
(2006) 12 UK CK 0040
In the Uttarakhand High Court
Case No : Special Appeal No. 164 of 2006

Shishupal Singh Bhandari	Vs	APPELLANT
State of Uttaranchal and Others		RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Citation : (2007) 2 UC 668

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Sri Pankaj Purohit, for the Appellant; Sri N.B. Tiwari, Addl. General/Chief Standing Counsel and Sri Nanak Chand Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Rajeev Gupta, C.J.—Mr. Pankaj Purohit, Advocate for the Appellant.

Mr. N.B. Tiwari, Addl. Advocate General/Chief Standing Counsel with Mr. Nanak Chand Gupta, Standing Counsel for the Respondents.

They are heard on admission.

2. Appellant Shishupal Singh Bhandari has filed this Special Appeal against the impugned judgment dated 16-11-2006 passed in Writ Petition No. 1980 of 2003 (S/S).

3. Petitioner Shishupal Singh Bhandari filed the writ petition for the following reliefs:

a. Issue a writ, order or direction in the nature of Certiorari to call for the record and to quash the advertisement dated 01-12-2003 issued by the Respondent No. 3 contained in Annexure No. 8 to the writ petition.

b. Issue a writ, order or direction in the nature of Mandamus commanding the Respondents not to make any appointment on the post of Shiksha Mitra in Primary School, Nilarhi pursuant to the impugned advertisement.

c. Issue a writ, order or direction in the nature of Mandamus commanding the Respondent No. 2 to give approval to the appointment of the Petitioner on the post of Shiksha Mitra in Rajkiya Adarsh Vidhyalaya (Primary School) Nilarhi Block - Narayan Bagarh, District Chamoli.

d. Issue a writ, order or direction in the nature of Mandamus commanding the Respondents to pay arrears of honorarium / salary as admissible to the Petitioner and further honorarium / salary on month to month basis regularly.

e. Award the costs of the writ petition in favour of the Petitioner.

4. Respondent No. 3 Pradhan / Adhyaksha, Gram Shiksha Samiti, Gram Panchayat Nilarhi, Block Narayan Bagarh, District Chamoli invited applications for appointment to the post of Shiksha Mitra in Primary School, Village Nilarhi in District Chamoli vide Advertisement dated 11-07-2003, wherein the last date for submitting the applications was prescribed as 20-07-2003. As Petitioner Shishupal Singh Bhandari was the sole applicant in response to the said Advertisement, Respondent No. 3 passed a resolution recommending the appointment of Petitioner Shishupal Singh Bhandari on the post of Shiksha Mitra. Respondent No. 2 Basic Shiksha Adhikari, Chamoli, finding serious irregularities in the selection process, did not approve the appointment of Petitioner Shishupal Singh Bhandari on the post of Shiksha Mitra and directed Respondent No. 3 Pradhan /Adhyaksha, Gram Shiksha Samiti, Gram Panchayat Nilarhi to re-advertise the post of Shiksha Mitra and invite fresh applications. In compliance of the above direction of Respondent No. 2 Basic Shiksha Adhikari, Chamoli, Respondent No. 3 issued another Advertisement dated 01-12-2003 (Annexure No. 8 to the writ petition) inviting fresh applications for the post of Shiksha Mitra.

5. This second Advertisement dated 01-12-2003 was the subject matter of challenge in the writ petition filed by Petitioner Shishupal Singh Bhandari.

6. In the counter affidavit filed on behalf of Respondents Nos. 1 & 2, it was specifically pleaded that as the selection process undertaken by Gram Panchayat Nilarhi, headed by Respondent No. 3, was found to have been conducted in breach of the guidelines laid down in the Government Order issued in that behalf, the recommendation made by Respondent No. 3, for appointment of Petitioner Shishupal Singh Bhandari on the post of Shiksha Mitra, Primary School, Village Nilarhi, was not approved by Respondent No. 2 Basic Shiksha Adhikari, Chamoli and direction was issued to issue fresh advertisement for the said post. The averments in paras 12 and 13 of the counter affidavit read as follows:

12. That as per the contents of para No. 10 of the writ petition are not accepted. The allegations are false and are a part of an attempt by the Petitioner to justify his illegal appointment. The Respondent No. 3, Pradhan, Gram Panchayat, Nilarhi had sent proposal for appointment of Petitioner only ignoring other names. Perhaps it is with this background, the Petitioner had sanctioned the name of Km. Arti D/o Sri Rajendra Singh, R/o Village Nilarhi, which was the eligible and qualified for the appointment. Since the proposal sent by the Gram Pradhan /

Respondent No. 3, was not according to the rules and was defective, hence the proposal was rejected and sent back to the Respondent No. 3 as also the Head Master, Primary School Nilarhi vide letter No. 617 / Shiksha Mitra / 2003-2004 dated 23-10-2003 which specifically mentions that the application for a candidate, who was a resident of different Gram Panchayat, and outsider as such. Copy of letter dated 23-10-2003 is being filed herewith and is marked as ANNEXURE No. C.A. 2 to this counter affidavit, which is self explanatory and reflects the entire controversy that the Petitioner did not qualified the norms for the appointment under Shiksha Mitra Yojna as he was outsider and was not a resident of Gram Panchayat Nilarhi.

