
(2010) 05 AHC CK 0037
In the Allahabad High Court
Case No : Special Appeal No. 1682 of 2008

Smt. Suman Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2010) 5 AWC 4905 : (2010) 126 FLR 792 : (2009) 121 FLR 958

Hon'ble Judges : R.K. Agrawal, J; Abhinava Upadhyaya, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Abhinava Upadhyaya, J.—The present appeal arises out of the judgment/order of the Hon''ble single Judge dated 4.11.2008 whereby this Court declined to interfere with the appointment of respondent No. 7 as Aganwadi worker in the concerned Aganwadi Centre.

2. The appellant claims herself to be an applicant for selection of Aganwadi worker in Gram Panchayat Dudhaura, Block Captanganj, Tehsil Harraiya, district Basti alongwith Seema Devi, respondent No, 7. The claim of the appellant is that the selected Aganwadi worker, i.e., respondent No. 7 is not a domicile of the village and, therefore, her selection is contrary to the Scheme/G.O. dated 16th December, 2003, copy of which has been annexed as Annexure-CA-1 to the counter-affidavit filed by the State-respondents. The basis of the allegation of the appellant is that respondent No. 7 is married to one Mr. Santosh Kumar, who is the resident of Jurayeepur, Block Harraiya, district Basti and on account of her marriage she cannot be treated to be a domicile/resident of village Dudhaura.

3. The facts, in brief, are that an advertisement was issued on 29.5.2007 for selection of Aganwadi worker. Pursuant thereto the appellant as well as respondent No. 7 applied and respondent No. 7 was selected vide select list dated 20.6.2007. The appellant aggrieved by the selection, made a

representation to the District Magistrate, Basti which in turn directed the Child Development Programme Officer, Captanganj, Basti to make fact finding enquiry in this behalf. It is alleged in paragraph 5 of the affidavit that a report was submitted in favour of respondent No. 7. Being dissatisfied the appellant again made a representation for re-enquiry upon which it was informed that the enquiry has already been made on 20.8.2007 wherein the selection of respondent No. 7 was found to be genuine and in accordance with the scheme and, therefore, letter of appointment dated 10.1.2008 was issued in favour of respondent No. 7.

4. It is alleged that the appellant has been constantly agitating before the authorities that the appointment of respondent No. 7 has not correctly been made and she being second in the merit list, should have been appointed but nothing happened in the matter. It is stated that the appellant filed writ petition being Civil Misc. Writ Petition No. 17625 of 2008 Smt Suman Devi v. State of U.P. and Ors. before this Court which was disposed of vide order dated 7.4.2008 (Annexure-10 to the writ petition) with the direction to the District Programme Officer, Basti to decide the representation of the petitioner-appellant within two months. The said representation was decided vide order dated 8.9.2008 rejecting the claim of the appellant. Against the aforesaid order dated 8.9.2008, the appellant preferred the present writ petition before this Court, which has also been dismissed. Hence, this special appeal.

5. The entire claim of the petitioner-appellant is that respondent No. 7 is not a domicile or a resident of village Dudhaura. In fact she originally belongs to village Rajajot, Bahadurpur, Basti. On account of her marriage with Santosh Kumar s/o Sri Ram Shabd she has become a resident of Jurayeeपुर, Block Harraiya, district Basti and, therefore, her selection from Dudhaura village is against the provisions of scheme which stipulates that the Aganwadi worker has to be from the same village where selection is to be made.

6. The State authorities as well as respondent No. 7 justifying the said selection, have stated through their affidavits that from the very childhood respondent No. 7 has been staying with her "nana" (maternal grandfather) who is the resident of village Dudhaura alongwith her mother.. It is also stated that the maternal grandfather had no son and his wife had also died a long time ago and, therefore, to help him in his old age the mother alongwith respondent No. 7 resided with him in village Dudhaura from where she completed her education. It has also been found in the enquiry that respondent No. 7 is the holder of identity card issued by the Election Commission of India wherein her address has been shown as village Dudhaura, district Basti. The ration card also indicates her address as village Dudhaura and so does the parivar register which is annexed as Annexure-CA-2 to the counter-affidavit filed by respondent No. 7. In the fact finding enquiry it was found that respondent No. 7 has all along been living with her mother and "nana" Sri Sumeshwar, who has executed a registered Will in favour of the mother of respondent No. 7.

7. The respondent No. 7 in the counter-affidavit has filed the parivar register of Rajajot village where her name appears to have been struck off as not residing in the said village. She has also alleged that the appellant Suman Devi is in fact a resident of Katari which also has an Aganwadi Centre and, therefore, ineligible for selection from Dudhaura.

