

(2025) 10 J&K CK 1152
In the Jammu And Kashmir High Court
Case No : LPA No.222 Of 2025

Geeta Devi

APPELLANT

Vs

UT of J&K

RESPONDENT

Date of Decision : 15-10-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (2025) 10 J&K CK 1152

Hon'ble Judges : Arun Palli, CJ;Rajnesh Oswal, J

Bench : Division Bench

Advocate : Amit Gupta, Palvi Sharma, Ravinder Gupta

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1) Writ petition bearing SWP No.1518/2014 was preferred by the appellant for quashing the order dated 26.05.2014, whereby the respondent No.3 had directed respondent No.4 to terminate the services of four Anganwadi Helpers including the appellant and to re-advertise and fill the posts in accordance with rules, and further relief in the form of writ of mandamus was also sought for commanding the respondents to allow the appellant to perform her duties in Anganwadi Centre, Malti, as Anganwadi Helper.

2) It was stated that the appellant was engaged as Anganwadi Helper in Anganwadi Centre, Malti (C) after participation in the selection process pursuant to advertisement notification dated 17.02.2005, whereby applications were invited for the posts of Anganwadi Helper for Anganwadi Centres in different ICDS projects located in Districts of Jammu province. While the appellant was performing the duties as Anganwadi Helper, all of a sudden by virtue of order dated 26.05.2014 (supra), the respondent No.3 directed the respondent No.4 to terminate the services of four Anganwadi Helper including the appellant. It was contended that no show cause notice was served upon the appellant before the

issuance of order resulting into denial of opportunity of hearing to the appellant, as the same was issued just on the basis of recommendation of respondent No.5. The appellant placed on record the advertisement notice, selection list of Anganwadi Helpers of ICDS Project, Billawar and the engagement order dated 31.07.2006 issued by respondent No.4 in respect of engagement of the appellant as Anganwadi Helper in Anganwadi Centre, Malti 'C'.

3) The writ petition preferred by the appellant was objected to by the official respondents by submitting that the appellant was terminated pursuant to the order of the State Vigilance Commission, passed in a complaint titled "Dara Chand vs. Babu Ram Tandon" because the appellant had neither applied for the post of Anganwadi Helper nor participated in any selection process.

4) The learned Writ Court, vide its judgment dated 22.08.2025, dismissed the writ petition preferred by the appellant.

5) The appellant has impugned the aforesaid judgment in this intra-court appeal on the grounds, inter-alia, that the learned Writ Court has not taken into consideration that the order of termination is ex-facie arbitrary and illegal having been issued in utter disregard of the principles of natural justice; that if there were certain procedural lapses, the appellant could not have been penalized for such lapses on the part of the authorities; that the recommendation made by the State Vigilance Commission was only recommendatory in nature and the Commission was not having adjudicatory powers to direct the termination of services and the finding of the learned Writ Court that the appellant did not challenge the order passed by the State Vigilance Commission, is unjustified, particularly when the appellant was not a party to the proceedings before the State Vigilance Commission.

6) The appellant through the medium of CM No.6418/2025 has placed on record the application claimed to have been submitted by her for engagement as Anganwadi Helper in Anganwadi Centre, Malti.

7) Learned counsel for the appellant has argued that the appellant had applied pursuant to the advertisement notification dated 17.02.2005 and participated in the selection process and thereafter only, she was engaged as Anganwadi Helper in Anganwadi Centre, Malti, but she has been disengaged by the official respondents only on the recommendations made by the State Vigilance Commission, that too without affording any opportunity to the appellant to put forth her case before the official respondents.

8) Ms. Palvi Sharma, appearing vice Mr. Ravinder Gupta, AAG, submitted that appropriate orders may be passed.

9) Heard and perused the record.

10) The perusal of advertisement notification dated 17.02.2005 reveals that it was a general notification for engagement of eligible female candidates as Anganwadi Helper on honorarium basis for various Anganwadi Centres in

