
(2012) 02 AHC CK 0012
In the Allahabad High Court
Case No : Special Appeal No. 398 of 2010

Smt. Munni Yadav

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Citation : (2012) 5 AWC 4961

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : Sanjay Singh, Murlidhar, J.P. Singh and Dhrender Singh, for the Appellant; K.S. Kushwaha, Mahesh Narain Singh, Anant Vijai and C.S.C., for the Respondent

Judgement

B. Amit Sthalekar, J.—This special appeal has been filed by the appellant challenging the order of the learned single Judge dated 23.3.2010. The facts giving rise to the present special appeal are as follows:

The petitioner filed a writ petition No. 9798 of 2010 seeking quashing of the order dated 27.1.2010 (Annexure-8 to the writ petition) whereby a recommendation has been made for cancelling the appointment of the petitioner on the post of Shiksha Mitra and further directing that the appointment on the post of Shiksha Mitra be made only from amongst those candidates who fulfilled all the necessary eligibility conditions and merits in village Rampur. Patti Sarnam Khan and the said proposal of selection be forwarded to the District Basic Education Officer-respondent No. 3.

2. The case of the petitioner is that she was a resident of village Rampur Patti Sarvan Khan Tehsil Jamania District Ghazipur. She was married to one Shri Angad Yadav who was a resident of village Jallapur, Tehsil Sadar. In April 2008 the petitioner, for the purposes of selection as Shiksha Mitra, submitted her application before the Sub-Divisional Officer, Jamania District Ghazipur who was the authority competent to issue domicile certificate. The Sub-Divisional Officer, Jamania issued a domicile certificate which has been filed by the petitioner as

Annexure-1 to the writ petition and it is based upon the report of the Naib Tehsildar Jamania showing that the petitioner is a resident of village Rampur Patti Sarman Khan. The case of the petitioner further is that for Primary School Rampur Milki she was selected for the post of Shiksha Mitra being highest in merit and was sent for training in D.I.E.T., Saidpur, District Ghazipur, which she completed from 27.1.2009 to 25.2.2009. After completing her training she submitted her joining before the Head Master, Primary School, Rampur Patti Sarman Khan, Ghazipur and Rampur Milki. Ghazipur on 26.2.2009 and was allowed to join in the Primary School, Rampur Milki. One Anju Yadav-respondent No. 6 to the writ petition, who was also a candidate for the post of Shiksha Mitra submitted a complaint before the respondent No. 3 stating therein that the petitioner Munni Yadav after her marriage to Angad Yadav became a resident of village Jallapur Saidpur District Ghazipur and, therefore, she had obtained appointment on the post of Shiksha Mitra for village Rampur Patti Sarnam Khan by concealment of facts. It was also stated in the said complaint that in response to an advertisement published in April 2008 for Primary School, Jallapur Block Saidpur District Ghazipur, the petitioner had again applied for the post of Shiksha Mitra. On the said complaint Sub-Divisional Officer Jamania directed the Tehsildar Jamania to conduct an enquiry in order to ascertain the correct facts and submit his report. The Sub-Divisional Officer, Jamania in his report dated 8.2.2010. which was submitted before the District Basic Education Officer, Ghazipur, has stated that the domicile certificate dated 21.10.2008 was correct and the same was not being cancelled. This report of the Sub-Divisional Officer, Jamania was approved by the District Magistrate by his order dated 25.1.2010. However. when the matter came up before the District Basic Education Officer, Ghazipur. the petitioner as well as the respondent No. 3 were given opportunity of hearing and after consideration of the various reports the District Basic Education Officer held that the petitioner had obtained appointment on the post of Shiksha Mitra in Rampur Patti showing herself to be a resident of the said village whereas at the same time she had also submitted an application for the post of Shiksha Mitra in response to an advertisement issued in April 2008 showing herself to be a resident of Jallapur and therefore, in the circumstances she had wrongly been given appointment as Shiksha Mitra in village Rampur Patti Sarnam Khan and her services deserve to be cancelled.

