
(1990) 05 AHC CK 0054
In the Allahabad High Court
Case No : C.M.W.P. No. 12249 of 1990

Urmila Devi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 04-05-1990

Acts Referred:

Constitution of India, 1950 — Article 16, 16(2)

Subordinate Civil Courts Ministerial Establishment Rules, 1947 — Rule 24

Citation : (1992) 1 LLJ 127

Hon'ble Judges : S.D. Agarwala, J;G.K. Mathur, J

Bench : Division Bench

Advocate : Tarun Verma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—By means of the present writ petition under Article 226 of the Constitution of India the petitioner has challenged the validity of an order passed under Rule 24 of the Subordinate Civil Courts Ministerial Establishment Rules, 1947 which provides that women shall not be eligible for appointment to the ministerial establishment of the Civil Courts subordinate to the High Court. The actual order is as follows:-

"In exercise of the powers conferred by clause (b) of Section 275 of the Government of India Act, 1935 the Governor of the United Provinces is pleased to order that women shall not be eligible for appointment to the ministerial establishment of the Civil Courts subordinate to the High Court of Judicature at Allahabad and the Chief Court of Oudh, Lucknow."

2. On April 5, 1990 an advertisement was issued by the District Judge, Gorakhpur inviting applications to fill up Class III posts in the judgeship. On the same day on April 5, 1990 the District Judge, Gorakhpur has sent a communication to the Regional Employment Officer, Gorakhpur forwarding him conditions of eligibility of the candidates. One of the conditions imposed by the

District Judge was that no woman candidate will be eligible for Class III posts. When petitioner wanted to apply for the said post and she approached the Regional Employment Officer, she was informed that she cannot apply for the said post as she is not eligible according to the communication issued by the District Judge dated April 5, 1990. Consequently it is this communication which has given rise to the present controversy. It is not disputed that the communication dated April 5, 1990 has been sent by the District Judge, Gorakhpur in view of the order quoted above passed under Rule 24 of the Subordinate Civil Courts Ministerial Establishment Rules, 1947.

3. Article (1) of the Constitution of India provides that all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of Part III, shall to the extent of such inconsistency, be void. Admittedly the impugned order was passed in exercise of the powers under Clause (b) of Section 275 of the Government of India Act, 1935. This order was consequently passed prior to the commencement of the Constitution.

4. Part III of the Constitution of India deals with fundamental rights. Article 16(2) of the Constitution of India specifically provides as follows:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State."

5. The above Article 16(2), therefore, specifically lays down that a person shall not be ineligible for the employment to any post merely on the ground of sex. The impugned order disentitled the women for appointment to the ministerial establishment of the Civil Courts subordinate to the High Court. This order is clearly violative of Article 16(2) of the Constitution of India and as such is ultra vires. The consequential communication issued by the District Judge dated April 5, 1990 is also, therefore, invalid.

6. It may be mentioned here that on the Administrative side of the High Court the question whether women candidates can also be permitted to appear for the ministerial posts in the subordinate courts came up for consideration. Justice Satish Chandra, the then Chief Justice of this Court by an order dated April 8, 1980 had directed that the District Judge should employ women candidates also in the subordinate courts in view of the Constitutional guarantee contained in Article 16(2) of the Constitution of India.

7. In view of the above the petition is allowed and the order passed under Rule 24 of the Subordinate Civil Courts Ministerial Establishment Rules, 1947 quoted above is declared ultra vires the Constitution of India. The communication issued by the District Judge dated April 5, 1990 is also quashed. It is open to the District Judge, Gorakhpur to issue a fresh communication providing that the women will also be entitled to apply for the vacant posts for which advertisement has already been issued on April 5, 1990.

The petition is disposed accordingly.