

(2004) 11 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8763 of 2003

Smt. Janki Bai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Constitution of India, 1950 — Article 16(3)

Citation : (2005) 2 MPLJ 143

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : R.K. Verma, for the Appellant; V.P. Nema, Government Advocate for the Respondent Nos. 1 to 3 and Parag Chaturvedi, for the Respondent No. 4, for the Respondent

Judgement

A.K. Shrivastava, J.

By this petition which was originally filed before the Tribunal, and after its abolition, it has been received in this Court for its adjudication, the petitioner is seeking relief of the quashment of the appointment order (Annexure A-7), dated 21-1-1993 of respondent No. 4 appointing him on the post of Teacher.

In order to recruit Teacher in a school situated in Village Baderakala, an advertisement was published, a copy of which is placed on record as Annexure A-1. In the advertisement, the essential requirement for recruitment has been mentioned which reads as under:--

^^;ksX;rk& dfu"B izkFkfed "kkykvksa esa v/;kidksa dh O;oLFkk LFkkuh; vk/kkj ij dh tkuk gS vFkkZr vH;FkhZ dk "kkyk xzke dk fuoklh gksuk vfuok;Z gSA ;fn "kkyk xzke es U;wuer vgZrk ds O;f? miyC/k u gksus dh fLFkfr esa lehiorhZ xzke ds miyC/k U;wure vgZrk/kkjh yksxksa dh fu;qf? dh tk;sxhA bu fu;qf? esa efgyk izR;kf"k;ksa dh izkFkfedrk nh tk;sxhA

v/;kidksa dh U;wure "kS{kf.kd ;ksX;rk uohu ikB;?e vFkok iwjkus ikB;?e ls mPprj ek;/fed ijh{k m?kh.kZ gksuk vkfuok;Z gSA**

The contention of Shri Verma, learned Counsel for petitioner is that petitioner does qualify the requisite qualification and apart from the minimum qualification, since being a lady, she is having preferential right. On these premised submission, it has been contended that this petition be allowed.

Shri Nema, learned Government Advocate submits that respondent No. 4 who was given appointment was more meritorious than that of petitioner and he resides in Village Patara having distance of 1.5 kms from Village Baderakala where the school is situated and, therefore, no illegality was committed in appointing him.

Shri Parag Chaturvedi, learned Counsel for respondent No. 4 also submitted the same argument which has been putforth by Shri Nema, Government Advocate.

It be seen that what should be the criteria for appointment, it has been mentioned in the advertisement itself which I have already quoted hereinabove. On going through the advertisement nowhere it has been mentioned that if a candidate resides up to a particular distance from the school, i e., Village Baderakala then a preferential right will be given to him. On the other hand, it has been specifically mentioned in the advertisement that if a lady candidate is there, she will be having a preferential right. Admittedly neither petitioner nor respondent No. 4 are the residents of Village Baderakala. The petitioner is resident of Village Nargawan and respondent No. 4 is residing in Village Patara. Thus, in this situation, it was incumbent upon the respondent Nos. 1 to 3 to give preferential right to the petitioner. Shri Verma, learned Counsel for petitioner has also invited my attention to appointment letter of respondent No. 4 (Annexure A-7). On going through the appointment letter, it is gathered that certain conditions are mentioned for the appointment and one of the condition is that the candidate should reside within the periphery of 2 kms from the village where the school is situated, i.e., from Village Baderakala. Surprisingly, this condition is not there in the advertisement (Annexure A-1) and the other conditions which are embodied in the appointment letter are also not there in the advertisement. It appears that in order to accommodate respondent No. 4 the condition of residence of 2 kms from the school has been mentioned. Shri Nema, learned Government Advocate has placed heavy reliance on Annexure R-1 which is a report of ADIS. On going through Annexure R-1 it appears that firstly the distance of Patara (Umaria) where respondent No. 4 resides has been shown as 3 kms, however, by scoring out the distance of 3 kms 1 1/2 kms has been written. There is an objection by some person that the distance is 2 kms. On the left hand side of this Annexure R-1, again there is a note that B.Ed./ADIS on inspection found the distance of Village Patara from the school is 1.5 km. Annexure R-2 is another document filed alongwith the return of respondent Nos. 1 to 3 wherein the candidature of petitioner was rejected for the simple reason that as per respondents she resides 4 kms away from Village Baderakala where the school is situated. The petitioner filed Annexure A-6 which is a certificate issued by Revenue Inspector certifying the Village Nargawan is within 2 kms from

Baderakala. Alongwith the rejoinder, petitioner further filed some more certificates of Patwari and Sarpanch of Gram Panchayat Padra certifying that the distance of Nargawan is 1.5 kms from Village Baderakala. Similar certificate has also been issued by Gram Panchayat Mohari. On going through the minutes Annexure R-2 filed alongwith the return of respondent Nos. 1 to 3, it is gathered that the candidature of petitioner was rejected on the ground of distance of her village from Baderakala. It be seen that in the advertisement no such criteria was fixed regarding the ceiling limit of 2 kms and therefore where the candidate like petitioner being a lady candidate was available, the respondent ought to have considered her candidature on that ground. On bare perusal of Annexure R-2, it is revealed that preference was given to lady candidate for another school Jhirmili then why similar treatment was not provided to the petitioner. It is no more in dispute that petitioner as well as respondent No. 4 both are matriculate. True respondent No. 4 is having more remarks than petitioner. But, it is equally true that in the advertisement preferential right to a lady candidate is given which can not be ignored.

Shri Nema, learned Government Advocate by placing reliance on the decision of this Court in the case of Savitri Singh v. State of M.P. 2003(5) M.P.H.T. 483, has submitted that residence can not be a ground to accord preferential treatment or reservation save as provided under Article 16(3) of the Constitution of India. However, the case of Savitri (supra) is tangentially off the point. Here in the present case both the candidates (petitioner as well as respondent No. 4) are not the residents of same village and the preferential right of lady candidature was not the point to be considered in this case. Therefore, the case of Savitri (supra) is not at all applicable in the present case.

However, this fact can not be marginalized and blinked away that respondent No. 4 is working for last 11 years and therefore District Education Officer, Jabalpur is hereby directed to reconsider the entire case and pass necessary order in regard to the appointment strictly in terms of the advertisement (Annexure A-1). Let this exercise be done on or before 30th April, 2005 till then respondent No. 4 shall continue to discharge his duties. The petition is accordingly disposed of.