13. That as per the contents of para No. 11 of the writ petition are not accepted. The Petitioner has distorted this fact, it is wrong to say that no other candidate had applied. The fact is that the Respondent no, 3 was in collusion with the Petitioner and had refused to accept the application of Km. Arti, aforesaid. In this context, it is necessary to state that the Respondent No. 3 had refused to accept the application of Km. Arti and a direction was issued by the Assistant Basic Shiksha Adhikari, Narain Bagar, District Chamoli to the Respondent No. 3 vide letter No. 2122/ Shiksha Mitra 03-04 dated 9-8-2003 to accept the application of Km. Arti, aforesaid. Copy of letter dated 9-8-2003 is being filed herewith and is marked as ANNEXURE No. 3 this counter affidavit. Again the aforesaid, Km. Arti had complained to the Respondent No. 2 that there were certain irregularities in Pradhan Gram Panchayat level and she had complained that the Gram Pradhan / Respondent No. 3 has misguided her saying that the post of teacher under Shiksha Mitra Yojna was that for male candidate only. This was a clear violation of the rules. The annexure No. CA 3 contains the entire records of correspondence relevant to the candidature of Km. Arti and speaks volumes about the irregularities, manipulations at the Gram Pradhan / Respondent No. 3 level, which further proves the irregularities in the appointment of the Petitioner, which is altogether illegal.

7. The learned Single Judge, on a thorough analysis of the rival submissions of the Learned Counsel for the parties and their pleadings, held that Respondent No. 2 has not committed any illegality in not approving the recommendation of Respondent No. 3 for the appointment of Petitioner Shishupal Singh Bhandari on the post of Shiksha Mitra and in directing to re-advertise the said post and invite fresh applications. The learned Single Judge has observed in paras 6 and 7 of the impugned judgment:

6) Learned Counsel for the Petitioner argued that Respondent No. 2 should have approved the recommendation of Respondent No. 3, when said name was recommended by it, for appointment as Shiksha Mitra. Said recommendation has been annexed at page 19 of the paper book, as a part of Annexure-4, to the writ petition. Perusal of this document itself shows that only one name is mentioned in said document, and it is nowhere mentioned that the local unemployed qualified person is available or not. This is exactly the complaint of Km. Arti,

against the recommendation of the Committee, to Respondent No. 2, as is clear from paper No. 18, which is part of Annexure-3 to the counter affidavit. In said complaint Km. Arti has alleged that she was told by Village Panchayat that the post is meant for males only, and she was misguided by the Village Panchayat. She has further asserted in the complaint that she not only belongs to village Nilarhi, but also possesses requisite qualification for her appointment as Shiksha Mitra.

7) In the above circumstances, it can-not be said that Respondent No. 2 has committed any error of law or that of fact, in not approving the name of the Petitioner for his appointment for the post of Shiksha Mitra, for the year 2003-2004, for which the Petitioner was a candidate.

8. In this view of the matter, the learned Single Judge has dismissed the writ petition vide impugned judgment dated 16-11-2006 and has further directed that the interim order dated 09-12-2003 shall stand vacated.

9. Mr. Pankaj Purohit, the Learned Counsel for the Appellant vehemently argued that the selection process, wherein the Petitioner was the sole applicant, was in strict compliance of the guidelines issued in that behalf.

10. Mr. N.B. Tewari. Addl. Advocate General/Chief Standing Counsel and Mr. Nanak Chand Gupta, Standing Counsel for the Respondents, on the other hand, supported the impugned judgment and submitted that the selection process, wherein the Petitioner was selected for appointment, suffered from serious irregularities and as such, Respondent No. 2 Basic Shiksha Adhikari, Chamoli rightly declined to approve the appointment of the Petitioner on the post of Shiksha Mitra and directed the Gram Panchayat to re-invite fresh applications for the said post.

11. In the State of Uttaranchal, literacy percentage is quite high. It is, therefore, difficult to believe that no one from Village Panchayat Nilarhi would be eligible and aspirant for the post of Shiksha Mitra in Primary School, Village Nilarhi, District Chamoli. It is also relevant here to mention that the remuneration for the post of Shiksha Mitra, at the relevant time, was Rs. 2,250/-, which we are told, now, has been enhanced to more than Rs. 4,000/-. The very fact that Petitioner Shishupal Singh Bhandari, who admittedly is not a resident of a village within Gram Panchayat Nilarhi, was the sole aspirant for the post, speaks volumes about the irregularities committed in the selection process.

12. In this state of affairs, Respondent No. 2 Basic Shiksha Adhikari was fully justified in not approving the Petitioner's appointment to the post of Shiksha Mitra and in directing Respondent No. 3 Pradhan / Adhyaksha, Gram Shiksha Samiti of Gram Panchayat Nilarhi to re-advertise the said post and invite fresh applications.

13. We, therefore, do not find any infirmity in the impugned judgment. The Special Appeal, therefore, is liable to be dismissed and is hereby dismissed

summarily.

14. Consequently, CLMA No. 14709 of 2006 also stands dismissed.