

Simitri Kumari Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-24-2010

Judge : A.P. Sahi, J.

Appeal No. : Civil Misc. Writ Petition No. 21598 of 2008; Civil Misc. Writ Petition No. 45063 of 2008.; and Civil Misc. Writ Petition No. 66408 of 2008'

Appellant : Simitri Kumari

Respondent : State of U.P. and Others

Judgement :

1. These three writ petitions relate to the same subject matter of the claim of the petitioner and the contesting respondents on the post of Shiksha Mitra stated to be reserved for the female category.

2. Simitri Kumari, who is petitioner in Writ Petition No.21598 of 2008, is the contesting respondent in the other two writ petitions. Deepa Minj is the petitioner in the other two writ petitions. The selection relates to the year 2006. The Gram Shiksha Samiti drew a resolution under which Deepa Minj is stated to have been proposed for being appointed as Shiksha Mitra on the ground that she was the most eligible candidate in accordance with the merit drawn up in the meeting which was convened for the said purpose and accordingly she was appointed against the said post and continued to function.

3. Almost one year thereafter Simitri Kumari moved a complaint/application on the ground that she was higher in merit than Deepa Minj and, therefore, she ought to have been selected. The objection to the same by Deepa Minj is that the application form of Simitri Kumari was not complete in all respects inasmuch as she had not furnished the domicile Certificate that was required to be accompanied along with the application to be moved in this regard and no such irregularity had been cured till the last date of submission of the application form.

4. Simitri Kumari aggrieved by the non-consideration of her representation, filed Writ Petition No.25424 of 2007 which was disposed of on 25.5.2007 directing the District Magistrate, Sonbhadra, to consider the grievances of the said petitioner and pass appropriate orders. The District Magistrate, thereafter, has proceeded to pass the order dated 2.11.2007 accepting the claim of Simitri Kumari and has set aside the selection and appointment of Deepa Minj.

5. It is to be noted that after the order was passed by the District Magistrate, Simitri Kumari has preferred Writ Petition No.21598 of 2008 praying for a mandamus that the District Magistrate and the authorities be commanded to implement the order dated 2.11.2007.

6. Aggrieved by the order dated 2.11.2007, Deepa Minj has filed Writ Petition No.45063 of 2008 questioning the correctness of the same. A subsequent order was passed by the Basic Shiksha Adhikari directing that Simitri Kumari be sent on training and be permitted to join, against which, the third writ petition No.66408 of 2008 has been filed by Deepa Minj.

7. Sri R.K. Ojha, learned counsel for Deepa Minj, submits that the District Magistrate has proceeded to pass the order on the basis of pure imagination without the existence of any evidence to support the claim of the contesting party in relation to her domicile Certificate. He submits that no such domicile Certificate was filed along with the application and even otherwise the application moved by Simitri Kumari on 2.11.2006 is conclusive evidence of the fact that the domicile Certificate was not in existence on the last date of filing of the application Form before the Gram Shiksha Samiti. He further contends that the District Magistrate has proceed to pass the impugned order without putting the petitioner to any

notice or giving her any opportunity, as such, the same is in violation of principles of natural justice. For this, he relied on the notice which was allegedly issued on 5.7.2007 by the District Basic Education Officer, Sonbhadra, which accompanies the counter-affidavit of Raghav Ram Pandey, the Deputy Basic Education Officer, Sonbhadra, in Writ Petition No.66408 of 2008. Sri Ojha contends that the said notice is nowhere addressed to his client Deepa Minj and, therefore, the recital contained in the order dated 2.11.2007 is erroneous. On the aforesaid submissions, it is urged that the District Magistrate has been swayed away by irrelevant considerations other than the relevant material on record and, therefore, the impugned order deserves to be set aside.

8. He further submits that Deepa Minj has continued as Shiksha Mitra and it is only when one of the writ petitions was dismissed in default on 21.5.2010 that Simitri Kumari has been given charge to function as Shiksha Mitra on 2.7.2010.