8. We have considered the affidavits filed by the parties as well as the fact finding enquiry report. Nothing contrary has been shown to disbelieve the said report. It does appear that respondent No. 7 for all practical purposes is resident/domicile of village Dudhaura where her selection has been made. The only factual aspect, which needs consideration is regarding marriage of respondent No. 7 with Santosh Kumar who is resident of village Jurayeeपुर, Block Harraiya, district Basti. According to the appellant this is an admitted fact and, therefore, on account of her marriage in a different village she cannot be treated to be a domicile of village Dudhaura and that being the case, she could not be selected as Aganwadi worker from Dudhaura. This is the only point argued by the learned Counsel and no other point has been raised.

9. On the factum of marriage, in the fact finding enquiry report it is mentioned that respondent No. 7 was married at a very young age and her "Gauna" has not yet taken place. "gauna" in common parlance means sending of the girl after marriage to the residence of her husband. It is a matter of common knowledge that it has been an age old tradition in many villages in rural India that even after marriage the bride continues to stay with her parents which may extend to years, till she is taken to the husband's residence. This ceremony is called "gauna". It is also a matter of common perception that the tradition of "gauna" must have begun from the times when child marriages were legal and not a taboo and upon such marriage, till the girl attained the age of puberty or was considered mature enough, she continued to stay with the parents and thereafter was taken by the in-laws to their respective residence. A married woman staying back with her parents until "gauna" has taken place, is therefore, not uncommon to rural India.

10. Learned Counsel for the appellant has submitted that the moment marriage takes place and if the husband is of a different village, the wife would, ipso facto, cease to be the resident or domicile of the original village, irrespective of the fact whether "gauna" had taken place or not.

11. This fact of marriage of respondent No. 7 with Sri Santosh Kumar, r/o village Jurayeeपुर, Block Harraiya is not denied by her but it has been submitted that she continues to stay with her mother in Dudhaura and has also filed documentary evidence for the aforesaid purpose and as such she has rightly been treated to be the resident of village Dudhaura and has been granted appointment. It has also been submitted that even the appellant does not dispute this fact that her "gauna" has not yet taken place. This fact is also borne out from the enquiry report wherein the statements of villagers alongwith the appellant were taken and it was unanimously stated that respondent No. 7 is the

resident of village Dudhaura and her "gauna" has not yet taken place.

12. Learned Counsel for the appellant then drew our attention to the decision of a Division Bench judgment of this Court in the case of Shalita Gupta (Smt.) v. State of U.P. and Ors. 2008 (2) UPLBEC 1304 , whereby the Division Bench had relied upon another decision of this Court in the case of Smt. Kiran Yadav Vs. Smt. Santoshi Devi and Others, The applicability of these decisions are, however, disputed by the learned Counsel for the respondents on the ground that they have been rendered considering an appointment of Shiksha Mitra under a different scheme.

13. We may now consider the judgment rendered by the Division Bench in the case of Shalita Gupta (supra). In the aforesaid case Shalita Gupta was appointed as Shiksha Mitra pursuant to an advertisement dated 31.2.2005 for village Khirkia, district Kushinagar. Her selection was challenged by Smt. Seema Arya contending that Shalita Gupta got married on 13.1.2005 to one Sanjai Gupta, resident of village Dudhai, district Kushinagar. Therefore, she ceases to be the resident of Khirkia and, therefore, could not have been selected. The District Magistrate on such representation held that Shalita Gupta continues to be the resident of village Khirkia on account of the fact that the "gauna" had not taken place. The matter was agitated before the writ court which quashed the appointment of Shalita Gupta on the ground that "gauna" makes no difference and on account of marriage of Shalita Gupta in another village she could not have been treated to be the domicile of the village where she was appointed as Shiksha Mitra. The Division Bench in the aforesaid case declined to interfere with the order of the Hon'ble single Judge holding that for appointment of Shiksha Mitra the moment a female candidate is married to a person, who is resident of another village, cannot be treated to be domicile of the village of her parents.

14. In this behalf, it may be relevant to consider the Scheme of Shiksha Mitra. Under a Central Government funded programme known as Sarva Shiksha Abhiyan the Scheme of Shiksha Mitra has been implemented vide Government order dated 26th May, 1999. The purpose of the Scheme was to provide education to the children of the village by voluntary participation of qualified youth of that village by way of their appointment in the existing Basic Schools on a vacancy keeping in mind the norms of the teacher and the taught ratio. In the aforesaid G.O. it is provided that if such qualified youth is not available in the village then volunteers can be invited from the neighbouring villages of the same panchayat. Vide G.O. dated 15.6.2007 it was provided that if a female Shiksha Mitra if married in another village she will be removed as Shiksha Mitra. Thereafter, by another G.O. dated 21.1.2008 the rigour of the aforesaid Clause was toned down and it was provided that such married female Shiksha Mitra will be removed only upon her tendering resignation. The aforesaid provision makes it clear that even after marriage of the female candidate in different village, she can continue to hold the post unless she herself resigns from it.