3. We have heard Shri J.P. Singh, learned counsel for the appellant, learned standing counsel for the State-respondents and Shri Anant Vijai, learned counsel appearing for the respondent No. 6.

4. The appeal came up for admission on 23.3.2010 and was directed to be put up for admission on 25.3.2010. However, when the case was taken up on 7.4.2010 the respondent No. 3 was granted three weeks time to file counter-affidavit and two weeks was granted to the petitioner thereafter to file the rejoinder-affidavit and in the meantime the parties were directed to maintain status quo with regard to the post of Shiksha Mitra.

5. A counter-affidavit has been filed on behalf of respondent No. 6 Smt. Anju Yadav. No counter-affidavit has been filed on behalf of respondents No. 1 to 5. In the counter-affidavit filed by respondent No. 6 the allegations of her complaint have been reiterated that once the appellant had been married to Shri Angad Yadav she ceased to belong to village Rampur Patti Sarnam Khan. It was also averred that Shri Angad Yadav was a resident of village Jallapur Saidpur, District Ghazipur and that the petitioner could not have submitted her application for appointment on the post of Shiksha Mitra showing herself to be a resident of village Rampur Patti Sarnam Khan, i.e., her father's village.

6. A supplementary-affidavit dated 29.3.2010 has been filed by the appellant and in paragraph 7 of the said affidavit there is a categorical averment that even though the appellant has been married in village Jallapur but she has been residing in the house of her parents, i.e., at village Rampur Patti Sarnam Khan and a domicile certificate has also been issued by the Sub-Divisional Magistrate, Jamania to that effect after a thorough enquiry and verification of facts. Moreover, in the report of the Sub-Divisional Magistrate dated 8.2.2010 it is categorically stated that the earlier domicile certificate of the appellant issued on 21.10.2009 by the Sub-Divisional Officer, Jamania has not been cancelled so far. This report of the Sub-Divisional Magistrate dated 8.2.2010 has been filed as Annexure-7 to the writ petition. In the said report it has been stated by the Sub-Divisional Magistrate, Jamania that the earlier report of Lekhpal dated 21.8.2009 which was the foundation of the domicile certificate earlier issued in favour of the appellant has not been cancelled. This report dated 8.2.2010 has been issued after conducting a proper enquiry from Tehsildar, Jamania, as will be clear from the letter itself.

7. The fact that the earlier domicile certificate issued on 21.10.2009 of the appellant has not been cancelled and the fact that the appellant continues to reside in her parent's house even after her marriage does not appear to have been considered by learned single Judge while dismissing the writ petition (A) No. 9789 of 2010 vide order dated 23.2.2010. In paragraph 3 of the writ petition also the petitioner has made a categorical averment that even after her marriage she has been living with her father, Shri Bali Ram Singh Yadav in village Rampur Patti Sarnam Khan and her husband Angad Yadav is also living with her in the same village. In paragraph 16 of the writ petition the petitioner has again reiterated her earlier averment that even after her marriage she has been living with her parents in village Rampur Patti Sarnam Khan.

8. In our opinion these were relevant facts with regard to the controversy involved in the petition and were required to be considered by the learned single Judge while deciding the writ petition. These facts however do not appear to have been considered by the learned single Judge as the same do not find mention in the impugned order dated 23.2.2010. For the aforesaid reasons, the appeal is allowed and the order dated 23.2.2010 passed by learned single Judge is set aside. The matter is remitted back to the learned single Judge for deciding

the controversy afresh after taking into consideration the report of Sub-Divisional Magistrate, Jamania dated 8.2.2010 and the specific averments made in paragraph 7 of the supplementary-affidavit dated 29.3.2010 as well as the averments made in paragraphs 3 and 16 of the writ petition.

There shall be no order as to cost.