different ICDS Projects located in various Districts of Jammu province. As per the said notification, the last date for receipt of applications by post or by hand was 11.03.2005. The application placed on record by the appellant reveals that it was allegedly submitted by her on 15.03.2006 whereas in the application itself, it is pleaded that the same was submitted on 16.03.2006 to Child Development Project Officer, Bilawar. It clearly establishes the fact that the appellant never applied pursuant to the notification dated 17.02.2005. Once it is the case of the appellant herself that she applied on 16.03.2006, then she can't be heard saying that she applied pursuant to the advertisement notification dated 17.02.2005, which prescribed the cutoff date for submission of applications as 11.03.2005. Nothing has been brought to the notice of either the Writ Court or this Court by the appellant to show that any advertisement notification other than the one issued in February, 2005, was issued by the official respondents pursuant to which the appellant applied for the post of Anganwadi Helper in Anganwadi Centre, Malti. The Vigilance Commission, in its order dated 23.01.2014, has also observed that the appellant as well as other candidates had never applied for the post of Anganwadi Helper. The appellant has not been able to establish that she applied pursuant to advertisement notification dated 17.02.2005. We have no hesitation to hold that the appellant was a back door appointee who managed her engagement through illegal means.

11) It is equally true that no opportunity of hearing was afforded to the appellant before issuance of order of disengagement but the principle of 'audi alteram partem' does not operate in isolation to the facts involved in the case. Had she been afforded any opportunity of hearing, the result would have been the same.

12) Thus, this Court is of the considered view that the denial of opportunity of hearing to the appellant before passing the order impugned would not have changed the fate of the case of the appellant. Even otherwise, once the engagement of the appellant is found to be illegal, obtained by illegal means, the appellant is not required to be heard in any manner whatsoever. The Hon'ble Supreme Court in the case of Jainendra Singh vs. State of UP, (2012) 8 SCC 748, has held as under:

"Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer."

13) The Hon'ble Supreme Court in Ashwani Kumar and others vs. State of Bihar and others, (1997) 2 SCC 1, has observed that none of the illegal appointees has any right to continue as whole exercise was an unauthorized adventure.

14) In the judgment of the Hon'ble Apex Court in 'State of Manipur v. Y. Token Singh, (2007) 5 SCC 65' it has been observed and held as under:

16. The offers of appointment issued in favour of the respondents herein were

cancelled inter alia on the premise that the same had been done without the knowledge of the Revenue Department of the State. No records there for were available with the State. As noticed hereinbefore, an inquiry had been made wherein the said Shri Tayeng, the then Commissioner of Revenue stated that no such appointment had been made to his knowledge. The State proceeded on the said basis. The offers of appointment were cancelled not on the ground that some irregularities had been committed in the process of recruitment but on the ground that they had been non est in the eye of the law. The purported appointment letters were fake ones. They were not issued by any authority competent there for.

17. If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to pay salaries to them from the State exchequer. Any action, which had not been taken by an authority competent there for and in complete violation of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself had denied to have issued a letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State did not, thus, lack bona fides.

18. Moreover, it was for the respondents who had filed

the writ petitions to prove existence of legal right in their favour. They had inter alia prayed for issuance of a writ of or in the nature of mandamus. It was, thus, for them to establish existence of a legal right in their favour and a corresponding legal duty in the respondents to continue to be employed. With a view to establish their legal rights to enable the High Court to issue a writ of mandamus, the respondents were obligated to establish that the appointments had been made upon following the constitutional mandate adumbrated in Articles 14 and 16 of the Constitution of India. They have not been able to show that any advertisement had been issued inviting applications from eligible candidates to fill up the said posts. It has also not been shown that the vacancies had been notified to the employment exchange.

22. The respondents, therefore, in our opinion, were not entitled to hold the posts. In a case of this nature, where the facts are admitted, the principles of natural justice were not required to be complied with, particularly when the same would result in futility-----

(emphasis added)

15) The same position has been reiterated in State of Bihar vs. Kirti Narayan Prasad, (2019) 13 SCC 250, wherein the Hon'ble Supreme Court has held that if the appointment is illegal from its inception, such employee is not entitled to protection under Article 311 of the Constitution. Paras 15 and 16 of the said judgment are reproduced as under:

15. In State of Orissa and Anr. v. Mamata Mohanty, (2011) 3 SCC 436, this Court

has held that once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage. It was held thus:

"68(i) The procedure prescribed under the 1974 Rules has not been followed in all the cases while making the appointment of the respondents/ teachers at initial stage. Some of the persons had admittedly been appointed merely by putting some note on the notice board of the College. Some of these teachers did not face the interview test before the Selection Board. Once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage". (Emphasis supplied)

16. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.

16) We have examined the judgment passed by the learned Writ Court which is well-reasoned and lucid not warranting any interference at our end.

17) The appeal is found to be misconceived and is dismissed accordingly along with connected CM(s).