
(2013) 05 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1780 of 2000

Mohammad Shafi Hajam

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2014) 1 JKJ 455

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : M.P. Gupta, for the Appellant; D.K. Khajuria, Advocate and Mr. Ravinder Sharma, AAG, for the Respondent

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—Petitioner, respondent No. 5 in the petition and other eligible candidates responded to an advertisement notice issued

by Zonal Education Officer, Education Zone Gondhow Tehsil and District Doda inviting applications from eligible candidates for Rehbar.e.Taleem

position in Primary School, Juddi village Bhalwana. The Village Level Committee prepared a tentative panel wherein the respondent No. 5 figured

at S. No. 1 and the petitioner at S. No. 2. The Zonal Education Officer Gondhow (respondent No. 4) acting on the recommendation made by the

Village Level Committee vide order No. ZEO 304-07 dated 10.07.2000 engaged the respondent No. 5 against the advertised position.

2. Petitioner, aggrieved with his non-selection and engagement of respondent No. 5 questions the order No. ZEO/304-07 dated 10.07.2000,

whereby the respondent No. 5 was engaged against the advertised position through medium of writ petition on hand. The main plank of petitioner's

case is that in terms of Government order No. 396-Edu of 2000 dated 28.04.2000 only a candidate who belongs to village Bhalwana would be

eligible for the advertised position and that as the respondent No. 5 belonged to a different revenue village namely Barshalla he was not eligible for

Rehbar.e.Taleem position in question and therefore could not have been engaged as Rehbar.e.Taleem in Primary School Juddi. It is pleaded that

as the petitioner figures at S. No. 2 in the panel, he was most meritorious candidates from village Bhalwana and had a right to be engaged as

Rehbar.e.Taleem in Government Primary School Juddi, Bhalwana.

3. The respondents 1 to 4 oppose the writ petition on the ground that Bharote and Barshalla are hamlets of village Bhalwana and the respondent

No. 5 therefore was a resident of village Bhalwana and entitled to be engaged as Rehbar.e.Taleem in Government Primary School Juddi

Bhalwana. The respondent No. 5 however failed to respond to the Summon issued by this Court. The petitioner in his rejoinder reiterated that

Barshalla was a village different from Bhalwana and therefore respondent No. 5 was not eligible for the advertised Rehbar.e.Taleem position.

4. In view of the nature of controversy raised, this Court on 12th October, 2004 asked the Counsel for the respondents 1 to 4 to file an affidavit to

clarify the position and take a stand in the matter. Learned Counsel on receipt of necessary information from the respondents took a stand different

from one set out in the reply filed in opposition to the writ petition. Learned Counsel in all fairness stated that Bhalwana and Barshalla are two

different villages and Bharote/Juddi is a hamlet of village Bhalwana. Learned Counsel further stated, that the respondent No. 5 was not a resident

of village Bhalwana and therefore in terms of Government order dated 28.04.2000 not eligible for Rehbar.e.Taleem position in Government

Primary School Juddi. The Court vide judgment dated 03.11.2004 allowed the writ petition and quashed the order No. ZEO/304-07 dated

10.07.2000, whereby respondent No. 5 was engaged as Rehbar.e.Taleem in Primary School Juddi (Bhalwana). The respondents 3 and 4 were

directed to consider the petitioner for appointment as Rehbar.e.Taleem against the vacancy that became available due to quashment of aforesaid

order in accordance with rules.

5. The respondents 1 to 4 in compliance to the writ court judgment dated

03.11.2004 considered the petitioner's claim and vide order dated 19th

May, 2005 engaged the petitioner as Rehbar.e.Taleem in Government Primary School Juddi (Bhalwana). The petitioner joined on 19th May, 2005

itself and has been regularised/appointed as general line teacher with effect from 19.05.2010 in the Pay Scale of 5200-20200+Grade Pay of Rs.

2400.

6. The respondent No. 5 who was not before the writ court on 03.11.2004 i.e. the date the writ petition was finally disposed of, approached this

Court some time after judgment dated 03.11.2004 was rendered, with an application bearing APSWP No. 10 of 2004 for setting aside order

dated 24th September, 2004 whereby he was set exparte. The respondent denied that he was served and had any knowledge about pendency of

the writ petition. The application was allowed on 24.02.2006. The writ petition-SWP No. 1786/2000 was accordingly revived and directed to be

listed for consideration. However the Court while allowing the application made it clear that revival of the writ petition would not effect the order

dated 19.05.2005 whereby the petitioner was engaged as Rehbar.e.Taleem in Government Primary School Juddi, subject to final disposal of the

writ petition.

