

(2024) 04 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 616 Of 2013

Shabnaz Kosser

APPELLANT

Vs

State Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 02-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 04 J&K CK 0001

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Abhirash Sharma, Jagmeet Kour, Ramesh Arora, Rohit Verma

Final Decision : Disposed Of

Judgement

Sanjeev Kumar, J

1. In Phase-3rd of expansion programme of ICDS an Anganwari Centre for hamlet Pandran and Jakala comprised in Ward No.5 and 6 of Panchayat Halqa Badakana ICDS Project Darhal came to be sanctioned. Vide advertisement notification dated 01.07.2010 issued by respondent No.4, applications were invited for engagement as Anganwari Workers/Helpers on honorarium basis for various Anganwari Centres including the Anganwari Centre in question. The petitioner along with respondent No.7 and few others claiming to be the residents of the concerned hamlet submitted their application forms.

2. The application forms submitted by the eligible candidates were scrutinized by the Selection Committee and a list of eligible candidates was prepared in accordance with the procedure laid down by respondents vide Government Order No.07-SW of 2010 dated 18.01.2010 read with corrigendum issued vide Order No.10-SW of 2010 dated 19.01.2010. All the eligible candidates, as is claimed by the official respondents, were interviewed by the then Selection Committee and on the basis of academic merit and performance in the interview, a merit list was prepared. In the provisional select list, a candidate, namely, Yasmeen Akhter was

shown provisionally selected as Anganwari Worker, however, selection of Yasmeen Akhter was objected to by the other candidates on the ground that the documents submitted by her were tampered. She was given an opportunity to produce the original documents, which she could not produce. Consequently, her selection was cancelled. The candidate next in merit in the select list Ms. Samara Kouser, too, failed to produce the requisite documents for verification of their genuineness.

3. Left with no option, official respondents called the third candidate in the order of merit but she, too, could not be engaged for having married outside the Tehsil during currency of the selection process. This is how respondent No.7 (private respondent), who was figuring at serial No.4 in the select list on the basis of her merit, was offered engagement. It is this engagement of the private respondent made by respondent No.5 vide order dated 11.10.2012, which is called in question in this petition.

4. Impugned engagement of respondent No.7 is challenged by the petitioner on the following grounds:-

i) That the private respondent has been engaged as Anganwari Worker without their being any select list prepared, issued and published by the official respondents.

ii) That the private respondent belongs to Ward No.6, whereas the Anganwari Centre in question is located in Ward No.5 and that being the position, private respondent was ineligible to be engaged as Anganwari Worker in the Anganwari Centre in question.

iii) That the engagement of private respondent is otherwise not sustainable, as the private respondent at the time of submitting her application and even at the time of her alleged selection and engagement was a regular student of Baba Ghulam Shah Badshah University, Rajouri and doing her MA Arabic. She was, therefore, not available to perform the duties of Anganwari Worker for which she was allegedly selected and engaged.

5. The official respondents have contested the claim of the petitioner and have explained, in their reply affidavit, the manner in which the selection process was undertaken. It is submitted that, as per the norms laid down by the Government in terms of Government Order No.07-SW of 2010 read with Government Order No.10-SW of 2010, the forums for filing appeal and revision have been provided and, therefore, in view of the availability of the alternate forums under the Scheme, it was not permissible for the petitioner to invoke extraordinary writ jurisdiction of this Court directly without exhausting the remedies provided under the Scheme.

6. Regarding allegation of the petitioner that the private respondent was engaged despite the fact that she had not faced the interview, it is submitted by the official respondents that a proper interview notification was issued and

published indicating the dates for viva voce and all eligible candidates, whose names appeared in the merit list, were interviewed. The official respondents have placed on record Annexure-R-10, which is a list of eligible candidates, who appeared in the interview and were awarded different marks by the Selection Committee. The allegation of the petitioner that the private respondent never participated in the interview is, thus, refuted. To the similar extent is the reply affidavit filed by the private respondent.

7. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that in the face of availability of alternative and efficacious remedy of appeal and revision provided in the Scheme laying down norms for identification of Anganwari Centres and selection of Anganwari Workers/Helpers issued vide Government Order No.07-SW of 2010 dated 18.01.2010, it was not permissible to invoke the extraordinary writ jurisdiction of this Court without first exhausting the aforesaid remedies. Needless to say that in the dispute that arises in respect of selection and engagement of Anganwari Worker/Helper, many a times complicated disputed questions of fact are involved viz. whether the candidate belongs to the hamlet or Ward in a particular Panchayat Halqa where Anganwari Centre is situate; whether the Anganwari Centre in question is situated in hamlet A or Hamlet B or Ward- A or Ward-B. Such complicated disputed questions of fact are admittedly not determined by this Court exercising jurisdiction under Article 226 of the Constitution of India unless there is enough documentary evidence on record to that extent. On this solitary ground only, I could have relegated the petitioner to aforesaid remedies but having regard to the fact that this petition is pending in this Court for the last more than ten years, it would be travesty of justice to send the parties to litigate the issue yet again from the beginning.

