

(2011) 09 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 981 of 2010 and CMP No. 1551 of 2010

Fareeda Jan

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Citation : (2011) 3 JKJ 23

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, Judge

1. With the consent of learned counsel for the parties, Deputy Commissioner, Anantnag, is ordered to be impleaded as party respondent in this writ petition. Registry to accordingly update the cause title of the writ petition.

2. Advertisement notice was issued, on January 11, 2010, inviting applications from the eligible female candidates for being considered for being selected as Anganwadi Workers on honorarium basis for Anganwari Centres, besides others in Anganwadi Centre Itoo Mohalla, Sundoo village Sundoo. One of the conditions of the Advertisement Notice was that the candidates residing in the concerned Punch Constituency/Ward shall be eligible to apply for the same. The petitioner as also private respondent responded to the said Advertisement Notice and on the basis of merit, the petitioner was shown to have been tentatively selected as Anganwadi Worker in Itoo Mohalla, Sundoo. The Block Development Officer, Achabal sent communication dated April 26, 2010 to Child Development Officer, Achabal and informed the said authority that as per the report of

Panchayat Secretary, Halqa Sundoo, Achabal, the name of the petitioner does not figure in the voter list of village Sundoo, as such the punch ward

certificate issued in her favour shall be treated to be cancelled. The Child Development Project Officer issued a notice, wherein and whereunder,

the tentative selection of the petitioner was withdrawn and private respondent was tentatively selected for the approved habitation. Petitioner being

aggrieved of the communication of Block Development Officer as also of the withdrawal of her tentative selection has filed this writ petition.

3. On notice issued, respondents have filed objections.

4. The stand is taken by the respondents that petitioner being not resident of Punch Constituency, thus was not eligible and the impugned order has

been rightly passed. Heard learned counsel for the parties. Considered the matter.

5. Learned counsel for the parties argued in tune with their respective pleadings.

6. The Block Development Officer, Achabal, has cancelled the punch ward certificate issued in favour of the petitioner on the report of the

Panchayat Secretary, Halqa Sundoo on the ground that her name did not figure in the voter list. The order of cancelling the punch ward certificate

issued in favour of the petitioner is illegal, inasmuch as, to determine as to whether a person is resident of a particular place would not solely

dependent on as to whether her name figures in the voter list of the area. The name of a person who is resident of an area, for variety of reason

may not find place in the voter list. He may not give information to the competent authority who is preparing voter list or even the person who is

responsible for preparation of voter list may for some reason omit to consider him. Non-figuring of a person in the voter list, thus would not be

clinching factor to determine the residential status of a person. If the contrary view is accepted, then a person though residing in a particular area

for this reason will be declared as non-resident of that area. The basis, on which the punch ward certificate has been cancelled does not stand to

reason and is rendered arbitrary. The cancellation of the punch ward certificate is to be declared invalid for another reason that before cancelling

the punch ward certificate of the petitioner she was not afforded opportunity of hearing. For this reason the consequential order of withdrawing the

tentative selection list as Anganwadi Worker cannot be sustained in law. As the dispute is raised about the residential status of the petitioner which

status is seriously contested by the respondents, it would be appropriate to direct the Deputy Commissioner, Anantnag to hold an enquiry in this behalf.

7. For the above stated reasons, this petition is disposed of in the following manner:-

a. By issuance of writ of Certiorari, impugned order No. CDPO/Ach/10/150-54 dated 10-05-2010 issued by respondent no. 4 and

communication No. AB/127 dated 26-04-2010 issued by respondent no. 5 are quashed.

b. The Deputy Commissioner, Anantnag, to conduct an enquiry in respect of the residential status of the petitioner. While conducting the said

enquiry, the affected parties including the petitioner and private respondent shall be afforded opportunity of hearing and the relevant material which

may be produced by the parties shall also be entertained and considered. The Deputy Commissioner shall forward his findings and

recommendations to respondents 3 and 4, who will accordingly pass appropriate orders. In the event, it is found that the petitioner was resident of

Itoo Mohalla, Village Sundoo at the time of last date of filing of applications, then her selection shall be maintained. However, in the event, it is

found that she was not resident of the said area at the time of last date of filing of application form, then next meritorious candidate shall be

selected/engaged as Anganwadi Worker. The Deputy Commissioner to conclude the aforesaid enquiry within a period of four weeks from the date

copy of this order is served and thereafter respondents 3 and 4 to pass appropriate orders within two weeks. Till the decision is taken, status-quo

as on date be maintained.

8. Disposed of alongwith connected CMP(s).