
(2010) 11 AHC CK 0041
In the Allahabad High Court
Case No : Special Appeal No. 1827 of 2010

Kumari Sonika verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Citation : (2011) 1 ADJ 103 : (2011) 1 UPLBEC 386

Hon'ble Judges : F.I. Rebello, C.J;A.P. Saw, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Appellant was selected for being appointed on the post of Shiksha Mitra under the relevant Government Orders. She appears to have applied against the advertisement in respect of an urban area alongwith a large number of candidates for other institutions. It is the categorical case of the Appellant that 22 selected candidates who had also applied against the same advertisement were given appointment and they had joined their duties on 17.4.2010.

2. The candidature of the Appellant was placed in the category of "Disputed" by the Assistant Basic Shiksha Adhikari for no fault on her part and in the absence of any litigation in relation to the post on which she was selected. Sri M.A. Qadeer has vehemently urged that the word "Vivadit has been wrongly mentioned against the candidature of the Appellant and she was deprived of the appointment for extraneous considerations.

3. Later on the Appellant has been informed that she cannot be offered appointment in view of the Government Order dated 2.6.2010 which prohibits making of a fresh appointment after the promulgation of the Compulsory Education Act, 2009 which has come into effect from 1.4.2010. The aforesaid communication has been assailed in the writ petition giving rise to the present appeal. The Appellant has also assailed the Government Order dated 2.6.2010 contending that the same would apply prospectively and not in relation to

selections which had already been held prior to the issuance of the Government Order dated 2.6.2010.

4. Alternatively, an argument has been made by Sri Qadeer to the effect that the even otherwise the Government Order dated 2.6.2010 does not in any manner impair the selection of the Appellant inasmuch as, the said Government Order only prohibits fresh appointments in future and does not declare the entire scheme a nullity. He, therefore, submits that on both counts the orders impugned are unsustainable and the learned Single Judge committed an error by dismissing the writ petition on the ground that the Government Order dated 2.6.2010 deprives the Appellant of her right to claim appointment.

5. Learned Standing Counsel Sri Pipersenia on the other hand submits that the claim of the Appellant is misplaced inasmuch as after the promulgation of the Government Order, she was not entitled for any appointment and even otherwise mere selection does not give any right of appointment. He further submits that in the absence of any future direction of the State Government such a claim of the Appellant cannot be accepted and the learned Single Judge has not committed any error in dismissing the writ petition.

6. Having heard learned Counsel for the parties and having perused the judgment impugned, we find that the learned Single Judge has rested his conclusion on the strength of the legal principle that a selected candidate does not have any indefeasible right to claim appointment. It has further been held by the learned Single Judge that the policy as enunciated in the Government Order dated 2.6.2010 also dis-entitles the Appellant from claiming any appointment.

7. The learned Single Judge, in our opinion, has not construed the aforesaid provision in the light of the facts that emerge in the present case. In the instant case, the Appellant had a right to be considered for appointment in view of the undisputed fact that 22 other selected candidates during the same period had been granted appointment and had joined their duties on 17.4.2010.

8. The Appellant could not have been discriminated on the ground of a Government Order banning future appointments. In our opinion, the aforesaid Government Order would apply in respect of future selections and not in relation to such selections where the appointment had been delayed on account of the fault on the part of the Respondents. It is evident from the record that there was no dispute in relation to the selection of the Appellant as Shiksha Mitra. The word "Vivadit as mentioned in the proposal was found by the Respondents themselves as incorrect. In such a situation to non-suit the Appellant would be to deny the opportunity of employment to her on an erroneous assumption. The Appellant was entitled to be offered appointment alongwith other selected candidates and there was no occasion to treat her selection to be disputed. This being the factual position in the present case, in our opinion, the Respondents have erroneously applied the Government Order dated 2.6.2010, which cannot be pressed into service on the facts of the present case. The Respondents can refuse to make

selection and appointment after 2.6.2010 if the said policy can be held to be justifiable with which we are not presently concerned. The present case is in relation to a selection and appointment prior to the enforcement of the said Government Order and, therefore, as indicated above the same would not be governed by the same.

9. In view of what has been stated above, the appeal deserves to be allowed. Accordingly, the order refusing to appoint the Appellant vide order dated 8.6.2010 and the order dated 22.4.2010 are quashed. The impugned judgment dated 12.10.2010 is set aside. The Respondents shall now proceed to consider the placement of the Appellant keeping in view the observations made herein above in accordance with law. The appeal and writ petition accordingly stand disposed of. Needless to say that the orders shall be passed only after giving opportunity to any such candidate who is likely to be affected by any consequential displacement.