

(2023) 06 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 517 Of 2008

Nasreen Qadir

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 06-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 06 J&K CK 0014

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M. Y. Bhat, R. A. Bhat, Mohsin S. Qadiri, Maha Majeed, Z. A. Queshi, Rehana, Moomin Khan

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) The petitioner has challenged, inter alia, order bearing No.64CEO/S/2011 dated 26.09.2011, whereby respondent No.10 has been engaged as Rehbar-e-Taleem (for short "ReT") in Middle School, Gangbough, and order No.ZEO/B/SSA/2318-20 dated 07.06.2012, whereby respondent No.14 has been engaged as a ReT in Middle School, Gangbough. A direction has been sought upon official respondents to issue engagement order in favour of the petitioner against the post of ReT in Government Middle School, Gangbough.

2) Briefly stated, the case of the petitioner is that on 23.02.2008, an advertisement notice was issued by respondent No.5, whereby applications were invited for filling up of two posts of ReTs in Middle School, Gangbough. It was indicated in the advertisement notice that Middle School, Gangbough, falls in Ward No.65 of the Municipal Committee, Srinagar. A corrigendum to the aforesaid advertisement notice was issued by respondent No.5 on 28.02.2008, wherein it was provided that instead of Ward No.65, Ward No.32 be read in the advertisement notice dated 23.02.2008.

3) It appears that the petitioner as well as private respondents No.10 and 14 along with other candidates applied pursuant to the aforesaid advertisement notice. A panel of 25 candidates, who had applied for the posts, was prepared by the official respondents. The petitioner as well as respondents No.10 and 14 figured in the said panel. In the panel, the petitioner and respondent No.14 were shown as residents of Ward No.32 whereas respondent No.10 was shown as resident of Ward No.65.

4) It appears that representations were made by certain persons including the father of the petitioner to the official respondents stating therein that Middle School, Gangbugh, falls in Ward No.32 of Municipal Committee, Srinagar, as such, only the candidates belonging to the said Ward should be considered for selection and not those belonging to other wards but to the dismay of the petitioner, impugned engagement orders were issued in favour of respondents No.10 and 14. It is claimed by the petitioner that respondent No.10, admittedly, does not belong to Ward No.32 and respondent No.14, though belong to Ward No.32, is admittedly, having less merit than the petitioner.

5) The petitioner is stated to have made a representation to respondent No.3 for conducting an enquiry into the matter and by virtue of order No.515-DSEK of 2013 dated 20.02.2013, an Enquiry Committee was constituted to probe into the allegations levelled by the petitioner regarding engagement of respondents No.10 and 14.

6) It appears that the matter regarding location of Middle School, Gangbugh, and the ward certificates issued in favour of the candidates was also enquired into by Srinagar Municipal Corporation and after enquiry, it was report that Government Middle School, Gangbugh, falls within the territorial jurisdiction of Ward No.65. The petitioner is stated to have made representation against this report as according to her the school falls within the territorial limits of Ward No.32 of Srinagar Municipal Corporation.

7) The petitioner has challenged the impugned engagement orders issued in favour of respondent Nos.10 and 14, primarily, on the ground that respondent No.10 is not a resident of Ward No.32 where the school is located and that respondent No.14 is having lesser merit than the petitioner. It has also been contended that the reports relating to enquiry procured by official respondents are fraudulent in nature and have been procured only to favour private respondents and to deny legitimate claim of the petitioner.

8) The respondents have contested the writ petition by filing separate replies thereto. Private respondent No.10 in his reply has submitted that as per the reports of enquiry, the school in question is located in Ward No.65 and as per the scheme for engagement of ReTs, he was eligible to apply for the said post and the candidates hailing from Ward No.32 were not eligible. It has been contended that the petitioner does not have any case on merits. During the pendency of the writ petition, respondent No.10 has expired.

9) The stand of respondent No.14 is that even if the case of the petitioner is accepted, still then the said respondent being a resident of Ward No.32, was eligible to be appointed as an ReT in Middle School, Gangbugh, whereas respondent No.10 was not eligible to be engaged. On this basis it is urged that the engagement of respondent No.14 cannot be disturbed because there were two posts of ReTs available for selection and on one of these posts respondent No.14 was entitled to be engaged.

10) The stand of respondent Education Department in its reply is that the petitioner was not eligible for being engaged as an ReT in Middle School, Gangbugh as the said school was found to be falling in Ward No.65 and not in Ward No.32 to which the petitioner, admittedly, belongs. It has been submitted that an enquiry was conducted in the matter and during enquiry, it was found that Middle School, Gangbugh falls within the territorial jurisdiction of Ward No.65 and it is because of this reason that the petitioner, who belongs to Ward No.32, was not selected.

