

(2018) 11 J&K CK 0092

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 404 Of 2014

**Latief Ahmad Lone @APPELLANT@Hash State Of Jammu & Kashmir And
Ors**

Date of Decision : 20-11-2018

Acts Referred:

National Council For Teacher Education Act, 1993 — Section 12, 14

Citation : (2018) 11 J&K CK 0092

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Bhat Fayaz, N.H. Shah, M. Ashraf Wani

Final Decision : Dismissed

Judgement

1. In this petition, petitioner inter alia seeks following relief:

- i) By a writ of certiorari quashing the notification published in Greater Kashmir on 16-11-2013 in so far it pertains to ReT MS Mochi Mohalla Zaloora in Social Science Subject.
- ii) By a writ of Certiorari quashing the communication bearing No. 12591-93 dated 22-02-2014 issued by Chief Education officer, Baramulla.
- iii) By a writ of Mandamus, commanding the official respondents to appoint the petitioner as ReT in MS Mochi Mohalla Zaloora in Social Science Subject.
- iv) By a writ of quo-warranto directing the official respondents 3& 4 to disclose law and authority as to how they have issued impugned order of appointment as ReT in favour of private respondents.

2. Facts giving rise to the filing of the instant petition briefly stated are that the Zonal Education Officer, Dangerpora, Sopore-respondent No. 4 issued an advertisement notice inviting application from the eligible candidates for filling up of three ReT Teacher posts for a specific subject Math/Science, Urdu (Language) and Social Science in MS Mochi Mohalla in revenue village Zaloora and the posts were published in "Rising Kashmir" in its Circulation dated 28-07-2013. It is

further stated:

i) That the petitioner being the only meritorious candidates obtained 878/1800 in graduation , 678 / 1000 in Bed and 634 / 900 MA in political Science, applied within stipulated time.

ii) The respondent No. 4 fraudulently entertained the application form of respondent No. 8 who was not the resident of Village Zaloora Sopore up to the marriage dated 24-10-2013 and in this behalf, the petitioner had approached the respondent on numerous occasions in order to enquire into the matter and had even filed RTI to get the details of the particulars of the private respondent but the information till date was not provided.

iii) After denial of getting the details of the particulars of the respondent No. 8 from the official respondents, petitioner approached Deputy Commissioner Baramulla regarding the subject matter but no action was taken.

iv) The petitioner filed an objection against the notification of the selection and also approached before the Crime Branch J&K and the IGP Crime directed the Deputy Commissioner Baramulla to verify the allegations levelled in the complaint and take necessary action.

v) That 24-10-2013 is the date of alleged marriage of respondent No. 8, but the respondent No. 3 has not taken this vital aspect of the matter while considering the objections of the petitioner and the findings had been given in violation of the report of VLC Sarpanch and SDM concerned, the whole exercise had been carried out to mar the chance of the petitioner for the post of ReT. The Chief Education Officer, rejected the objections of the petitioner vide his Communication No. 12591-93 dated 22-02-2014.

vi) The respondent No. 3 in view of the above communication would appoint private respondent without waiting outcome of the enquiry being conducted by the Crime Branch as well as Deputy Commissioner Baramulla.

vii) The private respondent has secured 815/1800 marks in BA, 670/1000 in Bed, 751/1600 in MA. She has produced certificate of M.Ed which she has qualified from an un-recognized college.

viii) The selection for the upgraded school is to be made strictly on the basis of Government Order No. 615-Edu of 2013 dated 12-08-2013 but the respondents of their own have selected the private respondent though being inferior at BA, MA and B.Ed level as such the selection of private respondent as ReT in Mochi Mohalla is in violation of the Government Order No. 615-Edu of 2013 dated 12-08-2013.

