
(2006) 09 AHC CK 0134
In the Allahabad High Court

Smt. Kusum Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Citation : (2008) 6 AWC 5430

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri R.K. Pandey, learned Counsel for the petitioner and Sri Abhinav Upadhyay, learned Standing Counsel for the respondents.

2. The petitioner has sought a mandamus commanding the respondents to appoint him on the post of Shiksha Mitra in Primary School Ameliya, Gram Panchayat Chandapur, Block Koraon, District Allahabad.

3. The brief facts giving rise to this petition are that pursuant to the various Government orders laying down guidelines regarding appointment on the post of Shiksha Mitra in Primary Schools, a selection was held in the year 2004 wherein the petitioner was placed on the top of the select list for appointment to the post of Shiksha Mitra in Primary School Ameliya, Gram Panchayat Chandapur, Block Koraon, District Allahabad as is apparent from the proceedings of the Selection Committee (Annexure-2 to the writ petition). However, she has been denied appointment on the post of Shiksha Mitra on the ground that her mother-in-law is Gram Pradhan of Village Chandapur and therefore, being closely related to the Gram Pradhan, she is disqualified for appointment under the Government Order dated 1.7.2000.

4. Learned Counsel for the petitioner vehemently contended that the relationships which are prohibited have been specifically mentioned in the aforesaid Government order which does not include "mother-in-law" and therefore, the petitioner could not have been disqualified for appointment to the

post of Shiksha Mitra.

5. The short question required consideration in this case is whether the petitioner was disqualified for appointment to the post of Shiksha Mitra on the ground that her mother-in-law was Gram Pradhan and whether the said relationship is prohibited under Government order dated 1.7.2000.

6. The Government order provides that the near relatives of Pradhan and Secretary of Shiksha Samiti shall not be appointed as Shiksha Mitra. The Gram Pradhan is the Sabhapati of the Selection Committee. The near relatives have further been specified which are father, grand-father, father-in-law, son, grandson, brother-in-law (Damad), brother, sister, husband, wife, daughter and mother. The relevant extract of the aforesaid Government order is reproduced as under:

f"k{k kfefr ds lHkkifr o lfpo ds fudV lEcU/kh dk p;u f"k{k fe= ds :i esa ugha fd;k tk;sxA lEcU/k;ksa dk rkRi;Z firk] nknk] Lolqj ?fi= ,oa ek= lEcU/kh? iq=] ikS=] nkekn] HkkbZ] cgu] ifr] iRuh] iq=h rFkk eka ls gSA

7. Learned Standing Counsel however, vehemently contended that the various relatives in the aforesaid Government order are illustrative and not exhaustive since the basic purpose is to exclude the near relatives of the persons who play an important role in the Selection Committee. He submits if a father-in-law is prohibited, it is not understandable as to why mother-in-law will not be prohibited. However, this issue is no more res Integra since a Division Bench of this Court in Gyan Pratap Singh Vs. The State of Uttar Pradesh and Others, has already considered a similar issue. While interpreting provision contained in Sub-rule (5) of Rule 165 of the U.P. Panchayat Raj Rules, 1947 (hereinafter referred to as 1947 Rules) it was held that relationships identified in the explanation are exhaustive and not illustrative.

8. Sub-rule 4 of Rule 165 of 1947 Rules prohibits appointment of Panchayat members relation to any post. The explanation of Sub-rule 5 of Rule 165 provides as under:

Explanation-The word "relation" in the proviso means father, grand-father, father-in-law, maternal or paternal uncle, son, grandson, son-in-law, brother, nephew, first cousin, brother-in-law, sister's husband, wife, wife's brother, son of nephew.

9. A Division Bench of this Court after reading the aforesaid explanation took a view that explanation is not illustrative but exhaustive and the word relation is restricted to its meaning assigned and specified in the aforesaid provision. It has also held that it is not for the Court to find out different degrees or items of prohibition to exchange the aforesaid relationship though it has not mentioned in the Rule. The English translation of the provision in the Government Order would be as follows:

Relative means father, grandfather, father-in-law (maternal or paternal), son, grandson, son-in-law, brother, sister, husband, wife, daughter and mother.

10. The language of the Government order providing the meaning of relation is *pari materia* with the explanation to Rule 165(5) of 1947 Rules and therefore, though at first flush the contention of the learned Standing Counsel appears to be attractive but I feel bound by the view taken by the Division Bench in *Gyan Pratap Singh (Supra)* and hold that the petitioner could not have been disqualified only on the ground that her mother-in-law was Gram Pradhan of the Panchayat.

11. The learned Standing Counsel however vehemently contended that the matter pertains to the year 2004 and since the period of appointment of Shiksha Mitra is only one year, therefore, some other person must have been appointed and this petition has rendered infructuous by efflux of time.

12. In my view the submission is to be noted for rejection outright. A perusal of the Government Order dated 1.7.2000 would show that though a Shiksha Mitra is to be appointed for an academic Session but has a right of renewal in the next Session subject to his satisfactory work and performance in the preceding academic Session. Thus though initial appointment of a Shiksha Mitra is only for one academic year but under the Government Order he has a right to be considered for renewal of the term in the next academic Session provided his work, performance and conduct in the preceding Session has been satisfactory. Since the petitioner has been denied appointment on the post of Shiksha Mitra, she also stand denuded of her right to be considered for renewal of the term as per para 5 of the aforesaid Government Order. The pendency of this case before this Court shall not vanish the right of petitioner to get appointment on the post of Shiksha Mitra and also to loose right to be considered for renewal of the term. The scheme laid down in the aforesaid Government Orders makes it clear that once a person is selected as Shiksha Mitra, and has performed satisfactory, he is not be terminated or substituted by another person. In these circumstances, it cannot be said that the writ petition is rendered infructuous by efflux of time.

13. In the result, the writ petition succeeds and is allowed. A mandamus is issued to the respondents to consider petitioner for appointment to the post of Shiksha Mitra and not to disqualify her only on the ground that her mother-in-law is the Gram Pradhan of the concerned Gram Panchayat, if she fulfills all other eligibility qualification etc., and pass an appropriate order regarding her appointment expeditiously preferably within a period of 2 months from the date of production of a certified copy of this order.