

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.: 3081 of 2019

Decided on: 21.08.2020

Kumari BeenaPetitioner.

Versus

State of H.P. and others ...Respondents.

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. A.K. Gupta, Advocate.

For the respondents : M/s Somesh Raj, Dinesh Thakur
and Sanjeev Sood, Additional
Advocate Generals for
respondents/State.

(Through Video Conference)

Ajay Mohan Goel, Judge (Oral)

By way of this writ petition, the petitioner has challenged the order passed by the Deputy Commissioner whereby the request of the petitioner for issuance of *bonafide* certificate in her favour stands rejected.

2. The case of the petitioner is that she is residing in Shimla since the year 1997 and in terms of the provisions, as are contained in Hand Book on Personnel Matters (Vol-I),

¹ Whether reporters of the local papers may be allowed to see the judgment?

issued by Personnel Department of the Government of Himachal Pradesh, she is entitled to *Bonafide* Himachali certificate.

3. Earlier also, a writ petition was filed by her, i.e. CWP No. 2450 of 2017, titled as Kumari Beena versus State of H.P. and Ors., which was disposed of by this Court on 02.11.2017, by directing the competent authority to pass appropriate order. Pursuant to this, order stands passed by Deputy Commissioner, who has rejected the claim of the petitioner primarily on the ground that the *Bonafide* Himachali Certificate can be issued to a person, who happens to be a citizen of India and as the petitioner is not a citizen of India, therefore, she is not entitled for issuance of *Bonafide* Himachali certificate.

4. Mr. A.K. Gupta, learned Counsel for the petitioner has vehemently argued that the order so passed by the competent authority is not sustainable in the eyes of law as citizenship is not a condition precedent for issuance of *Bonafide* Himachali certificate. He has also relied on the documents annexed with rejoinder and on the strength of the

same, he submits that similar certificates stand issued to persons similarly situated as the petitioner.

5. I have heard learned Counsel for the parties and gone through the pleadings as well as documents appended therewith.

6. The petitioner is primarily relying her claim on the contents of Hand Book on Personnel Matters (Vol. I), in which a bonafide Himachali has been defined and in terms whereof a person is entitled for the *Bonafide* Himachali certificate, if he/she has been a resident of State of Himachal Pradesh for a period of 15 years. The Hand Book on Personnel Matters incidentally is a book which has been issued by the Department of Personnel of the Government of Himachal Pradesh in three volumes, which contains various notifications etc. which have been issued by the Government of Himachal Pradesh from time to time pertaining to the mode and manner of offering appointment to persons in government jobs and other matters incidental thereto.

7. Coming to the facts of this case. In my considered view, the contention of learned Counsel for the petitioner that citizenship has got nothing to do with the issuance of

Bonafide Certificate does not has any merit. The reason as to why issuance of *bonafide* certificate requires a person to be the citizen of India is that more often than not it is a condition precedent to possess Bonafide Himachali certificate to be eligible to apply for a job in a Government Department of the State of Himachal Pradesh. It is not in dispute that the petitioner is not a national of India because it is an admitted fact that she is a national of Nepal. While deciding the representation of the petitioner, in terms of the order passed by this Court, the following findings have been returned by the Deputy Commissioner while rejecting the representation of the petitioner:-

“From the perusal of the entire record placed before me, I am of the opinion that a bonafide Himachali Certificate can be issued to a citizen of India only as clarified by the Government of Himachal Pradesh, Department of Revenue vide letter No. Rev.B.A.(3)-1/2004-IV, dated 07.08.2014. In such an eventuality the issue to be decided in the present case is whether the applicant is a Citizen of India and to my mind that is the crux of the issue. As per

Section 3 of the Citizenship Act of India, 1955, except as provided in sub-section (2), every person born in India:-

(a) On or after the 26th day of July, 1987, but before the 1st day of July, 1987;

(b) On or after the 1st July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004) and either of whose parents is a citizen of India at the time of his birth;

(c) On or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), where--

(i) both of his parents are citizens of India; or

(ii) One of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth,

shall be a citizen of India by birth.

The applicant has tried to prove her citizenship on the basis of her birth certificate issued by the Registrar, (Births & Deaths) Municipal Corporation, Shimla in which she is shown to be born at Bachiter

Bhawan, Dingra Estate, Boileauganj, Shimla on 07.02.1997. Section 3(1)(b) of the Indian Citizenship Act, 1955 is applicable to the applicant which provides that "except as provided in sub-section(2), every person born in India, on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004) and either of whose parents is a citizen of India at the time of his birth; shall be considered as an Indian. The applicant failed to produce any authentic document which could prove that one of her parents was a citizen of India at the time of her birth and thus her claim for the issuance of the certificate fails on this ground.

Therefore, in view of my above observations I am convinced beyond any doubt that the applicant K. Been D/w Shri Manglu, R/o Bachitra Bhawar, Boileauganj, Tehsil & District Shimla, H.P., does not fall under the definition of Indian Citizenship and thus her claim of the issuance of a Bonafide Himachali Certificate cannot be treated as genuine

and justified under the prevalent requirements of the provisions.”

8. In my considered view, the findings so returned by the Deputy Commissioner are correct findings because as the petitioner does not happen to be a citizen of India, refusal of *Bonafide* Himachali Certificate to her by the Deputy Commissioner, cannot be faulted with.

9. In this view of the matter, this writ petition being devoid of merit is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

August 21, 2020
(narendar)