
(2011) 10 AHC CK 0124

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 46164 of 2011

Smt. Shyam Kali

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Citation : (2011) 11 ADJ 818 : (2012) 132 FLR 799

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Rajes Kumar, J.—Heard Sri M.D.Singh "Shekhar" assisted by Sri R.D.Tiwari, learned counsel for the petitioner, Sri S.S. Sharma, learned counsel for the respondent Nos. 2 to 6 and Sri Shatrughan Singh, learned counsel for the respondent No. 7.

2. By means of the present petition, the petitioner is challenging the order dated 14.2.2011.

3. Both the petitioner as well as the respondent No. 7 applied for the post of Anganbari Sahayika for Deviganj Centre, which falls in urban area. There were two posts of Angnbari Sahayika, one was to be filled up by the General Category Candidate and the other was to be filled up by the Reserved Category candidate. The dispute relates to the post to be filled up by the Reserved Category candidate. Both the petitioner and the respondent No. 7 applied for the post to be filled up by the reserved category candidate. The respondent No. 7 is admittedly 8th Class pass and also holds the BPL certificate. The Administrative Committee of the Gram Panchayat rejected the application of the respondent No. 7 on the ground that she has not filed the educational certificates of Class V and VIII and the petitioner has been selected. The selection of the petitioner has been approved by the Gram Panchayat and thereafter for further approval, the matter has been referred to the Committee, headed by the District Magistrate.

The District Magistrate has selected respondent No. 7 on the ground that she falls under the BPL category and is also older in age than the petitioner.

4. The contention of the petitioner is that the Gram Panchayat on consideration of entire facts and circumstances, recommended the name of the petitioner for appointment and has rejected the claim of Smt. Usha Rani on the ground that she has not furnished the certificates of educational qualification of Class V and VIII. Once the name of Smt. Usha Rani has been rejected, the Committee headed by the District Magistrate has no authority to approve the name of Smt. Usha Rani, respondent No. 7, which is contrary to the scheme of the Government Order dated 16.12.2003 and the notification dated 21.7.2010, issued by the Bal Vikas Pariyojana Adhikari, Fatehpur.

5. The District Magistrate was directed to file his personal affidavit and the other respondents have also been directed to file the counter-affidavit.

6. In the counter-affidavit, filed by the District Magistrate, it has been stated that the respondent No. 7 has filed the certificates of High School and Intermediate alongwith her application. As per the Government Order, the minimum qualification for the post was V Class and the preference was to be given to those candidates who have passed Class VIII and since the respondent No. 7 has filed the certificates of High School and the Intermediate, which is higher educational qualification than Class VIII, therefore, she was eligible for consideration for the post and she is holding a BPL certificate and in age she is also older than the petitioner, thus, she has been rightly selected.

7. In the counter-affidavit, filed by the respondent Nos. 3 to 6, it is submitted that the educational certificates filed by the petitioner were found forged. Some documents have been annexed alongwith the counter-affidavit in this regard.

8. In the rejoinder affidavit, such averments have been disputed and it is contended that no opportunity has been given in this regard.

9. Having heard learned counsel for the parties, I have perused the impugned order, counter and rejoinder-affidavits and other documents.

10. The relevant part of the Government Order dated 16.12.2003 is referred herein below :

11. Under the Government Order dated 16.12.2003, for appointment on the post of Anganbari Sahayika, the minimum educational qualification is Class V, but it also provides that preference should be given to those candidates who have passed Class VIII, therefore, if a candidate has passed High School or Intermediate, which is higher educational qualification than Class VIII and annexed the certificates of High School or Intermediate, such candidate is also eligible to be considered on preferential basis alongwith the other candidates who are entitled to be considered on preferential basis. Once a candidate is found eligible under the Government Order, the selection is to be made in accordance to the procedure prescribed under the Government Order. If the respondent No.

7 has filed the High School and Intermediate Certificates alongwith the application, the presumption would be that she must have passed Class VIII and as such is eligible to be considered on preferential basis.

12. The contention of the petitioner that since certificate of Class VIII has not been filed alongwith the application, therefore, the respondent No. 7 is not eligible and is not entitled to be considered on preferential basis cannot be accepted.

13. In the counter-affidavit, the District Magistrate has stated that alongwith the application, certificates of High School and Intermediate have been annexed, which require verification. The Government Order dated 16th December, 2003, provides the selection process. It provides that the applications through the Gram Pradhan and by the members of the Regional Panchayat Samiti would be received in the office of the Bal Vikas Pariyojana Adhikari and in the office of the District Programme Officer, the same would be kept in a sealed box. The seal would be signed by the Bal Vikas Pariyojana Adhikari or the District Programme Officer, as the case may be. These sealed boxes would be opened in the presence of the members of the Gram Panchayat and after the scrutiny of the applications, the merit list would be prepared and the candidates would be selected on the same day. The Bal Vikas Pariyojana Adhikari, on a fixed remuneration, would issue the appointment letter to the selected candidate. Clause (Ja) of the said Government Order further provides that on the recommendation of the Selection committee, there would be no need for any prior approval of any Senior Officer, but a copy of the select list would be sent to the District Magistrate and the other copy to the Chief Development Officer on the same date. The Bal Vikas Pariyojana Adhikari and the District Programme Officer would affix the select list on the notice board of their office.

14. The above procedure for selection reveals that the District Magistrate has no role in the selection and the appointment of the Anganbari Karyakarti. However, in case if he receives any complaint with regard to selection, he can only refer the matter to the Selection Committee, constituted under the aforesaid Government Order, for consideration and can adjudicate the complaint on the direction of the Court.

15. In view of the above, the writ petition is allowed. The impugned order dated 14.2.2011, Annexure-7 to the writ petition, is set aside and the matter is remanded back to the Selection Committee to decide the matter afresh in the light of the observations made above, expeditiously, in accordance to law.