3. Respondent No. 4 has filed the objections wherein it is stated that PS Mochimohalla Zaloora was upgraded to the level of UPS level with sanction of three ReTs Teacher post for specific subject Math/Science, Urdu (Language) and Social Science and the posts were advertised in local newspaper through

information Department under proper procedure. It is further stated that in response thereto applications of eleven candidates including the petitioner were received by the answering respondents for subject Social Science, accordingly the merit list of all applied candidates were prepared wherein the candidate namely Rifat Ara W/o Ab. Hamid Gojrey R/o Zaloora qualification MA M. Ed figuring at S. No. 1 and the petitioner at serial No. 2. The merit was authenticated by the concerned Village Education Committee Zaloora accordingly the penal in favour of respondent No. 8 was submitted to CEO, Barmulla for approval. In the meantime, petitioner lodged complaint having qualification MA, B.Ed challenging the authenticity of the PRC issued by the concerned Numberdar in favour of empaneled candidate namely Rifat Ara W/o Ab. Hamid Gojrey R/o Zaloora qualification MA M.Ed along with credential received on the basis of state subject certificate, PRC Nikah Papers and the objection lodged by the petitioner has been considered by the Chief Education Officer, Baramulla and were rejected on merits. The official respondents prayed that the writ petition deserves to be dismissed being misconceived and devoid of any merit.

4. Respondent No. 8 in its reply has stated that Nikah of respondent No. 8 was solemnized on 26-11-2012. While as for as qualification of M.Ed from unrecognized instituted was concerned, the respondent No. 8 specifically pleaded that the qualification of M.Ed as acquired by the answering respondent is a recognized qualification. The qualification of M.Ed has been acquired by the answering respondent from Burkuttla University, Bhopal MP through Swami Vivek Anang College of Professional Studies, Sehore Madhya Pradesh. It was also pleaded in the reply that as a matter of fact, petitioner has also obtained his post graduate qualification (M.A Pol Sc) from Burkuttla University Bhopal MP. It is further stated that the Government Order No. 615-Edu of 2013 dated 12-08-2013 nowhere provides that a candidate with M. Ed qualification is to be excluded at the cost of candidate who possesses the qualification of B. Ed. M. Ed being professional qualification has an edge over other post graduate qualification. The petitioner has no right of being engaged against the post in question. It is further stated that the status of the answering respondent of being a resident/domicile of village Zaloora prior to issuance of advertisement notice stands enquired upon and after the conducting of an enquiry, it has been established that the answering respondent was a resident of village Zaloora prior to issuance of the advertisement notice. This finding is in consonance with the mandate of the law as laid down by the Hon'ble Division Bench of this court in case titled Mushtaq Ahmad Bhat Vs. Parvaiza Akhter.

5. The petitioner has annexed with this petition following documents:

a) Copy of the advertisement Notice published in Rising Kashmir vide its circulation dated 28-07-2013 whereby applications were invited for filling up of post of ReTs in various schools including MS Mochi Mohalla in revenue Village Zaloora.

b) Copies of certificates of Graduation, B.Ed and M.A in political certificate .

c) Copy of the application addressed to SDM for issuance of copy of Permanent Resident Certificate.

d) Copy of the notification whereby merit position of the candidates who had applied for the post ReT was published in Daily Greater Kashmir dated 16-11-2013

e) Copy of the Communication dated 30-12-2013 addressed to Deputy Commissioner, Baramulla by DDP for Inspector General of Police, State Crime Branch, J&K Jammu whereby Deputy Commissioner, Baramulla was directed to look into the complaint lodged by the petitioner against the respondent No. 8.

f) Copy of the certificate issued by few signatories from village Zaloora wherein they have certified that Mrs. Rifat Ara W/o Abdul Hamid Gojrey Daughter in law of M. Shaban Gojrey from 24-10-2013 as she was married on the same day with Ab. Hamid Gojrey which made her the resident of Dardipora (Zaloora) from 24-10-2013, hence she was not the resident of village Zaloora at the time when the notification of vacant post of M/s Mochi Mohalla were advertised by Z. E. O. Dangerpora as she became resident of the village after marriage at 24-10-2013.

g) Copy of the communication dated 22-02-2014 whereby objections of the petitioner has been rejected.

h) Copy of the B.Ed certificate issued by the University of Kashmir in favour respondent No. 8 and copy M.Ed certificate issued by Swami Vivekahand College of Professional Studies Sehore Madhya Pradesh (Affiliated to Burkutla University, Bhopal, M.P in favour of respondent No. 8.

i) Copy of the Government Order No. 615-Edu of 2013 dated 12-06-2013 wherein for newly upgraded Middle School under SSA, three teachers shall be engaged on each for the subject math and science, social science language (urdu/hindi).

j) Copy of the communication dated 24-03-2014 issued by Principal, Sopore Public School, Badam Bagh wherein it is certified that respondent No. 8 had worked in the above school in the year 2012 to 31st August 2013.

k) Copy of the letter dated 03-04-2014 addressed by Station House Officer, Police Station, Bomai to Superintendent of police, Sopore wherein it is stated that PS Bomai has received a written complaint from petitioner against the respondent No. 8.

l) Copy of the Voter list of Tehsil Sopore.

