

(2018) 06 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : SWP No. 2424 OF 2013, 2437 OF 2015

RAZWANA KAUSAR

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND OTHERS

RESPONDENT

Date of Decision : 05-06-2018

Acts Referred:

Citation : (2018) 06 J&K CK 0012

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Both these petitions are inter-connected and pertain to same subject and, therefore, are disposed of by this common judgment.

SWP No. 2424/2013 :

1. The facts as projected in this petition, briefly put, are that pursuant to the applications invited by respondent Nos. 2 to 4 for engagement of EGS

Guides in various schools in the District of Poonch including Education Zone, Balakote Mendhar, the petitioner submitted her application form for the

Centre that was to be opened at Nakar Dharati. On the recommendations of the Village Level Committee, the petitioner was engaged as Education

Volunteer (EV) for EGS centre Nakar Dharati and engagement letter in this regard was issued by respondent No.4 on 25.09.2004. It is claimed that

the petitioner continuously performed her duties till 2006 but remained out of action for some time due to her ill-health but she was re-engaged on

31.05.2007. It is submitted that while she was performing her duties continuously after her re-engagement, there came to be issued Government Order

on 17.10.2008 whereby EGS centres came to be upgraded to the level of Primary School and the EVs working in such centres were converted into

the RET. The EGS centre Nakar Dharati, it is claimed, was also upgraded in the year 2008 but the petitioner was not converted to RET though, as per

the Government Order, she was fully eligible to be appointed as RET. It is also claimed that even the Village Level Committee had recommended the

name of the petitioner.

2. The further case of the petitioner is that when she was not accorded consideration for conversion as RET, she filed SWP No. 111/2010, which was

disposed of by a Bench of this Court on 16.10.2012 by directing the respondents to accord her the same treatment as had been accorded to the

similarly situated candidates shown in Annexures E-1 and E-2 of the writ petition and convert the petitioner into RET from the date the EGS centre

was upgraded to Primary School. Respondents were granted eight weeksâ?? time to take a decision in this regard. It is alleged by the petitioner that

the aforesaid judgment of the Court was not complied with, which constrained the petitioner to file a Contempt Petition registered as COA No.

261/2013. While the contempt petition was pending, the respondents started process for regularizing the services of respondent No.5 as RET against

the post held by the petitioner in the EGS centre Nakar Dharati. It is submitted that respondent No.5 was never engaged as EV in the EGS centre

Nakar Dharati and, therefore, was not entitled to be regularized as RET in the upgraded EGS centre Nakar Dharati. Despite the fact that the

petitioner was entitled to be converted as RET in the upgraded EGS centre Nakar Dharati being EV of the aforesaid centre, the respondent No.4 vide

his Order No. ZEOB/SSA/319-21 dated 19.06.2013, allowed the petitioner to work as surplus RET in Zone Balakote. This was done by the

respondent No.4 on the ground that two posts of RET in Primary School, Nakar Dharati were formally occupied and that petitioner who was required

to be appointed as RET pursuant to the directions passed by this Court in SWP No. 111 of 2010 was surplus.

3. With the grievance that respondent No.5, who was never appointed as EV in EGS Nakar Dharati yet was illegally converted to RET in the

upgraded Primary School, Nakar Dharati ignoring the claim of the petitioner, the petitioner has approached this Court through the medium of instant

petition.

4. The grievance of the petitioner in this petition is, primarily, twofold :-

i) that respondent No.5 who was never engaged as EV in EGS Nakar Dharati could not have been converted as RET in the upgraded Primary School

Nakar Dharati; and

ii) that petitioner, who was engaged as EV in the aforesaid school/centre was entitled to be converted into RET on the upgradation of the centre into a

Primary School. More so, when this Court while disposing of writ petition, SWP No. 111/2010 vide its order dated 16.10.2012 had specifically directed

so.

5. Official respondents, i.e., respondent Nos. 1 to 4 as also the private respondent No.5 have filed their separate objections.

6. The stand taken by the official respondents in the objections is that the petitioner was engaged as EV in the EGS centre Nakar Dharati in the year

2004. She performed her duties till the year 2006 when she abandoned her services as EV to take up another job of contractual teacher in the Middle

School Dharati of Zone, Balakote. It is submitted that though petitioner after completing her contractual assignment, again joined in the EGS centre

Nakar Dharati on 31.05.2007 but the same was without an intimation to the respondent No.2. It is, thus, claimed that petitioner who had abandoned

her job as EV and remained absent for about two years before she unauthorizedly joined back, was not entitled to be converted as RET. It is stated

that only those EVs who were genuinely appointed and were in position when the Government Order was issued, alone were converted as RET upon

upgradation or reallocation of such EVs. With regard to the conversion of respondent No.5 as RET in upgraded Primary School Nakar Dharati, it

has been sought to be explained by the official respondents that respondent No.5 had been engaged as EV in EGS Centre Purrah and under the orders

of respondent No.4 the aforesaid center was merged with EGS Nakar Dharati which was subsequently upgraded as Primary School Nakar Dharati.

Reference in this regard is made to the order of respondent No.4 issued vide his Order No. ZEO/431-32 dated 04.02.2009.

