

(2018) 10 J&K CK 0077

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1288 Of 2014, CPSW No. 249 Of 2016, IA No. 99001, 1683 Of 2014

**Aisha Jabeen Shoket @APPELLANT@Hash State Of Jammu & Kashmir
And Others**

Date of Decision : 24-10-2018

Acts Referred:

Citation : (2018) 10 J&K CK 0077

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Bhanu Singh Salathia, Ravinder Gupta, Ajay Gandotra

Final Decision : Dismissed

Judgement

1. Respondent No. 3 issued an Advertisement Notification on 28.12.2013 inviting applications inter alia for supplying one post of Rehbar-e-Taleem (ReT) in Middle School, Kastigarh falling in Education Zone, Bhagwah, District, Doda. The petitioner along with other eligible candidates submitted their application forms for the aforesaid post notified for selection in the Middle School, Kastigarh. The respondent No. 4 prepared a merit panel of the eligible candidates belonging to village, Mundhar in which the petitioner figured at serial No. 2. Since the panel prepared was a joint panel for Lower High School, Zaden and Middle School, Kastigarh, as such, the candidate at serial No. 1 was selected for Lower High School, Zaden, whereas the petitioner was found to be the most meritorious candidate for supplying the position of ReT available in Middle School, Kastigarh. The panel was displayed and objections were invited from the general public of the area. The respondent No. 5, who belongs to revenue village, Kastigarh and was lower in merit than the petitioner, submitted his objections to the panel. It is submitted that respondent No. 5 without waiting for the disposal of his objections rushed to this Court and challenged the panel in SWP No. 702/2014 which was disposed of by this Court on 13.03.2014 without notice to the respondents, by directing the official respondents to consider the objection filed by the respondent No. 5 to the panel and thereafter take the selection process to its

logical end. In compliance to the directions passed in SWP No. 702/2014, the respondent No. 4 considered the objection raised by respondent No. 5 with regard to the select panel prepared for engagement of ReT in Middle School, Kastigarh and found that the school in question i.e. Middle School, Kastigarh was located in the revenue village, Mundhar and therefore, respondent No. 5, who was resident of revenue village, Kastigarh was not entitled to be considered. The respondent No. 5, instead of taking final decision on his objections, referred the matter to respondent No. 3 for issuance of appropriate instructions in this regard. Sensing trouble that could be fallen to the petitioner due to the ex parte judgment of this Court dated 13.03.2014 passed in SWP No. 702/2014 and instead of assailing the same before the appropriate forum, the petitioner filed the instant petition claiming a direction to the respondents to issue the formal order of appointment in her favour as ReT in Middle School, Kastigarh.

2. Respondent Nos. 1 to 4 have filed their reply. In their objections, the official respondents have pleaded that the panel was prepared by respondent No. 4 on the basis of revenue village, Mundhar as the school, though named as Middle School, Kastigarh, falls within the boundaries of revenue village, Mundhar. The official respondents have also stated that respondent No. 5 had raised objection to the empanelment of the petitioner for Middle School, Kastigarh on the ground that only the candidates belonging to revenue village, Kastigarh are eligible to be considered for the post of ReT in Middle School, Kastigarh. Before the objection could be decided by the concerned ZEO, the respondent No. 5 filed SWP No. 702/2014, which was disposed of by a Bench of this Court on 13.03.2014 without putting the respondents to notice. It is further submitted that while the matter was under consideration of the respondents in terms of the judgment of the Single Bench aforesaid, the petitioner filed the instant petition and this Court vide interim order dated 23.05.2014 directed the respondents to issue engagement order in favour of the petitioner in light of the letter of the Zonal Education Officer dated 26.03.2014 in accordance with rules. A clear stand has been taken by the official respondents and which is not disputed before this Court by respondent No. 5 that the school in question i.e. Middle School, Kastigarh is situated in village, Mundhar and not in revenue village, Kastigarh. It is also not in dispute that the petitioner belongs to village, Mundhar and is most meritorious candidate for the post in question whereas respondent No. 5 belongs to revenue village, Kastigarh. In the backdrop of this admitted factual position, the only question that needs determination in this petition is as to whether the candidates belonging to Mundhar are eligible to be considered for engagement as ReT in Middle School, Kastigarh only on the ground that the said school is situated within the territorial boundaries of the revenue village, Mundhar.