7. The respondent No. 5 after the writ court judgment dated 03.11.2004 was set aside filed his reply. The respondent No. 5 refutes the

petitioner's claim that petitioner is a resident of Juddi/Bharote village Bhalwana. It is insisted that petitioner belongs to village Ghat 30 Km's away

from Juddi/Bharote and therefore not eligible for the advertised post. The respondent insists that Bharote where the school is situated is a hamlet of

village Barshalla and not village Bhalwana and therefore the respondent being resident of village Barshalla is eligible for the Rehbar.e.Taleem

position and was rightly recommended for the position by Village Level Committee and engaged by respondent No. 4. It is pleaded, that Juddi is a

hamlet of village Bhalwana and though the Primary School was initially sanctioned for Juddi it was later shifted to Bharote hamlet of village

Barshalla as there was no student in hamlet Juddi to get enrolled in the school. The respondents dispute veracity of the State Subject Certificate

and RBA Certificate issued by the Competent Authority in favour of the petitioner showing him to be resident of village Bhalwana.

8. The petitioner in his rejoinder affidavit reiterates his stand that he is a resident of village Bhalwana and not of village Ghat as stated by the

respondent No. 5. To reinforce his claim petitioner seeks to rely on Ration Card, Certificate issued by the local Sarpanch, Permanent Residence

Certificate and Reserve Backward Area Certificate as also Khasra-Girdawari wherein location of the school is shown as Survey No. 769/119

village Bhalwana.

9. The parties have filed supplementary affidavit supported by the documents to re-inforce their respective stand. On 27th October, 2011 having

regard to the nature of controversy involved, the Deputy Commissioner, Doda was asked to file report indicating actual location of the school.

However, earlier to the aforesaid order Court on 25th February, 2010 sought information as regards location of the school and the status of

hamlets Juddi and Barote with list of hamlets/Mohra of Bhalwana and Barshalla in case these were two separate revenue villages. The Zonal

Education Officer filed the supplementary affidavit on 05.05.2010 and the Deputy Commissioner submitted necessary information in shape of

supplementary affidavit on 29th July, 2010. In the circumstances background information sought vide order dated 27.10.2011 was already

available on file and even the parties i.e. petitioner and respondent No. 5 responded to the information given by the respondent No. 4 and District

Development Commissioner, Doda through supplementary affidavits sworn by them.

10. I have gone through the record and pleadings and have heard Learned Counsel for the parties.

11. The case set up by the petitioner is that the Government Primary School Juddi is located within the territorial limits of the revenue village

Bhalwana and he belongs to revenue village Bhalwana and was most meritorious candidates from village, deserved to be engaged as

Rehbar.e.Taleem in the Government Primary School Juddi Balwana. The respondent No. 5 admits to be a resident of village Barshalla. He

however lays claim to Rehbar.e.Taleem position in Government Primary School Juddi, Balwana on the ground that the school though sanctioned

for Juddi-hamlet of village Balwana, was later shifted to Barote-hamlet of village Barshalla and he therefore is eligible and entitled to be engaged as

Rehbar.e.Taleem in the aforesaid Primary School. The respondent No. 5 also disputes eligibility of petitioner on the ground that the petitioner

belongs to village Ghat, and therefore not eligible for the Rehbar.e.Taleem position in question. The record available on the file would show that

Primary School has been sanctioned for Juddi-hamlet of village Balwana. The District Development Commissioner, Doda in his affidavit has

certified that Balwana and Barshalla are two separate villages. The village Balwana comprises of ten hamlets or Mohra's namely;

(i) Bhalwana

(ii) Kanthi

(iii) Shaik-pora

(iv) Dichla

(v) Batwal Mehla

(vi) Gojjar Basti

(vii) Bathakar

(viii) Juddi

(ix) Shinote(partially)

(x) Bharote(partially), and is part of Niabat Mohalla of Tehsil and District Doda.

The revenue village Barshalla compromises of five hamlets namely;

(i) Shinote (partially)

(ii) Bharote (partially)

(iii) Sisool

(iv) Bag

(v) Upper Kanthi.

The revenue village Barshalla is part of revenue circle Jangalwar, Tehsil Thathri, District Doda. Two of the hamlets Shinote and Bharote are

partially located in village Bhalwana and partially in village Barshalla.

12. The record available on the file belies the respondent No. 5's stand that petitioner is not a resident of revenue village Balwana. The record in

the shape of Permanent Residence Certificate, Reserve Backward Area Certificate, Ration Card, Copy of the Electoral Rolls, reveal that the

petitioner is a resident of revenue village Barnala and not a resident of village

Ghat as pleaded by the respondent No. 5. The Certificates like Permanent Residence Certificate, Reserve Backward Area Certificate are expected to be granted by the Competent Authority only after making an inquiry into the matter and satisfy himself that the person in whose favour such a certificate was granted was a resident of village shown in the certificate. Same is true about the Ration Card issued by Consumer Affairs and Public Distribution Department. This apart the Village Level Committee included petitioner at S. No. 2 in the panel, indicating thereby that petitioner was not a resident of village Ghat 30 K.M's away from revenue village Bhalwana. The respondent No. 5 on the other hand by his own admission is a resident of revenue village Barshalla. In the said background challenge to petitioner's eligibility for the advertised Rehbar.e.Taleem position on the ground that he does not belong to revenue village Bhalwana is bound to fail.