8. As is evident from the advertisement notification, the Anganari Centre has been sanctioned for hamlet 'Padran and Jakala', which is comprised of Ward Nos.5 and 6 of Panchayat Halqa Badakan, ICDS Project Darhal. As per the norms of selection issued by the official respondents vide Government Order No.07-SW of 2010 read with Govt. Order No.10-SW of 2010, unit of selection is 'hamlet' and not 'ward' and therefore, the candidates belonging to the hamlet are eligible to participate in the selection process for the post of Anganwari Worker/Helper located in the hamlet concerned. True it is that the hamlet is not defined anywhere in the Scheme or elsewhere and could be taken as 'a cluster of houses' known by a distinct name in the village. Such hamlet may be comprised in one or more than one ward.

9. That being the clear position, the plea of the petitioner that the private respondent belongs to Ward No.6 and, therefore, ought not to have been considered, is without any substance. Once it is not in dispute that the private respondent belongs to hamlet 'Padran and Jakala' and the Anganwari Centre in question is also situated in such hamlet, there is no gainsaying the fact that the private respondent is eligible and was rightly considered along with petitioner

and other candidates belongings to the hamlet for selection in question.

10. The other plea of the learned counsel for the petitioner that the private respondent came to be selected without facing the interview is also not borne out from the record. Annexure R-10 appended with the reply affidavit of the official respondents clearly indicates names of the persons/candidates, who participated in the process of viva voce and also the marks awarded to them. For Anganwari Centre 'Padran and Jakala', in as many as eleven candidates including the petitioner and private respondents have faced the selection process including viva voce. It is on the basis of this exercise undertaken by the official respondents, a merit list was prepared by the Selection Committee. The merit list of the eligible candidates of 'Pandran and Jakala' clearly indicates that Yasmeen Akhter was the most meritorious candidate in the hamlet and with her merit points 62.49 was placed at serial No.1 followed by Samara Kouser and Salma Shameen. All the three candidates figuring at serial Nos. 1, 2 and 3 were offered opportunity to prove their credentials but they failed to produce their certificates and were, therefore, excluded from the zone of consideration.

11. It is pertinent to mention here that on the basis of the aforesaid merit list, candidate with highest merit was shown selected and the select list was duly published in the daily newspaper. It is true that when Yasmeen Akhter could not produce the original documents, candidates at serial No.2 and 3 were considered. Samara Kouser faced the same problem as she, too, could not produce her original documents and, therefore, abandoned her claim. Salma Shameem having married outside the Tehsil during currency of the selection process was not considered for engagement. The private respondent being next in the order of merit was offered engagement as Anganwari Worker for Anganwari Centre in question.

12. So far as the petitioner is concerned, she is no match to the private respondent insofar as her academic merit is concerned, she has obtained 36.40 points whereas the private respondent has obtained 40.46 points. In the viva voce, the petitioner has been awarded 9 points whereas the private respondent has been awarded 13 points. The points awarded in the interview are almost proportionate to the academic merit of the petitioner and the private respondent. Even if, we equalize the points in viva voce awarded to the petitioner and private respondents, yet the petitioner will lag behind the private respondent by few points. Otherwise also, between the private respondent and the petitioner a candidate, namely, Kouser Parveen is intervening having merit of 47.68 points.

13. Viewed from any angle, the petitioner does not have any chance of selection even if this Court were to declare selection and engagement of the private respondents bad in the eye of law.

14. Viewed thus, I am of the considered view that not only the petitioner lacks necessary locus to call in question the selection and engagement of the private respondent as Anganwari Worker in Anganwari Centre in question, but has

otherwise no case on merits. It is true that the entire record, particularly in relation to the process of interview is not available in the office of the CDPO but we cannot lose sight of the fact that the selection pertains to the years 2010 and there is possibility of such record having been lost or misplaced somewhere. However, in the given facts and circumstances, I see no reason to suspect the process of selection.

15. The documents placed on record by the official respondents along with the reply affidavit, which have gone un-rebutted, clearly indicate the manner in which the selection process was conducted. The private respondent was selected and engaged because she was most meritorious candidate left in the fray for the engagement in question. The petitioner, as is already indicated, was no match to the petitioner whether it was academic merit or performance in the viva voce.

16. This brings me to the contention of the learned counsel for the petitioner that the petitioner being a regular student of MA Arabic in Baba Ghulam Shah Badshah University and having failed to join when she was offered engagement has lost her right to be engaged. The contention of the learned counsel for the petitioner prima facie seems to be borne out from the record. Since in this petition this Court is only called upon to determine the validity or otherwise of the selection process conducted by the official respondents, as such, it would not be appropriate to deal with the situation that may have emerged after the culmination of the selection process.

17. In these circumstances, it would be well within the right of the petitioner to make a complaint to the competent authority as to how a candidate selected and engaged as Anganwari Worker in Anganwari Centre in question has been permitted to abandon the Centre and pursue her studies in the University. I am sure if such a complaint is made, authorities concerned, in particular, District Programme Officer, ICDS Rajouri and CDPO, Darhal shall conduct an enquiry and take appropriate remedial measures. In the event, official respondents find that the private respondent has lost her right to continue in engagement because of the developments subsequent to her engagement and withdraw her engagement after serving a show case notice upon her, the position of Anganwari Worker in question shall be put to selection by issuing fresh advertisement notification.

18. The writ petition shall stand disposed of in the above terms.