9. Sri V.K. Gupta, learned counsel for Simitri Kumari, submits that there is ample evidence to indicate that her application Form was complete in all respects and the Gram Shiksha Samiti, while preparing the docket of receipt of such application Forms, has endorsed the word 'Yes' against the column meant for submission of domicile Certificate. He further submits that the said word has been interpolated later on as would be evident from the interpolated document which has also been filed along with the counter-affidavit. He contends that it is undisputed that Simitri Kumari is higher in merit than Deepa Minj and, therefore, the conclusion drawn by the District Magistrate cannot be said to be erroneous. He has further invited the attention of the Court to the finding recorded by the District Magistrate that notices were sent and the parties were aware of the proceedings before the District Magistrate yet nothing was brought to the notice of the District Magistrate to record otherwise.

10. Learned Standing Counsel and Sri Maurya for the Basic Education Officer, Sonbhadra, contend that the entire material was placed before the District Magistrate, who has arrived at a conclusion keeping in view the merit of Simitri Kumari.

11. Having heard learned counsel for the parties and having perused the records, it is evident that the main dispute centers round the submission of the domicile Certificate by Simitri Kumar. The reliance placed on the docket, which has been prepared by the Gram Shiksha Samiti, is not supported by any corroborative document nor any copy of the domicile Certificate of Simitri Kumari has been brought on record. There is no further evidence to indicate as to from where the said domicile Certificate has been issued. The District Magistrate in the order dated 2.11.2007 has nowhere discussed the actual existence of the domicile Certificate as relied upon by Simitri Kumari.

12. It is, therefore, clear that the District Magistrate has proceeded to pass an order on a non-existent evidence as relied by Simitri Kumari. No finding has been recorded on this vital issue and, therefore, in my opinion, the order of the District Magistrate is based on mere surmises and conjectures and merely on the allegations made by Simitri Kumari. In the absence of any cogent evidence of probative value, the District Magistrate could not have concluded that the application form of Simitri Kumari was accompanied by a domicile Certificate before the last date of filing. Once having found so and there have been no evidence of the domicile Certificate, the application Form of Simitri Kumari could not have been entertained. Sri Ojha has rightly relied on a Division Bench judgment of this Court in the case of Smt. Neelu Devi v. State of U.P. and others, 2008 (8) ADJ 646, and another Division Bench judgment in Subhash Chandra v. State of U.P. and others, 2010 (2) ADJ 224.

12. Coming to the issue of violation of the principles of natural justice, a specific allegation has been made to the effect that the petitioner Deepa Minj has been non-suited without putting her to notice. This fact stands corroborated by the Notice itself dated 5.7.2007 which indicates that it was issued to Simitri Kumari with a copy of the same to Sangeeta Devi. The said notice is not addressed to Deepa Minj at all and there is no evidence either on record or in the order of the District Magistrate that such a notice was actually served on Deepa Minj. In the absence of any proof of service of such notice, the order, in my opinion, is in violation of principles of natural justice.

13. Accordingly, on both counts the writ petition filed by Deepa Minj deserves to succeed. The District Magistrate, Sonbhadra, has committed an error by allowing Simitri Kumari to function as Shiksha Mitra in the circumstances indicated above and the order of the Basic Shiksha Adhikari dated 6.5.2008 is equally erroneous. Accordingly, both the orders dated 2.11.2007 passed by the District Magistrate and the order dated 6.5.2008 passed by Basic Education Officer are hereby quashed.

14. In the event Simitri Kumari is able to muster any evidence in relation to the existence of a valid domicile Certificate and its filing before the Gram Shiksha Samiti along with the application Form before the last date fixed, then in that event it shall be open to her to apply to the District Magistrate for a decision in this regard. In the circumstances as indicated above, it is Deepa Minj, who is entitled to continue as Shiksha Mitra. Accordingly, the two writ petitions of Deepa Minj namely Writ Petition Nos.66408/2008 and 45063/2008 are allowed with a direction to District Magistrate to permit Deepa Minj to continue to function as Shiksha Mitra. The writ petition filed by Simitri Kumari namely Writ Petition No.21598 of 2008 is hereby dismissed subject to the directions contained herein above. No costs.

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