The petitioner has also filed IA No. 1996/2014 in terms of which it is pleaded that the documents annexed thereto be allowed to be kept on record. Those documents are as under:

i) Copy of the Provisional; Certificate issued by Registrar (Exam), Barakatullah University, Bhopal in favour of the respondent No. 8 wherein it is certified that

respondent No. 8 had completed her M. Ed course in the year 2012.

ii) Copy of the marks sheet issued by Barkatullah University, Bhopal in favour of respondent No. 8.

iii) Copy of the Attendance register of Sopore Public School where amongst others name of respondent No. 8 is shown.

6. Mr. Bhat Fayaz, learned counsel appearing for the petitioner submits that as the certificate issued in favour of respondent No. 8 by Swami Vivekanand College of Professional Studies, Sehore, M.P could not be acted upon by the official respondents as the institute in which the respondent No. 8 is stated to have acquired the degree was unrecognized. He in this regard made reference to National Council For Teacher Education Act, 1993 and in particular Sections 12 and 14. He further banks upon the judgment passed by the Coordinate Bench of this Court in SWP No. 815/2015, and has sought indulgence of this court for issuance of similar direction as was passed in the said writ petition. It would be better to quote the operative part of the judgment:

"The Directorate of School Education Kashmir will take up the matter with the NCTE and to obtain their views as to whether M.Ed course offered by the Singhana University conducted in regular mode at IT in main campus requires approval of the NCTE. If answer is in negative then respondent No. 5 being the most meritorious shall be offered the engagement and in case answer is in affirmative, then in that eventuality merit of the petitioner and the respondent No. 5 has to be considered at the Post Graduation level. At post graduation level, petitioner is more superior than that of respondent No. 5 and in that eventuality petitioner shall be offered engagement as ZRP. Said exercise shall be undertaken and completed preferably within two months. It is further made clear that in case that Directorate of School Education, Kasshmir has in any matter obtained such clarification from the NCET then in that case whatever opinion has been received matter shall be concluded accordingly."

7. Learned counsel for the petitioner further submits that he has filed the objections against the candidature of Rifat Ara on the ground that the Nikah Nama is fake and the marriage of the respondent No. 8 has been solemnized after the cut of date before the Chief Education officer. He further submits that in the objections he has specifically made mention of report given by the Sarpanch, and VLC wherein they have categorically stated that the marriage of respondent No. 8 took place on 24-10-2013 i.e. after cut of date. They had also mentioned in their report that she became the resident of Dardipora (Zaloora) from 24-10-2013. But the Chief Education Officer without considering these vital aspects has rejected the objections vide Communication No. 12591-93 dated 22-02-2014. Learned counsel for the petitioner further submits that he approached the Deputy Commissioner, Baramulla regarding the same but he did not take any action in the matter. He further submits that he finally knocked the doors of Crime Branch, J&K regarding the subject matter involved in this writ

petition, and the IGP Crime Branch vide communication dated 30-12-2013 directed the Deputy Commissioner Baramulla to take appropriate action in the matter but the Deputy Commissioner did not inquire into the matter.

8. On the other hand, learned AAG submits that the contention raised by the learned counsel for the petitioner is totally misconceived. He further submits that the petitioner has filed the objection and the Chief Education officer has after the full inquiry found the objections of the petitioner not up to mark and rejected them altogether. Therefore the contention raised by the petitioner that no enquiry was done is ill founded. . The court is required to consider the grant of relief to its limited extent and other pleas taken regarding the validity of the certificate on which the official respondents had no notice cannot be projected now.

