
(2019) 03 UK CK 0135

In the Uttarakhand High Court

Case No : Writ Petition (S Of S) No. 3378 Of 2018

Seema Rangar

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Citation : (2019) 03 UK CK 0135

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Niranjan Bhatt, Seema Sah

Final Decision : Allowed

Judgement

Manoj K. Tiwari, J

1. By means of this writ petition, petitioner has sought following relief:-

"Issue a writ order or direction in the nature of Mandamus directing the respondents to include the name of the petitioner in the selection list for the post of ANM/Health Worker (Female) pursuant to selection process initiated through Advertisement No. 3Pa/Pa.Ka/Swa Karya/73/10 published on 15.03.2016."

2. According to the petitioner, respondent no.2 issued an advertisement, on 15.03.2016, inviting applications against 440 vacancies on the post of Health Worker (Female)/A.N.M. The last date for submission of application was indicated as 10.04.2016. In Clause 9 of the advertisement, applicants were cautioned that applications sent by registered post or speed post alone shall be accepted. According to the petitioner, she possessed all requisite qualifications and was also otherwise eligible for appointment to the post of Health Worker (Female) /A.N.M., therefore, she submitted her application through registered post. Copy of the postal receipt has been enclosed as Annexure No. 4 to the writ petition, which indicates that envelope containing the application was sent by the petitioner on 30.03.2016 from Post Office Chinyalisaur, Uttarkashi. According to the petitioner,

she had enclosed a Bank Draft of ` 200/- alongwith her application, photocopy whereof is part of record. The report given by the Postal Authority is annexed as Annexure No. 5, which indicates that envelope sent by the petitioner through registered post was delivered to the addressee on 01.04.2016. According to the petitioner, neither any written examination nor interview was required to be held and selection was made on the criterion of seniority with reference to year of passing A.N.M. course. Thus, according to her, anyone, who passed Health Worker/A.N.M. course earlier in point of time would be treated as senior, therefore, would have a preferential right of appointment compared to others.

3. A tentative select list was issued by respondent no. 2, in which petitioner's name was not included. Since petitioner was expecting her selection by virtue of her seniority, therefore, she made inquiry from the concerned authorities and was informed that her application is not available in the office of respondent no. 2. Thus, feeling aggrieved, petitioner approached this Court by filing this Writ Petition, wherein she contended that envelope containing the application submitted by her was delivered in the office of respondent no. 2 on 1.04.2016, as per the information given by Postal authorities. Postmaster General, Dehradun has been impleaded as respondent no. 3 in the writ petition. On 28.09.2018, when the writ petition came up for preliminary hearing, learned counsel for respondent no. 3 admitted the fact that application sent by the petitioner through registered post was delivered in the office of respondent no. 2 on 01.04.2016. Since the stand taken by respondent no. 2 was that the application is not traceable in his office, therefore, this Court directed respondent no. 2 to accept another application from the petitioner for reconstructing the record. Thereafter, on 8.01.2019, Court directed respondent no. 2 to provisionally permit the petitioner to participate in the counseling scheduled for 9th, 10th & 11th January, 2019 with the condition that her result shall not be declared without leave of this Court.

4. Learned counsel for the petitioner submits that, in terms of the order dated 08.01.2019, petitioner has participated in the counseling and her result has not been declared by respondent no. 2.

5. In paragraph no. 9 of the writ petition, petitioner has specifically stated that envelope containing the application sent by the petitioner was delivered in the office of respondent no. 2 on 01.04.2016. Reply to the said affidavit has been given in paragraph no. 7 of the counter affidavit filed by respondent no. 2, which is extracted below:

"7. That in regard to the contents of para 9 of the writ petition it is submitted that delivery of said speed post is shown by the Postal Department, while there is no record enclosed/annexed herewith regarding its receiving/delivery at Directorate, therefore its receiving is not verified at Directorate."

6. Thus, paragraph no. 9 of the counter affidavit is vague and evasive. Respondent no. 2 has not disputed the averment made by petitioner that the

envelope containing petitioner's application was delivered in the office of respondent no. 2 on 01.04.2016.

7. The sole question involved in the present writ petition is whether petitioner had applied pursuant to the advertisement dated 15.03.2016 or not. From the pleadings of the parties and the report given by Postal Authorities, it is apparent that petitioner had, in fact, submitted application within time. Since respondent no. 2 had given clear instructions to the applicants that they should submit application only by registered post/speed post, therefore, it can be safely inferred that respondent no. 2 had appointed Postal Department as its agent. Petitioner had handed over the envelope containing the application to the Postal Authorities on 30.03.2016 and the same was delivered in the office of respondent no. 2 on 01.04.2016, therefore, petitioner cannot be blamed if the application is lost from the office of respondent no. 2. Even otherwise also, since Postal Department was acting as an agent of respondent no. 2 and petitioner handed over the application to the Postal Authorities within time, therefore, she cannot be faulted for any lapse on the part of Respondent No.-2 or his agent i.e. Postal Department.

8. In the present case, unequivocal stand of the Postal Authorities is that the envelope containing the application was delivered in the office of respondent no. 2 on 01.04.2016. Thus it can be safely inferred that petitioner had applied pursuant to the advertisement, within time.

9. In such view of the matter, this Court has no hesitation in holding that petitioner cannot be held responsible for the mistake, on the part of office of respondent No. 2. Since petitioner had applied within time, therefore, her claim for appointment deserves to be considered on merits.

10. Accordingly, writ petition is allowed. Respondent no. 2 is directed to declare the result of the petitioner within two weeks and, in case her name figures in the list of successful candidates, appropriate order be issued in respect of the petitioner on or before 29.04.2019.