15. On the other hand, the Scheme of Aganwadi worker, with which we are

concerned, is also a Government of India Scheme under "Integrated Child Development Programme" and it is funded by the Central Government. The Aganwadi workers are appointed from amongst the local inhabitants and the selection is made by a Committee constituted in this behalf. Aganwadi workers, however, do not carry on any function of the State. They do not hold post under any statute and their posts are not created. The recruitment rules ordinarily applicable to the employee of the State are not applicable in their case. The State is not required to comply with the Constitutional Scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No statutory process for selection for the purpose of their appointment with the Constitutional Scheme exists. The Rules framed under the proviso of Article 309 of the Constitution of India are also not attracted. They are appointed on honorarium under a Scheme which is not permanent in nature, and under a contract and, therefore, do not hold any civil post. The same is with the case of the Scheme of Shiksha Mitra. That apart in both the aforesaid Scheme the engagement/selection is for the purpose of carrying out the objects of the Scheme which is not in any case an employment generating scheme. It is voluntary participation of the local inhabitants for upliftment and for providing nourishment and education to children.

16. For selection of Aganwadi workers preference is given to the qualified destitute of the village or widow of the village or qualified females who are below the poverty line. The idea is that some benefit would reach to the aforesaid category of females who are otherwise qualified and by their participation the object of the scheme could be achieved, i.e., Child Development Programme. Since the Scheme is of temporary nature and the honorarium is also very low, therefore, preference is given to the local inhabitants who are below the poverty line. In this context, it has to be viewed whether domicile can solely be judged on the basis of marriage whereas the eligibility requirement is that the candidate must be a local inhabitant irrespective of the fact whether married or not? In Aganwadi Scheme there is no provision like Shiksha Mitra that on marriage in another village the female Shiksha Mitra will be removed although by the later G.O. she was allowed to continue till she resigns from the post.

17. In the present case, the respondent No. 7 for all practical purposes is resident of village Dudhaura. Although she is said to be married to some one in a different village but that by itself would not disqualify her for being considered for selection as Aganwadi worker in village Dudhaura in the absence of provision like that of Shiksha Mitra Scheme/G.O. Although the presumption is that on marriage female if residing with her husband, becomes resident of the village where her husband resides but such presumption is a rebuttable presumption and we cannot be oblivious of the fact that there are cases where inspite of marriage the woman does not reside with her husband and continues to stay with her parents notwithstanding that the marriage has not legally broken.

18. The Division Bench in the case of Shalita Gupta (supra) has held that there is

a presumption that upon marriage the woman ceases to be the resident of the village of her parents and becomes the resident of the village wherein her husband resides. It has further been held that the fact that the "gauna" had not taken place, makes no difference as it is not the case of the appellant that her marriage has broken down. In our view, this is so because the Scheme of Shiksha Mitra contemplates that after being married in different village the female Shiksha Mitra will be removed from that post in the village of her parents.

19. The other case relied by the appellant is the case of Smt. Kiran Yadav (supra) which was followed in Shalita Gupta (supra). This case also raises presumption of change of domicile in the event of marriage of a female in another village.

20. We are in respectful agreement with the view expressed by the Division Bench in the aforesaid cases that on marriage with a person, who resides in a different village, presumption would be that the wife would also be treated to be the resident of that village and will cease to be a domicile of her parent's village. However, we are of the considered opinion that the aforesaid presumption is a rebuttable presumption and if as a matter of fact it is found that the woman continues to stay in the village of her parents even after marriage, she has to be taken to be a resident of that village and thereby eligible for being considered for selection of Aganwadi worker.

21. Unfortunately, for the appellant, in our considered view, the aforesaid two cases do not help her or in any way further its cause.

22. Therefore, in view of the aforesaid discussions made above, and considering the decisions in cases of Shalita Gupta (supra) and Smt. Kiran Yadav (supra), we are of the opinion that the Hon'ble single Judge has rightly dismissed the writ petition which does not call for any further interference by this Court, exercising its intra Court appellate jurisdiction.

The appeal, therefore, fails and it is, accordingly, dismissed.