
(2008) 02 J&K CK 0020
In the Jammu And Kashmir High Court

Abira Habib

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 02-02-2008

Acts Referred:

Citation : (2008) 2 JKJ 288

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bashir A. Kirmani, J.—The controversy in this case relates to appointment of a teacher under Sarva Shiksha Abhiyan in Government School

of Kunzer, Tangmarg tehsil, where respondent No. 6 was appointed to the annoyance of petitioner who challenged it on the ground that having

10+2 qualification as against simple matriculation of respondent he had a better claim for appointment in terms of the scheme according to which

higher qualification was to prevail as merit and efficiency were the standards of consideration. He, accordingly, seeks quashment of said

respondent's selection/appointment against the post on the ground that it was done quite arbitrarily and against petitioner's merit without even

conducting a regular process of selection. In response, official respondents 1 to 5 have, inter alia pleaded that for the post of Educational Volunteer

available for being filled up in the above said Government School, five candidates applied and a panel was drawn wherein petitioner did not find

figure because she had not applied at all and among available candidates respondent No. 6 being most eligible was selected and appointed against

the job and that being so, petitioner had no case to plead.

2. In view of the nature of claims and counter claims, this Court vide interim order dated 21.02.2005 while admitting the writ petition to hearing

observed that official record filed by respondents' counsel did not tally with the affidavit purporting to have been filed in the matter by concerned

officer directed Deputy Commissioner, Baramulla to examine credentials of the contenders who had eligibility at the relevant point of time and

furnish his report which ultimately appears to have been submitted on 1.11.2004 to which none of the parties have filed their written response.

Instead the appearing counsel as revealed by interim order dated 16.12.2005, have stated that they did not intend to file any further replies as their

pleadings already on record would suffice,

3. In terms of the report purporting to have been filed by Deputy Commissioner concerned, he has expressed dissatisfaction about genuineness of

the process of selection that is claimed to have been undertaken by concerned official respondents and has accordingly, concluded the report with

an observation that selection in the matter has not been conducted in a transparent manner and statements of Zonal Education Officer regarding

preparation of panel were not based on facts which cast doubt on entire selection process. He has also reported that applications of candidates

reported to have applied for selection are not traceable from records and has recommended for recommencement of selection process for the

reason that appointed candidate in the matter happens to be a matriculate only while as petitioner a 10+2 has not been considered at all.

Appended with his report are the affidavits of concerned Chief Education Officer and Zonal Education Officer. In his affidavit, the Chief Education

Officer, namely one Gh. Mohammad Malik, has inter-alia submitted that applications for engagement as Education Volunteer in the matter were

invited by concerned Zonal Education Officer vide his notification dated 30.01.2003 with concerned village being the zone of selection. He has

also deposed that the name of respondent No. 6 only was submitted by concerned Zonal Education Officer to his office for

consideration/appointment. On almost similar lines is the affidavit of concerned Zonal Education Officer, namely, Musooda Ashai who, among

other things, has stated that Sarva Shiksha Abhiyan scheme did not prescribe any specific procedure for inviting applications and that under the

scheme it was not necessary that selected candidate should provide rent free accommodation for the centre as happens to be mentioned in the

reply purporting to have been filed on behalf of official respondents 1 to 5. Alongwith all this, perusal of the official file purporting to have been

maintained in the matter by concerned officials reveals that as per Zonal Education Officer concerned the post under reference was never

advertised as there is no advertisement notice whatever or copy thereof in the file, neither there is any record regarding any such advertisement

having been issued by any means whatsoever in absence whereof the claim that it was so issued definitely falls flat for want of requisite substance.

In addition to that, the record of selection, if one calls it so, reveals that only respondent No. 6 was empanelled by concerned Zonal Education

Officer for appointment as Educational Volunteer alongwith a note that only one candidate, that is perhaps respondent No. 6, from revenue village

Kunzer applied for the post while others did not as they were residing away from the proposed venue and ""were not able to provide

accommodation"".