13. The next limb the respondent No. 5's case relates to location of the school where the Rehbar.e.Taleem position was available and required to be filled up. The respondent No. 4 in his affidavit has made it clear that the school stands sanctioned for Mohra/hamlet Juddi, revenue village Bhalwana. The record other than the aforesaid affidavit also reveals that the school has been sanctioned for Mohra/hamlet Juddi revenue village Bhalwana and is officially known as Government Primary School Juddi. The stamp used by the Headmaster of the school, as is evident from the Annexure RR-1 relied upon by the respondent No. 5 would also indicate that the school is meant for Mohra/hamlet Juddi. It is important to note that as per the affidavit sworn by District Development Commissioner, Doda Mohra/hamlet Juddi entirely falls within the revenue village Bhalwana.

It is no body's case that any part of Mohra/hamlet Juddi falls within the revenue village Barshalla. The school therefore falls within the revenue village Bhalwana and only a candidate who belongs to revenue village Bhalwana would be in terms of Government order No. 396 eligible for Rehbar.e.Taleem position in the school. In such cases the Mohra/hamlet and revenue village for which the school is sanctioned would determine the eligibility of a candidate for Rehbar.e.Taleem position available in the school. The case set up by the respondent 5, in alternative is that even if school was sanctioned for Mohra/hamlet Juddi revenue village Bhalwana, it

because of non-availability of a good number of student in

Mohra/Juddi was shifted to Mohra/hamlet Barote revenue village Barshalla and that as the respondent No. 5 belongs to revenue village Barshalla

he is eligible for Rehbar.e.Taleem position in question. In the first place as already pointed out the Mohra/hamlet/revenue village for which a school

is sanctioned would determine the eligibility of a candidate for Rehbar.e.Taleem position in school. If such eligibility is linked with the shifted

location of school it would not only result in confusion but will give a handle to local Authorities to deprive a candidate otherwise eligible from a

right to be considered for Rehbar.e.Taleem position, by shifting the location of the school 100 meters away from the official location of the school.

The official location of the school would be Mohra/ hamlet/revenue village for which the school is sanctioned by the Government.

14. In the present case even if it is assumed that the school was shifted from Mohra/hamlet Juddi by the local officers of the Education Department

to an adjacent Mohra/hamlet the eligibility to compete for the Rehbar.e.Taleem position would be restricted to the candidates of the

Mohra/hamlet/locality for which the school is sanctioned. It is pertinent to point out that in the present case there is no record placed on the file to

indicate that the decision to shift the school sanctioned for Mohra/hamlet Juddi to Mohra/hamlet Barote has been taken by the State Government.

Since the School continues to be officially called as Government Primary School Juddi as a stamp of Headmaster on Annexure RR-1 to the

supplementary affidavit of the respondent No. 5 would indicate, arrangement appears to be local in character without any sanction from the

competent authority.

15. The respondent No. 5's claim that the school was shifted from Mohra/hamlet Juddi to Mohra/hamlet Barote even if accepted, does not in any

manner brighten up his chances to succeed in the matter. It would be advantageous once again to refer to the affidavit filed by District

Development Commissioner, Doda giving details of the composition of revenue villages Bhalwana and Barshalla. Hamlet Barote, as the contents of

the affidavit would reveal is partially located in revenue village Bhalwana and partially located in revenue village Barshalla. The school as per the

revenue record and certificates issued by the Headmaster upper Primary School

Juddi (Annexure P-4 and P-5 to the supplementary affidavit filed

by the petitioner) is functioning from the part of Mohra/hamlet Barote that falls within the revenue village Bhalwana. The school building is located

on Survey No. 769/119 revenue village Bhalwana and the location of the school as per the certificate issued by the Headmaster, Nambardar and

Chowkidar is located within the territorial limits of village Bhalwana. The case set up by the respondent No. 5 is therefore destined to fail.

16. It needs to be pointed out that though the official respondents initially resisted the writ petition, they afterwards made a shift in their stand and

admitted that Balwana and Barshalla were two different villages; that the Government upper Primary School was located in revenue village

Bhalwana and petitioner therefore entitled to be engaged against R.e.T. in the said school, in view of the mandate of Government Order No. 396-

Edu of 2000 dated 28.04.2000. It is shift in the stand of the official respondent's that persuaded this Court to allow the writ petition on

03.11.2004 as consequence where of the petitioner was initially engaged as Rehbar.e.Taleem in said school and thereafter regularised as general

line teacher.

17. For the reasons discussed, the writ petition is allowed. The order No. ZEO/304-307 dated 10.07.2000 whereby the respondent No. 5 was

engaged as Rehbar.e.Taleem in the Government Upper Primary School Juddi quashed. The petitioner is accordingly held entitled to be appointed

as Rehbar.e.Taleem in the said school against the vacancy available in wake of quashment of the aforesaid order and all consequential benefits that

accrue from his engagement as Rehbar.e.Taleem in the said school. Writ petition is accordingly allowed.