
(2018) 07 UK CK 0134
In the Uttarakhand High Court
Case No : Special Appeal No. 547 of 2018

Smt. Kiran Negi	Vs	APPELLANT
Smt. Madhu Bisht & Others		RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Citation : (2018) 07 UK CK 0134

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Sanjay Bhatt, D.C.S. Rawat, Ranjan Ghildiyal

Judgement

K.M. JOSEPH, C.J. (Oral)

SHARAD KUMAR SHARMA, J.

Appellant is the sixth respondent in the Writ Petition. The Writ Petition was filed seeking the following reliefs:

I Issue a writ, order or direction in the nature of certiorari for quashing the order dated 18.06.2011 by which

representation dated 18.05.2011 of the petitioner was rejected by the respondent no. 2.

II Issue a writ, order or direction in the nature of certiorari for quashing the appointment order of respondent no. 6 as Aganbari Karyakarti at Village

Yashwantnagar Ramnagar District Nainital after summoning the same from the respondents department.

III Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents department to appoint the petitioner as

Aganbari Karyakarti for Village Yashwantnagar Ramnagar District Nainital.

2. The controversy surrounds around the appointment to the post of Anganbari

Karyakatri. An advertisement (Annexure No. 2) was published in Amar Ujala edition dated 29.07.2010 for appointment to the post of Anganbari Karyakatri at Anganbari Kendra, Yashwantnagar, Ramnagar, District Nainital. Both, the appellant and the writ petitioner applied. Initially, it is the case of the writ petitioner that the writ petitioner was selected, her name finds place at Serial No. 23. There was a complaint lodged by another person against selection of the petitioner. This led to the matter being looked into and there is no dispute that the matter was referred to the Appellate Committee. The Appellate Committee proceeded to consider the matter on that basis, as it turns out, that, both, the appellant and the writ petitioner do not belong to Yashwantnagar for which the advertisement was issued. Therefore, the inter se merit of the appellant and the writ petitioner was considered. Finding the appellant to be more meritorious than the writ petitioner, appellant came to be selected. Thereafter, the writ petitioner filed a writ petition as Writ Petition (S/S) No. 236/2011. The said Writ Petition was disposed of on 19.04.2011 by directing that the writ petitioner may file a representation and the second respondent was to take a decision on it. It is on the said representation that the decision dated 15.06.2018, which is impugned in this case, has been passed. By the impugned order, the representation filed by the writ petitioner on 16.05.2011 has been rejected.

3. By the impugned judgment dated 15.06.2018, the learned Single Judge allowed the Writ Petition. In doing so, the learned Single Judge found merit in the case of the writ petitioner that the writ petitioner actually belonged to the particular village for which the advertisement was issued, namely, Yashwantnagar. It is seen primarily the reasoning was based on an answer given under the Right to Information Act given by Naib Tehsildar. The writ petitioner, apparently, posed a question as to whether Yashwantnagar and Yashwantnagar Nai Basti are the same or they are different villages. The writ petitioner is shown as residing in Yashwantnagar, Nai Basti. It was for establishing therefore that Yashwantnagar, Nai Basti is the same as Yashwantnagar that the writ petitioner posed the query. The answer to the same, which is produced in the Writ Petition, is that they both are the same. If this is true, then the foundation for the decision against the writ petitioner may not last.

4. We heard Mr. Sanjay Bhatt, learned counsel for the appellant. We also heard

Mr. Ranjan Ghildiyal, Brief Holder for the State/respondent nos. 2 to 6 and also Mr. D.C.S. Rawat, Advocate for respondent no. 1/writ petitioner.

5. Learned counsel for the appellant would submit that actually appellant also belongs to Yashwantnagar and that Nai Basti is divided into four plots. It

is submitted that Yashwantnagar Aampokhara is the same as Yashwantnagar. In short, his case is that both the appellant and the writ petitioner

belonged to the same village. Appellant has got secured higher marks.

6. The case of the official respondents appears to be that, both, the appellant and the writ petitioner do not belong to Yashwantnagar; whereas, the

case of the writ petitioner is that only the writ petitioner belongs to Yashwantnagar and the appellant does not belong to Yashwantnagar rather she belongs to Aampokhara.

7. Essentially, the controversy can be resolved only on entering proper findings of fact. Ordinarily, the writ Court does not do merit review. Findings of

fact, unless perverse, are not interfered. At the same time, the writ petitioner has produced a document in the form of reply to a question raised under

the Right to Information Act. There is no reference in the impugned order to the information relied on by the writ petitioner as it was not produced

before the second respondent. Therefore, in the light of this development, we feel that the matter must be considered afresh.

8. Accordingly, we quash order dated 18.6.2011 and direct the second respondent to consider the matter afresh. The second respondent will take a

decision after affording an opportunity of hearing to the writ petitioner and also to the appellant. A decision will be taken in accordance with law within

a period of six weeks from the date of production of a certified copy of this order before the second respondent. We make it clear that the second

respondent will also take into consideration the reply given under the Right to Information Act, namely, Annexure-1 of the rejoinder affidavit.

Appellant will continue as Anganbari Karyakatri till a decision is taken afresh.