
(2021) 12 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 36 Of 2012

Naza Bano

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 14-12-2021

Acts Referred:

Citation : (2021) 12 J&K CK 0018

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Imiyiaz Sofi, Feroz Shiekh, Mir Majid Bashir

Final Decision : Disposed Of

Judgement

Sanjeev Kumar, J

01/ Vide advertisement notification dated 22nd of October 2010, issued by respondent No.4, applications were invited for filling up the posts of Aanganwari Workers in various Aanganwari Centres ["AWC"] of ICDS Block, Kupwara, which included one post of Aanganwari Worker in Khan Mohalla of Revenue village Opazwani. The petitioner as well as respondent No.6 along with few other candidates responded to the advertisement notification. Respondent No. 4 issued a tentative selection list on 04-01-2011 in which the petitioner was shown tentatively selected as a Aanganwari Worker in Khan Mohalla, Opazwani, with merit of 38.43 points. This was objected to by the respondent No. 6. The objection of respondent No.6 was found tenable by the respondent No.4, who finally selected respondent No.6 and issued engagement order in her favour.

02/ Feeling aggrieved, the petitioner filed an appeal against the engagement of respondent No.6 before the appellate authority, i.e. Deputy Commissioner (DC), Kupwara, who, vide his order dated 20-10-2011, dismissed the appeal, holding that both the petitioner as also the respondent No.6 were residents of hamlet concerned and respondent No.6 being more meritorious than the petitioner, had been rightly selected and engaged by respondent No. 4 as Aanganwari Worker in

Khan Mohalla, Opazwani.

03/ The petitioner is not satisfied with the order of the appellate authority and is, therefore, before this Court by way of instant writ petition.

04/ On being put to notice, the official respondents as well as respondent No.6 have filed their respective objections. It is the stand of official respondents that the AWC in question has been sanctioned for Khan Mohalla, Opazwani and Malik Mohalla under Expansion Programme, Phase III. The petitioner was initially placed in the tentative select panel for the Aanganwari Centre, Khan Mohalla, which was published for filing of objections by the aggrieved candidate/s, if any. Respondent No.6 objected to the placement of petitioner in the tentative select panel on the ground that she (respondent No.6) was more meritorious and belonged to the same hamlet for which the AWC had been sanctioned. The matter was considered by the official respondents and the plea of respondent No.6 was found tenable and, accordingly, in place of petitioner, respondent No.6 was issued the engagement order. On somewhat similar lines, the respondent No.6 has also defended her engagement by filing written objections. Apart from the objections taken note of above, the respondent No.4 has also filed supplementary affidavit in compliance to the order dated 11-09-2012 passed in this petition.

05/ Having heard learned counsel for the parties and perused the record, I am of the view that the issue, which is at the core of the controversy involved in this petition, is whether the respondent No.6 belongs to the hamlet where the AWC is located. Before this Court proceeds further, it is pertinent to note that at the relevant point of time, when the position in question was notified for selection, the selection and engagement of

Aanganwari Workers and Aanganwari Helpers was governed by Government order No. 07-SW of 2010 dated 18-01-2010, read with Government order No. 10-SW of 2010 dated 19-01-2010. As per the aforesaid Government orders, the criteria for selection of Aanganwari Workers was prescribed as under :

".....

3) Criteria for selection of Anganwari Worker

a) Female candidate in the age group of 18 to 44 years. The age, however, shall be reckoned on 1st of the calendar year in which the selection is made.

b) The candidate should be permanent resident of the State.

c) Minimum qualification of the Aanganwari Worker shall be matriculate and in case no matriculate candidate is available, middle pass candidate shall be considered.

d) In case of areas with predominant population of reserved categories, no qualification bar shall apply.

e) The candidate should belong to the hamlet where the Anganwari Centre is located. If a suitable candidate is not available in the hamlet, the candidate should be selected from the Revenue Village of which the said hamlet is a part. Likewise, if no suitable candidate in that Revenue Village, a candidate from the adjoining village shall be selected on the basis of inter se merit."

06/ It is the above eligibility qualification, given in paragraph (e) supra, that was incorporated by the respondent No.4 in the advertisement notification as well.

