

Shashikala Vs. State of Karnataka, Rep. by Its Secretary, Rural Development and Panchayath Raj and ors.

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Court : Karnataka

Decided On : Feb-18-2005

Reported in : ILR2005KAR1405; 2005(2)KarLJ449

Judge : V. Gopala Gowda, J.

Acts : Karnataka Panchayat Raj (Conduct of Election) Rules, 1993 - Rules 17(2) and 17(3); Karnataka Civil Services Rules; [Constitution of India](#) - Article 162

Appeal No. : W.P. No. 7603/2005

Appellant : Shashikala

Respondent : State of Karnataka, Rep. by Its Secretary, Rural Development and Panchayath Raj and ors.

Advocate for Def. : K.N. Phanindra, Adv. for R2 and ;H.B. Narayan, GP for R1

Advocate for Pet/Ap. : A. Nagarajappa, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V. Gopala Gowda, J.

1. Since this Writ Petition can be disposed of at the preliminary hearing stage itself, Sri H.B. Narayan, learned High Court Govt. Pleader is directed to take notice on behalf of respondents 1 and 3 and Sri K.N. Phanindra to take notice for R-2.

2. Heard the learned Counsel for the parties.

3. The nomination paper of the petitioner is rejected on the ground that she is working as a cook under the Scheme called 'Bisi Oota'(Hot Food) of the Government of Karnataka, which is profitable post as per the clarification made by the State Election Commission under Annexure-C. The clarification so made is based on the Letter dated 28.6.2004 of the Government that the staff working under the aforesaid Scheme are disqualified to contest in the election. The second ground mentioned in Annexure-A is that the petitioner has suppressed the fact of her working under the Scheme both in the nomination paper of the declaration.

4. The nomination paper is not rejected on the grounds mentioned in Sub-rules(2) and (3) of Rule 17 of Karnataka Panchayat Raj (Conduct of Election) Rules, 1993.

5. In Annexure-B it is Certified by the Secretary of Gram Panchayat that petitioner is being paid consolidated amount of Rs. 650/- per month for the work she is doing as Cook under the Scheme. Working under the Scheme by receiving such a party sum of Rs. 650/- per month will not make it profitable post. It is not a regular appointment and the service conditions are not governed by the Karnataka Civil Services Rules and other service Rules. There is no job security. The Government may cancel the Scheme at any time or some other person may be appointed in place of the petitioner.

6. If the sum of Rs. 650/- is divided into the whole month, it will not be even Rs. 25/- per day. This Court fails to understand as to how the Government or the Election Commission can consider receipt of such meager amount as an office of profit. Terming the employment under the Scheme on consolidated payment of Rs. 650/- without any service conditions as 'office of profit', is ridiculous, unwarranted and wholly untenable. Such conclusion is without proper application of mind.

Hence, the impugned endorsement at Annexure-A and the letter at Annexure-C cannot be sustained and they are liable to be quashed.

7. The other reason assigned that the fact of petitioner working under the Scheme is not disclosed either in the nomination form or in the declaration, is misconceived. Whatever particulars are printed in the nomination form and the declaration, are furnished. Non-disclosure of the employment under the Scheme is not fatal to contest the election. It is on very silly non existent fact the nomination paper of the petitioner is rejected. If a serious information like involvement in criminal acts and cases pending in Courts or if convicted for any offence and imposition of sentence are not disclosed, non-disclosure of such serious information may warrant rejection of nomination paper but not for the reason mentioned in the impugned endorsement,

8. Every resident of the grama panchayat area, whose name is enlisted in the voters list has got statutory right to contest in the elections of the grama panchayat . Such a right cannot be taken away by the executive Orders passed by the State Government under Article 162 of the [Constitution of India](#). The executive Orders shall not take away the statutory right of the citizens in the matter of Elections that are conducted to the grama panchayat. Terming the employment of the petitioner under the Scheme in question is contrary to probabilities and under any stretch of imagination it cannot be called 'office of profit'.

9. For the foregoing reasons, the Writ Petition is allowed and the impugned endorsement at Annexure-A rejecting the nomination of the petitioner and the letter at Annexure-C are quashed. The 3rd respondent Returning Officer is directed to accept the nomination of the petitioner.

6. Learned HCGP and Mr. Phanindra are permitted to file memo of appearance in two weeks.

7. HCGP shall communicate this Order to the Returning Officer.