

(2010) 04 AHC CK 0018
In the Allahabad High Court
Case No : Special Appeal No. 394 of 2010

Smt. Sunita Jaiswal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 5 AWC 4865

Hon'ble Judges : R.K. Agrawal, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jayashree Tiwari, J.—This special appeal has been filed against the order of the learned single Judge dated 15.2.2010 dismissing the writ petition of the petitioner.

2. It is contended on behalf of the appellant that the order passed by the learned single Judge is erroneous and against the provisions of the Government orders. It is contended that the appellant is already appointed and working and her term has been renewed for the Session 2009-2010 by the respondent No. 4 and learned single Judge ignoring this fact has dismissed the writ petition while upholding the impugned order of the District Magistrate that she was duly selected candidate and there was no occasion for any fresh appointment. It is further contended that de novo selection process if initiated, will take couple of years to attain finality and in between the post shall remain vacant. It is also contended that the form of the appellant was duly received by the competent and authorised person and the District Magistrate erroneously accepted that the form of respondent No. 6 was accepted by the authorised person.

3. Briefly stated the facts giving rise to the present case is that post of Shiksha Mitra(Mahila) arose at newly constructed institution for the year 2008-2009. The Assistant Basic Shiksha Adhikari, Nebua Naurangia directed the Secretary and Head Masters of the concerned institution to complete the selection process and

to submit the selection file within the prescribed time. The petitioner admittedly submitted her application to the competent and authorised person. Only application of the appellant and one application of a male member was received by the duly authorised person. The other application of Smt. Suman Jaiswal was received by Nisarullah Ansari, the person who was looking after the work of management but was not duly competent Principle. Accordingly, since only two applications were received by the competent person, the one application being of a male candidate was not accepted as the seat was meant for Mahila Shiksha Mitra. The petitioner being female candidate was considered, appointed and accordingly she worked in the said capacity. It is further contended that she was appointed on the said post for the academic session 2009-2010.

4. Subsequently, another applicant Smt. Suman Jaiswal made a complaint and on her application after due consideration and also in compliance of the order of the Hon'ble High Court to reconsider the matter of the appellant as well as the other applicant Suman Jaiswal, the District Magistrate held an enquiry and came to the conclusion that the selection process was vitiated as duly given application of Suman Jaiswal was not taken into account for and he came to the conclusion that the selection process is prima facie vitiated and faulty. In these circumstances, he upheld that in order to give equal opportunity to all the applicants the post be readvertised and de novo selection process be made according to law and thereby he disposed of the representation of Sunita Jaiswal dated 10.12.2009 in compliance of the order of the Hon'ble High Court in Writ Petition No. 61589 of 2009 dated 17.11.2009.

5. The learned single Judge while hearing the writ petition filed by the petitioner Smt. Sunita Jaiswal came to the conclusion that since the appointment on the post of Shiksha Mitra is not under any statutory rule and is only for a period of eleven months subject to renewal, therefore in such circumstances, if the competent authority concerned has found that some illegality has been committed during the initial appointment and equal participation has been denied then in that circumstances, if some candidate has been permitted to work and on that basis if the candidate has been granted renewal that will not create a right upon that person and in such circumstances, the authority is justified in directing to hold fresh selection. The learned single Judge upheld the order passed by respondent No. 2 dated 6.1.2010 and justified the order directing to hold fresh selection.

6. In this case, the record has been produced by the learned standing counsel. From perusal of the record it comes out that there are two applications, one on behalf of the petitioner Smt. Sunita Jaiswal in which there are some contradictions. The first application from Smt. Sunita Jaiswal is Annexure-4 in which she has been shown having passed High School in 3rd Division and intermediate in 2nd Division. The marksheet of High School examination is at page 87 in which the total marks secured by her are shown as 249. There is also variation in the subjects mentioned in the two certificates of Smt. Sunita Jaiswal.

In certificate at page 86 she is shown to have Hindi, English, Home Science, Science, Social Science and Drawing as her subjects. In the marksheet of Intermediate at page 85 she is shown as having taking Hindi, History, Civics, Economics and Sociology as her subjects and total marks obtained is 186. In another marksheet of intermediate total marks obtained is shown as 342 out of 500 and the subjects mentioned are Hindi, Sanskrit, Civics, Psychology, Sociology, Sports & Phy. Edu. On being enquired from the counsel for the petitioner as to out of these two intermediate marksheets which one is correct, the counsel for the petitioner pointed out that marksheet bearing total marks as 186 out of 500 is the correct marksheet of the intermediate examination. The learned Counsel for the petitioner also pointed out that another certificate and marksheet has not been given by her.

7. The contention of the petitioner is that she has given her form to the Principal and has got a receipt which is Annexure-3 at page 58 of the paper book. The application of the other applicant Suman Jaiswal alongwith present petitioner is shown to have been received by Sri Nisarullah Ansari who was looking after the other affairs.

8. After due consideration on the application given by another candidate Suman Jaiswal as well as the report on application of Smt. Sunita Jaiswal, considering the entire matter as mentioned at page 7 (Annexure-10) and from the perusal of the available record on file, it is clear that Sri Subhan Allah Ansari was suspended vide order 22.11.2007 of Basic Shiksha Adhikari and again he was reinstated vide order of Basic Shiksha Adhikari dated 25.9.2008. The application was received by him for the post of Shiksha Mitra as he was duly authorised to receive the forms. It is further held that building construction Incharge Nisarullah Ansari had illegally obtained application and has created the disputed situation and as a result of which the selection process appears to be. *prima facie* vitiated.

9. In such circumstances, it was directed by the competent authority that the aforesaid selection process be cancelled in order to give equal opportunity to all the applicants in the new selection process after due advertisement according to the Government orders so that the selection process will be more appropriate according to law and hence he came to the conclusion that the aforesaid selection process was full of faults he cancelled the same and disposed of the representation in accordance with the direction of the Hon'ble High Court and directed the Basic Shiksha Adhikari to re-advertise the post afresh and to complete the *de novo* selection process according to law.

10. The question which remains to be considered is whether the selection process which was found to have been vitiated by wrongful acceptance of the forms of the candidates by an unauthorised person can be upheld or will it be a better course to provide equal opportunity to all the duly competent applications in *de novo* selection by advertising the post again. The contention of the petitioner is that he was duly selected and her" appointment was renewed also and hence the order of the learned single Judge upholding the order of District

Magistrate dated 6.1.2010 appears to be total baseless.

11. The appointment initially made on the basis of vitiated selection process cannot be upheld and any renewal in reference to any such appointment can also be not upheld for creation of any legal right in favour of the petitioner Sunita Jaiswal because once the authority has come to the conclusion that by taking of forms of other applicants by unauthorised person who were having better marks than the present petitioner and the selection process was vitiated as their forms were not considered on the ground that they were not received by the competent person and they were deprived of the equal opportunity. The contention of the petitioner in these circumstances that she has been duly selected does not seem to be sustainable. In the circumstances, the order passed by the learned single Judge requires no interference.

12. The special appeal is dismissed.