
(2008) 04 AHC CK 0251
In the Allahabad High Court

Smt. Kavita Devi	Vs	APPELLANT
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Citation : (2008) 5 AWC 5281 : (2008) 119 FLR 215 : (2008) 2 UPLBEC 116

Hon'ble Judges : H.L. Gokhale, C.J.;Vineet Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri Sanjiv Singh in support of this appeal. Learned Standing Counsel appears for respondents No. 1, 2 and 3. Sri Rajeshwar Singh appears for the respondent No. 4. Sri V.K. Singh appears for respondent No. 5. Sri Nasiruddin Warsi appears for respondent No. 6 and Sri R.K. Ojha appears for the contesting respondent No. 7.

2. The contest in this matter is between the appellant-Smt. Kavita Devi and the respondent No. 7-Dharmendra Kumar Singh, which is for the post of Shiksha Mitra. Both the appellant-Smt. Kavita Devi and the respondent No. 7-Dharmendra Kumar Singh were claiming to be appointed on a post of Shiksha Mitra in a village, namely, Paliya Milki of district Kushi Nagar. In the said village, there were two posts of Shiksha Mitra, which were advertised. One post was reserved for a female candidate and the other one was for a general candidate.

3. The respondent No. 6-Smt. Mansha Devi was placed at serial No. 1 in the merit list, as she had secured 58.5% quality point marks. The respondent No. 7-Dharmendra Kumar Singh had secured 56.5% quality point marks and was placed at serial No. 2 and the appellant-Smt. Kavita Devi, having secured 56.2% quality point marks, was placed at serial No. 3.

4. By an order dated 17.2.2007, the District Magistrate directed that the appellant-Smt. Kavita Devi, who was third in the merit list, be appointed on the seat reserved for a female candidate. In the unreserved general category, the

District Magistrate directed for appointment of respondent No. 6-Smt. Mansha Devi, who was at the top in the merit list.

5. Being aggrieved by the aforesaid order, the respondent No. 7-Dharmendra Kumar Singh filed a writ petition, which has been allowed by the learned Single Judge and the respondent No. 7-Dharmendra Kumar Singh has been directed to be given appointment on the seat meant for a general category candidate. Hence this appeal.

6. Sri Sanjiv Singh, learned Counsel for the appellant has submitted that the District Magistrate was fully justified in selecting Smt. Mansha Devi-respondent No. 6 on the first seat, meant for general candidate and thereafter the appellant-Smt. Kavita Devi (who was lower in merit than the Dharmendra Kumar Singh) on the seat meant for female candidate. It was thus urged by Sri Singh that the learned Single Judge should not have interfered with the order passed by the District Magistrate.

7. As against that, Sri Ojha, learned Counsel appearing for respondent No. 7 submitted that the order of the learned Single Judge is perfectly justified, as the first seat is to be treated as reserved seat, on which post, respondent No. 6 was already selected and as such, the appointment of the respondent No. 7 on the second seat, as directed by the learned Single Judge, is perfectly justified in law. In support of the submission, he has placed reliance on a decision dated 4.4.2006 of a Division Bench of this Court rendered in Special Appeal No. 202 of 2006, Smt. Kalyani Devi v. State of U.P. and Ors.

8. The scheme for filling the post of Shiksha Mitra provides that 50% of Shiksha Mitras in the school of the village in question be filled by the female candidates. The object of such reservation is fulfilled if the candidate who has secured the highest marks, happens to be a female candidate, and the first seat be given to her. That would satisfy the provision of reservation for female candidates. As such, the second post should be given to the next candidate in the order of merit.

9. In the present case, the person at the top in order of merit was respondent No. 6-Smt. Mansha Devi. By being given appointment, the seat meant for the female candidate was duly filled by her. The respondent No. 7-Dharmendra Kumar Singh was second in the order of merit. He is a person of general category. He would be entitled to be given appointment on the second post of Shiksha Mitra.

10. If the construction of a Rule can be made in two ways, the Court should prefer the construction, which is more equitable. In the present, case, by such interpretation of the Rule as has been given by this Court, the provision of 50% reservation for female candidates is fulfilled and merit is also given due consideration. While dealing with a similar situation, a Division Bench of this Court in the (sic) judgment dated 4.4.2006 passed in Special Appeal No. 202 of 2006, has observed, as follows:

Generally speaking, if all reservation requirements are satisfied, then merit is to be preferred. The second reasoning is that generally, the law prefers an interpretation, which does not cause 100% reservation of the vacancies, this way or the other.

11. For the aforesaid reasons, we are not inclined to interfere with the order passed by the learned Single Judge.

12. Before parting with the case, we may observe that the academic year 2007-08 is coming to an end by the end of May, 2008. The authorities are directed to issue a fresh advertisement for the academic session 2008-09, which will begin from 1st of July, 2008. The respondent No. 7, who has been functioning in the current academic session, will be entitled to claim his continuation on the basis of his satisfactory working, since he has been working for the last more than a year on the basis of an interim order passed in the writ petition.