

13. The opinion of the Deputy Commissioner to the effect that the petitioner cannot be treated as resident of village Dhandla having not moved to her husband's house on the date of advertisement or up to the last date of receipt of applications is unsustainable, as such set aside.

14. It was contended by the learned counsel for Respondent No.5 that one of the conditions in the advertisement notice is that the candidate must be actually and physically residing in the village where the vacancy exists. After Nikah ceremony, the petitioner had not moved to the house of her husband, therefore, she was not actually and physically residing in the village Dhandla. The contention though attractive but on scrutiny is found to be without any substance.

15. The petitioner having acquired the status of being resident of village Dhandla after the Nikah ceremony could move to reside in the village at any time, constructively she is deemed to be residing there in the village where her husband resides, physically.

16. The object of the stipulation that the candidate must be actually and physically residing in the village is that the candidate must be available to impart education to the children. The object and the logic in effect is achieved because the petitioner for all practical purposes in perpetuity except for unforeseen situations has become the permanent resident of the village where her husband resides and her presence in the village to the advantage of the students of the school cannot be doubted. Such a stipulation in the background of the case has to be liberally and literally construed so as to allow it to take into its fold the hard realities. To construe it otherwise may have disastrous effects i.e. to say if the opinion of the Deputy Commissioner is taken correct, it would mean that if the petitioner after the performance of Nikah ceremony will apply in her parental village, her candidature will be objected on the ground that for all practical purposes she is married to a person of other village, today or tomorrow has to move to that village, therefore shall not be eligible to

apply for any post in her parental village and on the other hand after performance of Nikah ceremony if she is denied the right to apply where she has to live with her husband against a post to be filled up from the candidates of the village, it would mean that such candidates would be caught up in an uncertain situation. It is in the same background the stipulation i.e. residing actually and physically in the village where the vacancies are to be filled has to be liberally construed so as to give real effect to the object of the scheme and also to save the situation as has arisen and may arise in future .

17. After Nikah ceremony , marriage contract becomes complete, so a Mohammedan girl acquires the status of being resident of the place where her husband (in laws) resides, so cannot apply for a post of ReT as shall be available to be filled from amongst the candidates who reside in her parental village. After Nikah ceremony , she can apply for the post of ReT to be filled up from amongst the residents of the village where her husband (in laws) are residing , as having become resident of that village.

18. Viewed thus, writ petition succeeds. Opinion of the Deputy Commissioner as reflected in the report styled as order dated 13.12.2013 impugned to the effect that the petitioner cannot be treated as resident of village Dhandla is set aside. Petitioner is held to be resident of village Dhandla. The respondent Chief Education Officer, Ramban shall conclude the process of selection within a period of six weeks from today in accordance with the scheme.

19. Disposed of as above.

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