7. Respondent No. 5 has also taken the similar stand.

8. While this writ petition was pending, the petitioner filed another writ petition, i.e., SWP No. 2437/2015 seeking a direction to the respondents not to

regularize the services of respondent No.5 as RET against the post held by the petitioner in Primary School, Nakar Dharati. A further direction was also sought for issuance of formal order of engagement of petitioner as RET for Primary School, Nakar Dharati to show full compliance of the judgment passed by this Court on 16.10.2012 in SWP No. 111/2010. This petition too has been contested by the official respondents by filing their objections. The stand taken by the respondents in the earlier writ petition has been reiterated. Additionally, it is pleaded by the respondents that the judgment passed in the case of the petitioner in the earlier round of litigation, i.e., SWP No. 111/2010 has been complied with and the petitioner too has been converted as RET though with a rider that she would work as surplus RET till the suitable arrangement of RET post is made by the higher authorities.

9. Having heard learned counsel for the parties and perused the record, the facts which are not disputed are required to be noticed first. There is no

dispute that it was the petitioner, who was engaged as EV/EGS Guide in EGS centre, Nakar Dharati by the respondent No.4 vide his Order No.

ZEB/Camp Gallota No. 1 dated 25.09.2004. She continued to perform her duties till the year 2006 when she abandoned her services as EGS Guide to

take up the job of contractual teacher in the adjoining school. She joined back her services as EGS Guide on 31.05.2007. The plea of the official

respondents is that she joined back her services without any intimation to the respondent No.2 and without there being any specific order allowing her

to rejoin her duties, whereas it is on record that the petitioner was re-engaged as EGS Guide in the EGS centre Nakar Dharati on 31.05.2007 by the

order of respondent No.4. It is also not disputed that since 31.05.2007, i.e., after her re-engagement, she has been continuously performed her duties

in the aforesaid centre/school. Respondent No.5, as is evident from the objections filed by the official respondents, was engaged as EGS Guide in EGS

Centre Purrah and was never engaged or worked as such in EGS Centre Nakar Dharati. Learned counsel appearing for the

parties were ad idem that pursuant to the Government Order No. 322-Edu of 2008 dated 26.06.2008 read with Government Order No.

534-Edu of 2008 dated 17.10.2008, many EGS centres were upgraded to the level of Primary Schools and the incumbents working in such schools as

EVs were converted as RETs. There were certain EGS centres which were merged with upgraded centres. The EGS centre Nakar Dharati was

amongst such centres which were upgraded to the level of Primary Schools. Ordinarily with the upgradation of EGS centre Nakar Dharati to the level

of Primary School, the incumbents working as EVs in the aforesaid centre should have been converted as RETs but apparently this did not happen in

the case of upgraded Primary School, Nakar Dharati. Respondent No.5 was an EV appointed for and working in the EGS Centre Purrah. There is

nothing on record to indicate that the aforesaid centre was ever merged with upgraded Primary School, Nakar Dharati by any order issued by any

competent authority. The only order traceable in the record of this writ petition is an order of respondent No.4 issued vide his No. ZEO/431-32 dated

04.02.2009 whereby respondent No.5, an EV of EGS centre Purrah has been converted as RET and posted in the upgraded EGS centre Nakar

Dharati. There is no mention of the merger of EGS Purrah with EGS Nakar Dharati.Â

10. From the aforesaid narration, it is abundantly clear that the whole problem has arisen due to the illegal conversion of respondent No.5 as RET

and his posting in the upgraded Primary School, Nakar Dharati. It has also amply come on record that respondent No.5 never worked as EV in EGS

Centre Nakar Dharati nor after his conversion, as RET in the upgraded Primary School, Nakar Dharati. The petitioner has been continuously

performing her duties in the upgraded Primary School, Jabbar. This Court well appreciates the stand of the official respondents that the petitioner after

serving as EV in EGS Nakar Dharati for two years had abandoned the job to take up the assignment of contractual teacher and therefore, would have

forfeited her right but the fact remains that she was re-engaged in the year 2008 by the order of respondent No.4. The aforesaid order of Â Â re-

engagement of the petitioner was never cancelled or withdrawn. She succeeded in her writ petition, i.e., SWP Â Â No. 111/2010 and specific

direction was issued by this Court to convert her as RET obviously in the school where she had been working as EV. It is, thus, apparent that all-out

effort was made by the respondents to accommodate respondent No.5 at the cost of petitioner.

11. In view of the aforesaid facts, I find substance in the writ petition.Â Accordingly,Â theÂ sameÂ isÂ allowed.Â The appointment/adjustment

of respondent No.5 as RET in upgraded Primary School, Nakar Dharati issuedÂ by respondent No.4 vide his No. ZEO/431032 dated 04.02.2019 is

quashed. The respondents are directed to treat the petitioner as having been converted/appointed as RET in upgraded Primary School, Nakar Dharati

with effect from 19.06.2013, i.e., date when the petitioner was directed to work as surplus RET in Zone, Balakote by the respondent No.4 vide his

No. ZEOB/SSA/319-20 dated

19.06.2013 with all consequential benefits.

SWP No. 2437/2015:

In view of the discussion made hereinabove and for the reasons stated in SWP No. 2424/2013, no further orders are required to be passed in this writ

petition.

This writ petition is, accordingly, disposed of.