9. Mr. M. Ashraf Wani, learned counsel for the respondent No. 8 has submitted that the petition in its very nature was vexatious as no material is brought on record by the petitioner whereby inference can be raised that the degree obtained from Swami Vivekanand College of Professional Studies, Awadhpuri Colony, Sehore, Madhya Pradesh was invalid. He has further brought on record the communication issued by National Council for Teacher Education dated 11/01/2011 issued by the Regional Director (I/C) wherein the Swami Vivekanand College of Professional Studies, Awadhpuri Colony, Sehore, Madhya Pradesh is shown to be recognized one and was authorized to admit the students for the course for which certificate has been issued in favour of the private respondent. He has also relied upon the judgment of the Division Bench of this Court in case titled Mushtaq Ahmad Bhat Vs. Parvaiz Akhter and Ors. 2011(I) S.L.J rendered in LPA No. 75/2010 passed on 05-06-2010.

10. Considered the rival arguments.

11. It is the case of the petitioner himself as noticed above that the respondent No. 4 had fraudulently entertained the application of respondent No. 8 and for which grievance was put forth by the petitioner which was enquired into by the respondent No. 4 and the objection taken by him was turned down. This plea taken regarding marriage of the respondent No. 8 has been sounded by the official respondents to be fallacious. In the communication/enquiry report the respondent No. 4 has referred to the judgment of the Coordinate bench of this court and a judgment passed by the Division Bench in LPA No. 75/2010 titled Mushtaq Ahmd Bhat V/s Parvaiza Akhter and Ors., framed the conclusion that the marriage of respondent No. 8 was solemnized on 26-11-2012. It needs to be underlined that the respondents have projected in their stand that the marriage of the respondent No. 8 had not taken place on the date which the petitioner set forth as 24-10-2013. In para 10 of the enquiry report prepared by the Chief Education officer, Baramullah, respondents have commented upon the said stand of the petitioner as:

"Whereas, the Zonal Education Officer Dangerpora was asked vide this office No.

11735 dated 08-02-2014 to get the date of marriage claimed by the complainant i.e. 24-10-2013 verified as the date was objected by candidate Mtr. Rifat Ara. The Zonal Education Officer, Danagerpora vide this No. 2758 dated 17-02-2014 submitted that the husband of the candidate was on duty on 24-10-2013 as per the duty slip provided by Tehsildar Sopore (AERO) and it is submitted by the husband of the candidate Rifat Ara that the marriage has been solemnized on 26-11-2012.

The approach of the official respondents in holding the respondent No. 8 to be falling within the consideration Zone cannot be faulted with. The judgment of which notice has been taken by the official respondents supra clearly reflects this legal position. Even otherwise the petitioner cannot coax the writ court herein to return a finding on a question of fact which requires evidence to be produced and weighed as its determination can take place in the regular trial before a civil court.

12. There is also force in the contention raised on behalf of the official respondents that the petitioner herein could not ordinarily ask the court to examine the legality of an action on grounds of which they had no notice prior to the filing of the writ petition. In this regard reliance can be placed on judgment of Hon'ble Apex Court in case titled State of Haryana and anr. Vs. Chanan Mal AIR 1976 SC 1654. It would be advantageous to quote para 42 of the judgment:

"42. 3..... any petitioner who applies for a writ or order in the nature of a mandamus should, in compliance with a well known rule of practice, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a court for such an order even where the alleged obligation is established.

This principle has also been noted in Gopi Chand Dhawan and Etc vs. Deputy Secretary Punjab and Ors. AIR 1976 SC 1679 and Sheoshankar vs. State Government of Madhya Pradesh and Ors. AIR (38) 1951 Nagpur 58

13. The petitioner on his own admission has stated that he had asked the respondents to annul the action taken viz-a-viz the eligibility of the respondent No. 8 on account of her non residency at the relevant point of time. Regarding acquiring of the certificate affiliated with Barkatullah University, Bhopal, Madhya Pradesh no objection has been taken earlier. Even on its examination on merits the plea fails in light of the notification referred above which states that Swami Vivekanand College of Professional Studies, Awadhपुरi Colony, Sehore is recognized institute affiliated with Barkatulla University and is authorized to have intake capacity of 35 from the academic session 2010-2011.

14. Thus what has been stated above, no merit is found in the petition for grant of relief against the respondents No. 1 to 4 or for adjudging the action taken by the official respondents is bad. It may be proper herein to refer to the relief clause of the petition wherein petitioner has not claimed for issuance of any

direction against the respondents No. 5 to 7. Being it so and in view of what has been stated there is no scope for issuance of direction against the respondents No. 5 to 7. Viewed thus, there is no merit in the petition, same is dismissed.