

(2010) 07 AHC CK 0384
In the Allahabad High Court
Case No : Special Appeal No. 883 of 2010

Shree Krishna

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0384

Hon'ble Judges : Ferdino Inacio Rebello, C.J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. These two appeals arise out of the judgments dated 29.04.2010 and 25.05.2010, delivered in two separate writ petitions, namely Civil Misc. Writ Petition No. 22872 of 2010 and Civil Misc. Writ Petition No. 30655 of 2010, filed by the appellants Shree Krishna and Avnish Kumar respectively. Both the writ petitions were directed against a common order passed by the District Magistrate dated 4th of March, 2010 whereby the claim of both the appellants for selection and appointment as Shiksha Mitra has been rejected and the District Magistrate has proceeded to direct the authorities to re-advertise the posts and fill it afresh for the session 2010-11.

2. The dispute relates to the selections of the year 2007-08. The last date for filling up of the application forms for the said session was 30th July, 2007 and after receipt of the application forms, the appellants Shree Krishna contends that a resolution was passed wherein he was placed at serial No. 1. It is contended that after the selections were finalised and sent before the authorities for approval, Avnish Kumar moved a complaint that Shree Krishna had been wrongly selected and he should not be offered appointment. Civil Misc. Writ Petition No. 63986 of 2008 was filed by Avnish Kumar in which a direction was issued on 11th December, 2008 to the District Magistrate to decide the said dispute.

3. The District Magistrate on 7th of March, 2009 decided the claim and held that

Avnish Kumar had applied for the post of Shiksha Mitra, which was complete in all respects and he being higher in merit for being appointed was entitled to occupy the post. Consequently, Avnish Kumar was issued a letter of appointment on 18th April, 2009 as Shiksha Mitra at Primary School Asalpur Ismailpur Etah.

4. Against the aforesaid order dated 7th of March, 2009 passed by the District Magistrate, Shree Krishna preferred a Civil Misc. Writ Petition No. 20794 of 2009, which was allowed holding that the order was passed ex parte and the District Magistrate was required to reconsider the claim of the rival parties. While disposing of the writ petition, this Court made an observation that firstly, the District Magistrate did not endeavour to find out as to whether the application form of Mr. Avnish Kumar was complete or not and secondly, the certificates which were produced by Avnish Kumar were of August 2007, which is after the last date of filling up of the application forms. The District Magistrate was therefore required to enquire into these aspects and then pass an order.

5. We have heard learned Counsel for both the appellants and the learned Standing Counsel as well as the learned Counsel for the Basic Education Department - for the respondents.

6. The case of Avnish Kumar was that he had a caste certificate dated 20.09.2004 and the same was filed along with the other certificates while filling up of his application form. The contention is that the application form was complete in all respects and therefore, it was he who ought to have been selected. The allegation against Shree Krishna is that he was down below in merit and on account of certain political pressure he was extended the benefit of selection, which was illegal.

7. The contention of Shree Krishna is that Avnish Kumar did not fill up his application form within time and his application form could not have been accepted inasmuch as the certificates including caste certificate was issued on a date after the last date of filling up of application forms had expired. To be precise, the caste certificate according to Shree Krishna was issued on 3rd August, 2007, which could not have been appended along with the application form that had to be filed prior to that on 31st July, 2010. Shri Pandey, learned Counsel for Shree Krishna, therefore, submits that the candidature of Avnish Kumar has been rightly cancelled and to that extent, the conclusions drawn by the authorities is correct.

8. After the matter was remanded back, the District Magistrate on 4th of March, 2010 has arrived at the conclusion that neither the claim of Avnish Kumar deserves to be accepted nor the representation of Shree Krishna has any force hence both the applications have been rejected with a direction that fresh advertisement be issued and action be taken by the authority concerned for holding fresh selections.

9. The District Magistrate in the order dated 4th of March, 2010 has not investigate further about as to how the file in relation to the application form of

Avnish Kumar was lost. No endeavour appears to have been made to reconstruct the said documents or investigate the matter any further. There is no finding with regard to the contention of Avnish Kumar that he already had a certificate issued in the year 2004 and that the subsequent certificate was obtained only for the purposes of verification at the time of training.

10. In our opinion, the order dated 4th March, 2010 does not touch the aforesaid facts and is therefore vitiated. So far as the contention of Shree Krishna is concerned, the allegations made by him with regard to the submission of the application form of Avnish Kumar, have also not been controverted in the impugned order dated 4th March, 2010. The District Magistrate appears to have adopted a via media by declaring both the claims to be invalid with a direction to hold fresh selections.

11. In our opinion, if either of the selections are held to be valid, then the candidates would otherwise have a right of renewal under the relevant Government Order. In this view of the matter, it has to be ascertained as to whether the appointments of the appellants as claimed by them were in accordance with law or not and as to whether they are supported by evidence as agitated before us.

12. At this juncture, learned Counsel for both the appellants agreed that the impugned order of the District Magistrate be set aside and the matter be remanded back to the District Magistrate for a decision afresh in view of the aforesaid facts.

13. Accordingly, in view of the aforesaid position, the appeal is disposed of with the consent of the parties in the following terms:

(i) The judgment and order of the learned Single Judge dated 29.04.2010 passed in Civil Misc. Writ Petition No. 22872 of 2010 and the judgment and order dated 25.05.2010 passed in Civil Misc. Writ Petition No. 30655 of 2010 are set aside.

(ii) The order of the District Magistrate impugned dated 04th of March, 2010 is quashed with a direction to the District Magistrate to give opportunity of hearing to both the parties and proceed to decide the matter, after calling for the records in respect of both the claims including reconstruction of the misplaced file, and pass a final order as expeditiously as possible, preferably within a period of two months from the date of production of certified copy before him.

(iii) Till the matter is decided by the District Magistrate as directed hereinabove, status quo as on today with regard to the said post shall be maintained.

14. The appeals stand disposed of accordingly.