07/ From perusal of the record, produced by Mr. Feroz Sheikh - Dy. AG, it is seen that both the petitioner as well as respondent No.6 have, in their application forms, claimed to be the residents of Khan Mohalla of village Siraj Pora, Opazwani. Merit of the respondent No, 6 is, admittedly, higher than that of the petitioner. No document was, however, found on record which would demonstrate that the AWC, Khan Mohalla, has been established for both Khan Mohalla and Pir Mohalla, as has come in the report of District Programme Officer, which was communicated to the DC, Kupwara, vide communication No. DPO/ICDS/AWC/XI-8381 dated 09-12-2011. The controversy, put in a nutshell, is with regard to the actual residence of respondent No.6. The communication of the Programme Officer supra indicates that respondent No.6 is a resident of Pir Mohalla - a habitation different from Khan Mohalla. There is, however, an observation made by the Programme Officer that an AWC can only be sanctioned for 35 households, whereas, Khan Mohalla has only 20 households. He, therefore, infers that the AWC in question might have been sanctioned for both Khan Mohalla as well as Pir Mohalla. This observation of the Programme Officer is not corroborated or substantiated by any document on record. Be that as it may, neither the scheme for selection of Anganwari Worker issued vide Government order No. 07-SW of 2010 dated 18-01-2010 nor the advertisement notification makes any reference to a habitation or a Mohalla. The scheme as well as advertisement notification provides that a candidate, apart from other things, must belong to the hamlet where the AWC is located.

08/ Admittedly and indisputably, the AWC is located in Khan Mohalla. Whether the AWC, which is located in Khan Mohalla, has been sanctioned for Khan Mohalla alone or is sanctioned for Pir Mohalla also, is not relevant for determination of the controversy raised in this petition. In absence of any definition of 'hamlet' given in the scheme, one is left with no option but to look for the dictionary meaning of the word 'hamlet'. In the common parlance, a 'hamlet' is a small settlement, generally one smaller than a village. The Cambridge dictionary defines 'hamlet' a small village usually without a church. In Mariam Webster & Collins dictionary also a 'hamlet' is defined as a small village. Having regard to the definition of 'hamlet' given in various English dictionaries, I am of the view that a 'hamlet' in the context of establishment of AWC, would mean a settlement or a cluster of houses, which is known by a separate name and identity and forms part of a larger population known as village.

09/ When the issue is viewed in the context of aforesaid definition of 'hamlet', it

is abundantly clear that Khan Mohalla, which is distinct and separate from Pir Mohalla and Malik Mohalla of revenue village Opazwuni, qualifies to be a hamlet and only such candidate/s, who belong to this hamlet, is/are entitled to be considered. Going by the application forms of the petitioner and respondent No.6 and the record produced before me, both the petitioner and respondent No.6 are seemingly eligible, being the residents of Khan Mohalla, where the AWC is located. However, the communication of Programme Officer, referred to above, creates serious doubt about the residence of respondent No.6.

10/ In the facts and circumstances of this case, I am of the opinion that ends of justice would be met if the DC, Kupwara, is called upon to hold an enquiry to find out the actual residences of the petitioner and respondent No.6 at the time of issuance of advertisement notification. Accordingly, this petition is disposed of by providing as under :

" 1) The DC, Kupwara, shall, either himself or through an officer not below the rank of Additional Deputy Commissioner, conduct an enquiry to find out, conclusively, the actual residence of petitioner as well as respondent No.6 at the time of issuance of the advertisement notification.

2) The DC, Kupwara, or his nominee, as the case may be, shall associate the petitioner as also the respondent No.6 in the said enquiry, which shall be completed within two months from the date copy of this order and copy of the writ petition is served upon him.

3) On the basis of the result of aforesaid enquiry, conducted by the DC, Kupwara or his nominee, as the case may, the respondent No.4 shall pass appropriate orders. In case both the petitioner and respondent No.6 are found to be the residents of hamlet Khan Mohalla, in that eventuality, the meritorious candidate shall be engaged and the services of less meritorious, even if already engaged, shall be dispensed with. However, if, as a result of enquiry, only one of the two is found to be the resident of hamlet Khan Mohalla, then such candidate shall be offered appointment and the engagement of the other candidate, if already made, shall be dispensed with.

4) The whole exercise shall be concluded by the respondent No.4 within a period of four weeks from the date he receives the report from the Deputy Commissioner, Kupwara."

11/ In the above backdrop, this writ petition shall stand disposed of along with connected IAs.