

(2023) 06 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2290 Of 2012

Farhat Maqsood

APPELLANT

Vs

State Of J&K & Ors

RESPONDENT

Date of Decision : 16-06-2023

Acts Referred:

Citation : (2023) 06 J&K CK 0036

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Bhat Fayaz, Mohsin Qadiri, Maha Majeed

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioner has challenged selection of respondent No.5 as Rehbar-e-Taleem. A direction has also been sought upon respondents No.2 to 4 to issue formal engagement order in favour of the petitioner against the post of Rehbar-e-Taleem for Government Middle School, Nagbal.

2) As per the case of the petitioner, an advertisement notice came to be issued by respondent No.4 on 02.08.2012, whereby applications were invited from eligible candidates for two posts of Rehbar-e-Taleem for Government Middle School, Nagbal. The petitioner is stated to have responded to the said advertisement notice and submitted her application along with all requisite certificates. Respondent No.5 also responded to the advertisement notice and submitted his application on 11th August, 2012.

3) According to the petitioner, respondent No.5 managed to prepare his Permanent Residence Certificate (PRC) after the cutoff date for submission of application forms and his said certificate was entertained by the official respondents after six days of cutoff date. This was done on the basis of a communication issued by respondent No.3 to respondent No.4 directing him to

entertain PRC of respondent No.5 after the cutoff date.

4) According to the petitioner, she could not produce her PRC at the time of submission of application form as the same was under process in the office of Deputy Commissioner, Baramulla, though she had submitted other residential proof along with her application form.

5) It seems that respondent No.4 prepared a panel of candidates in which petitioner did not find her name. She challenged this action of respondent No.4 by way of writ petition bearing SWP No.2058/2012 before this Court and the said writ petition was disposed of with a direction to respondent No.4 to take a decision in the matter in the light of communication sent to him by respondent No.3 wherein it was stated that PRC can be entertained even at a latter point of time. According to the petitioner, in spite of this order, her name was not considered by the official respondents and finally on 31.10.2012, selection list was issued by respondent No.4 whereby respondent No.5 was selected while ignoring the petitioner.

6) The petitioner has challenged the impugned action of the official respondents on the ground that she is more meritorious than respondent No.5 and, as such, deserved to be selected. It has been contended that the official respondents could not have insisted upon the production of PRC as the same could have been produced by the petitioner at the time of making of final selection. According to the petitioner, the official respondents by ignoring her candidature have acted in violation of the order passed by this Court in SWP No.2058/2012. In this regard, the petitioner has relied upon the ratio laid down by this Court in the case of Hilal Ahmad Chack vs. State of J&K & Ors. 2010 SLJ 584.

7) Respondents No.1 to 4 have filed their reply to the writ petition, in which it has been submitted that though the petitioner and respondent No.5 responded to the advertisement notice yet the petitioner could not produce PRC even at the time of framing of the final panel. It has been submitted that respondent No.5 did produce his PRC within the prescribed time, as such, his candidature was considered, whereafter the selection panel was issued and Manzoor Ahmad Wani and Mohammad Yousuf Deedar (respondent No.5) were shown to have been tentatively selected.

8) Respondent No.5 filed a separate reply to the writ petition in which it has been submitted that the petitioner is actually a resident of Village Shrakwara and her father managed to purchase 10 marlas of land in Village Nagbal so as to induct his daughter in the school at Nagbal. It has been further submitted that it was only on 26.09.2012 that the petitioner's father managed to get entry in the Choola Register. According to respondent No.5, the petitioner is not actually a resident of Village Nagbal, as such, she has no right to seek her engagement as a Rehbar-e-Taleem in Government Middle School, Nagbal.

9) I have heard learned counsel for parties and perused the record of the case including the record of selection produced by learned counsel for the official

respondents.

10) The admitted case of the parties is that the petitioner did not furnish the PRC along with her application form and even respondent No.5 did not furnish the PRC along with his application form. It is contended by the petitioner that while PRC of respondent No.5 was entertained by the official respondents after six days of cut-off date for submission of application forms, her candidature was not considered as she could not produce PRC at the time of submission of her application form. The petitioner has placed heavy reliance on the judgment of this Court in the case of Hilal Ahmad Chack, to canvass the point that non-production of certificate of residence would not disentitle her to seek consideration and that she could have been considered and asked to produce the said certificate later on.

11) If we have a look at the record of the case, as per the advertisement notice issued on 02.08.2012, the applicants were asked to respond to the said notice within ten days i.e., by 12th August, 2012. The advertisement notice further provides that the application has to be accompanied by certificates including State Subject Certificate.

12) Respondent No.5 is stated to have submitted his application on 11th August, 2012 without copy of PRC. The record shows that on 30th August, 2012, respondent No.5 made an application to respondent No.3 stating therein that last date of submission of application form i.e., 12th August, 2012, was a Sunday and on the next day, when he produced the State Subject Certificate before respondent No.4, he refused to entertain the same. On the basis of this application, respondent No.3 sought a report from respondent No.4, who, while submitting his report, confirmed the aforesaid fact and sought further instructions from respondent No.3, who, vide his communication dated 26.09.2012, instructed respondent No.4 to entertain the certificate of respondent No.5. Thus, it is in these peculiar circumstances that respondent No.4 entertained PRC of respondent No.5.

13) The panel was prepared by the official respondents on 20.10.2012 by amending the earlier panel dated 15.09.2012. Even at the time of preparation of panel by respondent No.4, the petitioner had failed to produce her PRC. In fact, in para 9(ii) of the writ petition, the petitioner has stated that since her PRC is under process, the same would be produced before the respondents at the time of making of final selection, meaning thereby that even at the time of filing of the writ petition i.e., on 02.11.2012, the petitioner was not in possession of the PRC.

14) It is true that as per the ratio laid down by this Court in Hilal Ahmad Chack's case, PRC can be produced later on but the same has to be produced before the selection process is finalized. In the instant case, the selection panel was prepared by the official respondents on 20.10.2012 and by that time, the petitioner had not been able to procure the PRC. The official respondents could

not have waited indefinitely to accommodate the petitioner. It is not the case of the petitioner that she had produced the PRC before the official respondents prior to framing of the panel but they did not accept the same. In fact, the petitioner at no point of time produced any such certificate before the official respondents, either before the cutoff date or after the cutoff date up to the date of framing of the panel. Therefore, the ratio laid down by this Court in Hilal Ahmad Chack's case would not come to the rescue of the petitioner.

15) From the foregoing discussion, it is clear that the petitioner was not in possession of the requisite documents, particularly Permanent Residence Certificate, either at the time of submission of her application for or at the time of finalization of the selection process, as such, her candidature was rightly rejected by the official respondents. There is no merit in this petition. The same is, accordingly, dismissed. Interim direction, if any, shall cease to be in operation.

16) The record be returned to learned counsel for the official respondents.