11) The respondent Srinagar Municipal Corporation has also filed its reply to the writ petition in which it has been claimed that after the enquiry it was found that the petitioner is actually a resident of Gangbug which falls under Administrative Ward No.32 Baghat-i-Barzulla whereas Middle School, Gangbugh falls in that part of Gangbug village which comes within the jurisdiction of Ward No.65. It has been submitted that there was some discrepancy in the earlier position regarding location of the school, which, after enquiry has been clarified and it has been found that the school is located in Ward No.65.

12) I have heard learned counsel for the parties and perused the material on record.

13) The controversy involved in this writ petition falls in a narrow compass. It is an admitted case of the parties that initially the advertisement notice was issued for engagement of two ReTs in Middle School, Gangbugh located in Ward No.65 but later on a corrigendum came to be issued and it was provided that in the advertisement notice Ward No.32 be read as Ward No.65.

14) As per the scheme for engagement of ReTs, the eligibility clause lays down that the person concerned should be a permanent resident of State, he should belong of the village/ward where there is assessed deficiency of staff, he should possess the minimum qualification of 10+2 and he shall, as far as possible, fulfill the age qualification as prescribed by the State Government.

15) The dispute in this case is with regard to the location of the school because as per the scheme, for a person to become eligible to apply, he should belong to the relevant village/ward where the school is located. According to the petitioner she belongs to Ward No.32. This position is not in dispute. The dispute is with regard to location of the school. The official respondents claim that after enquiry it was found that the school is located in Ward No.65 and it is for this reason that the petitioner was found to be in-eligible and respondent No.10, who belongs to

Ward No. 65 was found to be eligible. If this stand of the official respondents is accepted, then respondent No.14, who admittedly hails from Ward No. 32, should not have been engaged as ReT in the School as the said School, according to the official respondents, falls in Ward No. 65.

16) There is yet another aspect of the matter, which requires to be noticed. Initially, the official respondents had issued advertisement notice indicating that the school in question is located in Ward No.65 but thereafter a corrigendum was issued, wherein it was provided that the school is located in Ward No.32. If during the process of selection, the official respondents came to know that the school is actually located in Ward No.65 and not in Ward No.32, then in that eventuality the proper course was to abandon the selection process and issue a fresh advertisement notice clarifying that the Middle School, Gangbugh is located in Ward No.65 so that all the eligible candidates belonging to Ward No.65 would have got an opportunity to apply for the post pursuant to fresh advertisement notice. Instead of doing so, the official respondents proceeded with the selection process and engaged respondent No.10 on the basis that he belongs to Ward No.65 and denied selection to the petitioner on the ground that she belongs to Ward No.32.

17) Thus, in either eventuality, the official respondents have not proceeded in the matter in accordance with law. Once the official respondents had proceeded with the selection of ReTs on the basis that the school is located in Ward No.32 by issuing a corrigendum to this effect, then only the candidates belonging to the said Ward should have been considered for selection. In case after holding an enquiry, they had come to the conclusion that the school was located in Ward No.65 and not in Ward No.32, then they were legally bound to issue fresh advertisement notice so as to allow opportunity to all the eligible candidates of Ward No. 65 to participate in the selection process.

18) Once the official respondents decided to take forward the selection process on the basis of amended advertisement notice, they were legally bound to consider only those candidates who hailed from ward No. 32. The selection of respondent No.10, who, admittedly, belongs to Ward No.65, is, therefore, not sustainable in law because he was not eligible for selection in terms of modified advertisement notice, which provided that the school is located in Ward No.32. Since respondent No.10 has died during the pendency of this writ petition, therefore, the relief regarding quashment of his engagement has been rendered infructuous.

19) The official respondents have proceeded to hold selection on the basis that the school in question is located in Ward No.32, as such, the petitioner was definitely eligible to participate in the selection process. Hence, action of the official respondents whereby he has been found ineligible is not sustainable in law. It is an admitted position that merit of the petitioner is superior to the merit of other candidates including respondent No.14, who had applied pursuant to the advertisement notice. Therefore, the petitioner was entitled to be selected and

engaged as a ReT along with respondent No.14. By not issuing engagement order in favour of the petitioner, her legitimate right has been denied to her in an arbitrary and illegal manner. The said action of the official respondents is violative of Article 14 & 16 of the Constitution and as such, the same is liable to be struck down.

20) Since respondent No.10 has been held to be in-eligible for selection and he has already died during the pendency of this writ petition, as such, while holding that the petitioner is entitled to be engaged in ReT in Middle School, Gangbough, there is no need to disturb the selection/engagement of respondent No.14. In view of availability of two posts of ReTs in Middle School Gangbough at the relevant time, the selection and engagement of respondent No. 14 is upheld.

21) For the foregoing reasons, the petition is allowed to the extent that the official respondents shall issue engagement order in favour of the petitioner against the post of ReT in Middle School, Gangbough. The petitioner shall be deemed to have been engaged as ReT from the date respondent No.14 has been engaged and she shall be given all consequential benefits. However, because the petitioner has not actually worked for this period, she shall be entitled to the consequential benefits on notional basis without any monetary benefit.