
(2017) 03 AHC CK 0071
In the Allahabad High Court
Case No : Service Single No. 2889 of 2011

Smt. Savita Devi

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Citation : (2017) 4 ADJ 672

Hon'ble Judges : Dr. Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : Onkar Nath Tiwari, Advocate, for the Petitioner; C.S.C., Maya Ram Yadav, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Devendra Kumar Arora, J.— Heard Sri Onkar Nath Tiwari, learned Counsel for the petitioner and Sri Badrul Hasan, learned Additional Chief Standing Counsel.

Petitioner has approached this Court assailing the order dated 27.08.2009, whereby the petitioner's representation for joining on the post of Aganbari Karyakarti/Sahayika has been rejected.

2. Submission of learned Counsel for the petitioner is that petitioner had applied for the post of Aganwadi Sahaiyika in pursuance to the advertisement issued in the year 2004 and was selected for the said post. After her selection, she was issued appointment letter but her joining was not accepted on account of some ulterior motive. It has been further submitted that the selection of the petitioner was against the clear vacancy and since posts are available, as one post out of two posts of Aganwadi Sahaiyika is still available, but opposite party did not allow the petitioner to join, though the petitioner presented herself for joining and also represented before concerned authority.

3. Feeling aggrieved by the said action of opposite parties, petitioner approached this Court by means of Writ Petition No. 5336 (SS) of 2007: Smit. Savit Devi v.

State of U.P. and others, and the same was disposed of vide judgment and order dated 16.02.2009 with the directions to the concerned opposite parties to decide the pending representation dated 21.03.2007, within a period of three months.

4. In compliance of the aforesaid order, the Director, Bal Vikas Sewa evam Pustahar, decided the representation, wherein the selection of the petitioner has been admitted but a stand has been taken that the petitioner did not report for joining within the period prescribed and on account of non-joining, the same was filled in by other person. According to the petitioner, the action of the respondents in denying appointment is wholly arbitrary and unjust.

5. In contrast, learned Additional Chief Standing Counsel has submitted that petitioner was issued appointment letter on 28.02.2002, wherein she was required to join along with the original records within a week, failing which, her appointment to the said post will automatically stand cancelled, for which she would be personally responsible.

6. For the reasons best known to her, petitioner did not report within time prescribed otherwise there was no question of denying her joining. The petitioner has not shown any document showing that she reported within time prescribed. On the contrary, petitioner has annexed copies of the letters dated 04.03.2003, 06.02.2004, 10.05.2005 addressed to District Programme Officer, Ambedkar Nagar as well as letter dated 21.03.2007 addressed to the Director with a request to issue direction for joining and payment of salary.

7. It has been clarified that the Director, after examining the comments of the District Programme Officer and material on record, came to the conclusion that the petitioner herself did not report for joining within the prescribed time, therefore, as per the terms and conditions mentioned in the appointment letter, her appointment automatically stood cancelled. Thereafter, the post was filled up while taking into consideration the order of the Apex Court passed in SLP No. 196 of 2001, and there is no post available at present. It is wholly incorrect to say that the vacancy is still available. In these circumstances, the assertion of the petitioner is wholly misconceived and unsustainable. In fact, petitioner has wrongly stated about the availability of the vacancy. Therefore, the petition devoid of merit is liable to be dismissed.

8. I have examined the submission of learned Counsel for the petitioner and gone through the record. As per the record, the petitioner in pursuance of the selection was issued the appointment letter on 28.02.2003 with a direction to report along with original documents within a week. In the said appointment letter, it has been clearly mentioned that if she fails to join within time prescribed, her appointment to the said post will be automatically cancelled and she will be responsible for the same.

9. As per the opposite parties, petitioner never approached the Child Development Officer, Ambedkar Nagar (opposite party no.3) for her joining in the time prescribed rather has annexed copies of the letters dated 04.03.2003,

06.02.2004, 10.05.2005 addressed to District Programme Officer, Ambedkar Nagar as well as letter dated 21.03.2007 addressed to the Director with a request to issue direction for joining and payment of salary.

10. There is nothing on record, which shows that petitioner ever approached to the concerned authority (opposite party no. 3) for her joining in terms of the appointment letter dated 28.02.2003 and if the letters annexed along with the certified copy of the judgment of this Court were placed before the Director are treated as correct, even then all the said letters are much after the prescribed time and there is nothing on record which shows that petitioner ever approached opposite party no. 3.

11. In the instant writ petition, the copies of letters dated 04.03.2003, 06.02.2004, 10.05.2005 addressed to District Programme Officer, Ambedkar Nagar as well as letter dated 21.03.2007 addressed to the Director, have not been brought on record, therefore, it is not possible to examine as to what has been stated in the said letters. However, there is no such pleading in the writ petition that petitioner had ever approached the opposite party no. 3 and on his refusal to accept her joining, she approached the District Programme Officer making complaint and seeking direction against him. It appears that the petitioner out of her own volition did not submit relevant documents within prescribed period as mentioned in the appointment letter dated 28.02.2003 and after about four years, she woke up and approached this Court seeking direction against the opposite parties by means of Writ Petition no. 5336 (SS) of 2007: Smit. Savit Devi v. State of U.P. and others. Moreover, it seems that petitioner was not interested in job otherwise she would have again applied when the next advertisement was issued for filling up the vacant posts of Anganbadi Sahaikas.

12. The law is well settled that delay defeats justice. In the year 2004, when she was not allowed to join, she should have immediately approached the Court for redressal of her grievance. The petitioner has to blame herself for not being conscious of her rights. Moreover, if the selected candidate fails to join within the prescribed time, then the offer of appointment automatically will come to an end. It may be added that a post cannot be kept vacant for all time to come and, in the instant case, the vacant post was rightly filled in view of the order of the Apex Court passed in SLP No. 196 of 2001. In these circumstances, no direction can be issued for joining of the petitioner on the post in question as claimed by the petitioner.

13. For the reasons aforesaid, the present petition being misconceived, is hereby dismissed.