Following at page No. 9 of the same file is a list of five candidates, namely, Hilal Ahmad Dar, Shaheena Akhter, Firdousa Akhter, Muzaffar Khalid

Wani and Arief Rashid Dar. In remarks column, in case of first three candidates the concerned Zonal Education Officer has remarked that they

were not willing to work as Educational Volunteers. Regarding one at Sr. No. 4, it has been mentioned that he has already been appointed under

SRO 43, with the net result that respondent No. 6 only remained available and willing for being appointed as Educational Volunteer. It would be

appropriate to notice that as per their statements purporting to have been given before Deputy Commissioner during course of enquiry aforesaid

the above named persons have totally denied having expressed any such disagreement. While Shaheena Akhter has stated that she had applied for

the job and never withdrawing from competition was always prepared to work on the job, Muzaffar Khalid, who is reported to have been

appointed under SRO 43, has stated that he ever informed the concerned Zonal Education Officer about his appointment which he himself did not

know till he applied for the job under reference and, as such, there was no question of his having withdrawing from the candidature. Similarly, the

candidates namely Hilal Ahmad Dar and Firdousa Akhter have also stated that they had applied for the job and had qualified 12th Class

examination but never withdrawn their names because they were always prepared to work on the job.

4. On cumulative consideration of what has preceded, the conclusions those profusely percolate are; first, that there is absolutely no reliable

material muchless any evidence to establish or even loosely show that the post under reference was ever advertised for seeking candidature from

eligible candidates: secondly, that the name of respondent No. 6 was empanelled by concerned Zonal education Officer in an expressly

unbecoming manner with a recorded note that he was the only candidate available as others had not applied which is blatantly belied by his own

statement regarding names of four other candidates who had applied for the job and were reported to have declined working on the post which is

again belied by the statements of those persons recorded by the Deputy Commissioner as stated above; thirdly, that the plea regarding publication

of advertisement notice in the matter, as taken by official respondents in their reply, is totally baseless and belied by the official record itself. All

these factors taken together sufficiently convey that the entire process resulting in appointment of respondent No. 6 as Educational Volunteer has

simply been a farce without having any of the features of a proper selection worth the name and has only been manipulated to assure sixth

respondent's appointment on the job in accordance with some pre conceived notion. As a matter of fact, the concerned Zonal Education Officer

who appears to have spearheaded this shameful exercise has shown himself as a manipulator, and fabricator of records rather than a responsible

person with authority to determine rights and claims of people. The entire gamut of his performance in matter almost borders on criminal

misconduct of a magnitude that is liable to be looked into in an appropriate action. The net result in so far as substance of the present matter is

concerned, is that neither the post under reference was properly advertised nor was the candidature of eligible persons sought. Neither any panel

was prepared in accordance with the principles of fairness and propriety nor was ultimately the sixth respondent selected/appointed properly. On

the contrary, all those who admit of having applied though their application are not traceable on record, were elbowed out callously even though

being higher in educational qualification and the whole process appears to have been conducted in a clandestine manner to achieve the

preconceived objective of sixth respondent engagement and unfortunately neither concerned Chief Education Officer nor the Deputy

Commissioner concerned have acted with the requisite degree of responsibility while approving Zonal Education Officer's nomination and

recommendation of sixth respondent for engagement against the available post. Had any one among them applied his mind to situation of the case

perhaps concerned Zonal Education Officer might not have been able to concretize his fraudulent intentions which have succeeded only due to

failure of concerned Zonal Education Officer to properly scrutinize the material and the concerned Deputy Commissioner to have things done rightly.

5. In the result, therefore, the petition is allowed and sixth respondent's engagement on the post under reference is quashed with a direction to

concerned Chief Education Officer to have the post re-advertised for fresh engagement through a proper process of selection in strict accordance

with scheme and law governing the matter. It is further directed that the Deputy Commissioner concerned shall immediately have an enquiry

conducted against concerned Zonal Education Officer who has manipulated the whole exercise and have appropriate proceedings launched against

him under law whatever his present position and status. Needless to say that all concerned would take care that such malicious exercises are not

undertaken by any unscrupulous officer like the Zonal Education Officer under reference at any point of time in future.

Disposed of accordingly.