3. Having heard learned counsel for the parties and perused the record, I find no difficulty to answer the aforesaid question debated before this Court by the learned counsel appearing for the parties. At the cost of repetition, it may be noted that the respondents, particularly respondent No. 5 has not disputed the fact that the Middle School, Kastigarh is located in the revenue village, Mundhar

nor it is disputed by anyone that in the revenue village, Mundhar the petitioner is the most meritorious candidate for engagement as ReT. The candidate with higher merit than the petitioner has also been engaged as ReT in Lower High School, Zaden falling in the same revenue village, i.e. Mundhar. In order to find answer to the question raised in this writ petition, this Court went through the "Rahbar-e-Taleem" Scheme promulgated by the respondent No. 1 vide Government order No. 396-Edu of 2000 dated 28.04.2000. In the aforesaid Government order, the respondent No. 1 has chalked out different parameters of the scheme and has laid down vividly the eligibility conditions for engagement of ReT in the schools suffering from deficiency of the staff. Having regard to the objectives unfolded by the respondent No. 1 in the "Rahbar-e-Taleem" scheme, a person to be engaged as ReT to make up the deficiency of the staff at the elementary level of education is to be drawn from the local community so that he is accountable for providing constant interface and interaction with the community to secure universal enrolment and to prevent the incidents of dropouts. The "Rahbar-e-Taleem" scheme makes a departure from the regular process of selection where participating candidates cannot be discriminated on the basis of their domicile. Given the nature of engagement of "Rahbar-e-Taleem", revenue village has been adopted as a unit of selection. Later on respondent No. 1 vide Government order No. 288-Edu of 2009 dated 08.04.2009 squeezed the unit of selection to a habitation fulfilling certain parameters laid down in the aforesaid order. Be that as it is, in the instant case, the selection is required to be made by taking the revenue village as a unit. Since the school in question is situated in village, Mundhar and therefore, the candidates, who are residents of village, Mundhar alone, can be treated to be local and therefore, eligible under the scheme. It is not the nomenclature of the school but its location that is of significance for the purpose of making selection of the ReT who, as per the scheme, has to be a person drawn from local community. Reference in this regard may be invited to the eligibility clause of the scheme with advantage. The eligibility clause as contained in Government order No. 396-Edu of 2000 (supra) is reproduced hereunder for ready reference:

"VLC shall assess the requirement of teachers in the Primary/Middle Schools within the area of their operation in due regard to the approved norms of staffing and the Roll. On the basis of the said assessment, VLC would draw up a panel of eligible qualified persons from the village."

4. Reading of eligibility clause (i) substantiates the submission urged on behalf of the petitioner that a candidate to be engaged as ReT must belong to the village where there is assessed deficiency of staff. The deficiency of a teacher has been assessed by the respondents in Middle School, Kastigarh, which falls in revenue village, Mundhar. That being the position, only the candidates who belong to village, Mundhar where there is actual deficiency of staff assessed by the respondents, are eligible to apply and compete for the post notified. Once it is not disputed that the school in question is situated in revenue village, Mundhar, the candidates belonging to revenue village, Mundhar cannot be held to be

ineligible simply because the school has been named after revenue village, Kastigarh. The judgment of this Court passed in the case of respondent No. 5 dated 13.03.2014 in SWP No. 702/2014, which was in ex parte and without any notice to the respondents cannot be held binding on the petitioner or even the official respondents.

5. For the foregoing reasons, this petition is allowed. Respondents are directed to take the selection process initiated vide Advertisement Notice No. DIP/J/7457/2013 dated 28.12.2013 to its logical end by issuing the formal order of engagement in favour of the petitioner. Let the whole exercise be completed as expeditiously as possible and in any case before the expiry of two months from today.

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6. In view of the disposal of the writ petition hereinabove, nothing survives in this contempt petition as the same has been rendered infructuous. Accordingly, the same is dismissed.