
(2020) 02 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 768 Of 2011, IA No. 1113 Of 2011

Rajesh Kumar

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Citation : (2020) 02 J&K CK 0020

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : D.K.Khajuria, Rajesh Thapa, Achal Sharma

Final Decision : Dismissed

Judgement

1 This petition has arisen under peculiar fact situation. The appointment of respondent No.5, namely, Dev Raj as ReT teacher in the Government

Primary School, Tunkhail, Tehsil Paddar made by ZEO vide his Order No. ZEO/P/SSA/10/161-65 dated 30.12.2010 is assailed by the petitioner on the

ground that the same has been made purportedly in compliance to the judgment dated 21.09.2010 passed by the Division Bench in LPA(SW) No.

25/2009 which was obtained by suppression of material facts.

2 With a view to understand the controversy raised in this petition in proper perspective, it would be necessary to take note of few facts as are

relevant for the disposal of this petition.

Respondent No.3 vide Advertisement Notification No. CEO/K/10/107-109 dated 05.05.2010 invited applications for the engagement of ReT teachers

at village level in different schools of District Kishtwar which included one post of ReT teacher in Primary School Tunkhail of Education Zone

Paddar. Amongst other candidates, the petitioner had responded to the aforesaid

notification and was waiting for the selection process to be concluded. While the aforesaid selection process was pending, it appears and is also borne out from the record that there was a dispute between respondent No.5, namely, Dev Raj and one Kushma Devi with regard to the engagement of ReT Teacher in Government Primary School, Laddar. It further transpires that against the engagement of Kushma Devi, respondent No.5 Dev Raj moved a representation before the official respondents and when it evoked no response, he filed SWP No. 1491/2005 seeking quashment of selection and engagement of Kushma Devi and a direction to the official respondents to consider and engage him as ReT teacher in Government Primary School, Laddar. During the pendency of aforesaid writ petition, it appears that the official respondents considered the grievance of aforesaid Dev Raj and, accordingly, issued a show cause notice to Kushma Devi for cancellation of her engagement. This made Kushma Devi also to file a petition i.e. SWP No. 2116/2007. Both the petitions aforesaid were considered by a Single Bench of this Court together and by a common Judgment dated 26.02.2009, the writ petition filed by Dev Raj i.e SWP No. 1491/2005 was allowed and the official respondents were directed to implement the communication of the Director School Education, Jammu bearing No. DSEJ/W/8570-72 dated 22.11.2007 by issuing a formal order of engagement in favour of Dev Raj as ReT in Government Primary School Laddar. Consequently, the writ petition filed by Kushma Devi was dismissed. The judgment dated 26.02.2009 passed by the Single Judge was assailed by Kushma Devi by filing two separate LPA Nos. 25/2009 and 26/2009. The Division Bench vide its interim order dated 15.03.2010 called upon the Director School Education, Jammu to settle the matter by saving the appointment of Kushma Devi and also by offering the appointment as ReT to Dev Raj. Responding to the observations of the Division Bench, the official respondents submitted to the Division Bench that one post of ReT teacher in Primary School Tunkhail, Zone Paddar was lying vacant and the same could be offered to respondent Dev Raj. With a view to settle the issue, the Division Bench took on record the statement made by the official respondents as also the copy of communication dated 27.08.2010 and directed them to issue appointment order in favour of Dev Raj as ReT teacher against the vacancy stated to be lying vacant in the Primary School Tunkhail.

This is how the Division Bench settled the matter and saved the appointment of Kushma Devi.

3 With a view to give effect to the Judgment dated 21.09.2010 passed by the Division Bench of this Court, the respondents withdrew the

Advertisement Notification which pertained to filling up of one post of ReT teacher in Government Primary School Tunkhail. The petitioner, feeling

aggrieved of the withdrawal of the Advertisement Notification, enquired from the official respondents the reason for such withdrawal. It is claimed

that, upon enquiry, the petitioner was informed that the post of ReT teacher in Government Primary School, Tunkhail has been withdrawn to give

effect to the judgment of the Division Bench dated 21.09.2010.

4 Being faced with the aforesaid position, the petitioner filed the instant petition seeking quashment of the engagement of respondent No.5, namely,

Dev Raj primarily on the ground that respondent No.5 could not have been appointed as ReT teacher in Government Primary School, Tunkhail as he

was not eligible for the post. It is also alleged by the petitioner that the Judgment dated 21.09.2010 passed by the Division Bench whereby the official

respondents were directed to appoint Dev Raj against the said post was obtained by sheer misrepresentation and, therefore, vitiated by fraud.

5 Respondents have filed their reply and contended that the appointment of Dev Raj, which is made by the official respondents in compliance to the

judgment dated 21.09.2010, cannot be assailed by the petitioner on any account and that too before the Single Bench of this Court. It is denied by the

official respondents that there was any misrepresentation on the part of the official respondents.

6 Mr. Thapa, learned Dy.AG appearing for the official respondents, states that, at the relevant point of time, the vacancy of ReT teacher in Primary

School Tunkhail was lying vacant as the selection process initiated to fill up that post had not been finalized and only application forms had been

received. Learned counsel for respondent No.5, while supporting the contentions of Mr. Thapa, submits that respondent No.5 has been working as

ReT teacher in the Primary School Tunkhail for the last five years and is long due for regularization. He, however, claims that the regularization of

respondent No.5 has not been made because of pendency of this writ petition.

7 Having heard learned counsel for the parties and perused the record, I am of

the view that even if the facts stated by the petitioner in this petition are taken as correct as they are, this Court may not have jurisdiction to issue directions as prayed for in the writ petition. Admittedly, respondent No.5 has been appointed as ReT teacher in Primary School Tunkhail pursuant to the judgment of the Division Bench dated 21.09.2010. It is equally true that the aforesaid judgment was passed by the Division Bench, prima facie, by being misled by the representation made by the official respondents. At the time when the statement was made before the Division Bench that a post of ReT teacher in Primary School Tunkhail was lying vacant where respondent No.5 could be adjusted, it was not brought to the notice of the Division Bench that the said post had been notified for selection and the candidates like the petitioner had responded to the said notification by submitting their applications forms and were waiting for the selection process to be concluded. Perhaps, had this fact been brought to the notice of the Division Bench, the judgment dated 21.09.2010 would have been a different judgment. Be that as it may, being aware of the jurisdiction of this Court in such matters, I refrain from further commenting upon the merits of the controversy.

8 In the given facts and circumstances where the petitioner has asserted a specific case of misrepresentation and fraud committed by the official respondents in persuading the Division Bench to pass the judgment dated 21.09.2010 which has adversely affected the rights of the petitioner, I am of the considered view that the remedy lies somewhere else. The petitioner may have to work out his remedy as is permissible in law, but surely this petition, for the reasons stated above, is not maintainable before this Court. Learned counsel for the petitioner fairly concedes this position and submits that only remedy to avoid the judgment passed by the Division Bench is perhaps filing of an appropriate petition for recalling of the judgment, but apprehends that such petition may not be maintainable as he was not a party in the appeals or in the writ petitions aforesaid filed by respondent No.5 and one Kushma Devi.

9 Without commenting upon the maintainability of the aforesaid petition, suffice it to observe that dismissal of this writ petition shall not come in the way of the petitioner to avail of appropriate remedy as is permissible under law. With these observations, this petition is dismissed along with

connected application.