

Seema Devi and anr Vs. State of Jandk; and ors

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Court : Jammu and Kashmir

Decided On : Nov-07-2012

Judge : Hon'ble Mr. Justice M. M. Kumar

Appellant : Seema Devi and anr

Respondent : State of Jandk; and ors

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. LPASW No. 94 OF 201. Seema Devi and anr Petitioners State of J&K and ors Respondent !Mr. M. K. Bhardwaj, Sr. Advocate with Mr. Ajay Abrol, Advocate ^Mr. Sudershan Sharma, Advocate Honble Mr. Justice M. M. Kumar, Chief Justice Honble Mr. Justice Mohammad Yaqoob Mir, Judge Date:

07. 11.2012 :

JUDGMENT

: M. M. Kumar, CJ 1. This appeal under Clause 12 of the Letters Patent is directed against judgment and order dated 22.08.2012 rendered by the learned Single Judge, holding that the name of the appellant-petitioners were rightly deleted from the panel prepared for their engagement on the post of Rehbar-e-Taleem in Primary School, Dhaki. The learned Single Judge also repelled the challenge to the induction of Naresh Kumar and Raman Kumar- respondent nos. 5 and 6 respectively in the panel. The view taken by the learned Single Judge is that the

appellant-petitioners were not actual residents of village Blater Mohra Dhaki. On account of serious dispute the learned Single Judge directed the Deputy Commissioner, Samba vide order dated 28.09.2010 to record findings with regard to the claim of the appellant-petitioners that they were residents of Village Dhaki. The appellant-petitioners and respondents were given opportunity to produce material to support their respective stand before the Deputy Commissioner who eventually filed the report which concluded that the appellant-petitioners were not actual residents of Village Blater Mohra Dhaki. The learned Single Judge rejected the objections filed against the report of the Deputy Commissioner and also the contention that the appellant-petitioners were not given opportunity to adduce evidence before the Deputy Commissioner. According to the learned Single Judge, the report of the Deputy Commissioner specifically indicated that the appellant-petitioners had appeared before him and have produced documents and made statements in support of their claim that they were actually residing in Village Blater Mohra Dhaki. The view of the learned Single Judge is discernible from the following paragraphs which read thus:- In coming to the conclusion that the petitioners were not residing in village Blater Mohra Dhaki, he has relied upon various documents besides the statements that the villagers and Numberdar of the Village made to him during his visit to the village. The villagers and the Numberdar has categorically stated before him that the petitioners were not residing in the village. He has, inter alia, relied upon Voter List, Declaration Form submitted by petitioner Nos. 1's father, Certificate issued by AEE, EM&RE Hiranagar indicating installation of electric connection on petitioner Nos. 1's father's name at village Tapyal, Voter List indicating the name of the family members of petitioner no.2 in village Mela, Marriage Card of petitioner no.2. In addition to the above documents, he relied on Tehsildar Sambas Certificate to the effect that petitioner Nos. 1 and 2 were not actually residing in village Dhaki. The petitioners' plea that reliance on Tehsildar's Certificate was misplaced because the Certificate was later annulled, does not affect, in any way, the factual findings recorded by the Deputy Commissioner, in that, the Certificate was annulled only on the ground that the Tehsildar was not the designated Competent Authority to issue Residence Certificate and not on any ground of its being factually incorrect. This apart, even if the Tehsildar's Certificate were not to be taken into consideration, there was still

ample evidence and material before the Deputy Commissioner to justify the findings reached at by him. The petitioners plea that the documents relied upon by the Deputy Commissioner were irrelevant too is without merit. In view of the categoric statements of the villagers and the Numberdar of the village to the effect that the petitioners were not actually residing in village Blater Mohra Dhaki, there may not be any scope for interference with the Deputy Commissioners report in Judicial Review, particularly, when the selection is yet to be finalized. The findings recorded by the Deputy Commissioner are found supported by the documentary evidence as also by the best evidence of the villagers and the Numberdar. 2. We have heard learned counsel for the parties at some length. Mr. M. K. Bhardwaj, learned senior counsel has made an attempt to persuade us to upset the findings recorded by the Deputy Commissioner in his report and has submitted that the Letters Patent Bench may record that the appellant-petitioners are residents of Village Blater Mohra Dhaki. However, Mr. 4 Sudershan Sharma appearing for the caveator has argued that the categoric findings recorded by the Deputy Commissioner and duly accepted by the learned Single Judge would not warrant any interference because the findings are based on evidence.

3. Having heard the learned counsel for the parties and perusing the paper book with their able assistance, we are of the considered view that this appeal is devoid of any merit and does not warrant admission.

4. The scope of certiorari jurisdiction has been the subject matter of consideration of Honble the Supreme Court in various judgments. In that regard reliance may be placed on the observations made in the cases of Syed Yakoob v. K. S. Radhakrishnan and anr, AIR 196.SC 47.and Surya Dev Rai v. Ram Chander Rai and ors, (2003)6 SCC 675.where it has been held that the true legal position of the certiorari jurisdiction is no longer in doubt and a writ of certiorari can be issued for correcting errors of jurisdiction committed by the inferior Courts or Tribunals, where the orders are passed by inferior Courts or Tribunals without jurisdiction or in excess of jurisdiction or as a result of failure to exercise jurisdiction such a writ can be issued. In para 7 of the judgment in Syed Yakoobs case the following observations have been made:- 5 7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been

frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding the Tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding, are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque* 1955-A SCR 1104.(S) AI

1955. SC

233) Nagendra Nath v. The Commissioner of Hills Division, 1958 SCR 124.: (AIR 195.SC

398) and Kaushalya Devi v. Bachittar Singh, A.I.R 196.S.C 1168. (Emphasis added) 5. A perusal of the judgment of the learned Single Judge would show that the Deputy Commissioner, on the basis of evidence adduced before him by the parties, has reached the conclusion that the appellant-petitioners are not residents of village Blater Mohra Dhaki. From the ratio of the judgment in Syed Yakoobs case it is patent that certiorari jurisdiction is not to be exercised by a Writ Court to reverse the findings of fact which is based on evidence because it would result into entering the area of re-appreciation of evidence and reversing the opinion of the inferior authorities. It is thus well settled that the Writ Court cannot re-appreciate evidence to reverse a finding of fact merely because another view is possible. There is thus no room to interfere in the order rendered by the learned Single Judge.

6. The appeal is wholly without merit and does not warrant admission. Accordingly, the appeal fails and the same is dismissed. (Mohammad Yaqoob Mir) (M. M. Kumar) Judge Chief Justice JAAMU:

07. 11.2012 Anil Raina, Secy.

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