

(2008) 10 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 35, 36, 335 Of 2008 & CMP No. 77, 78, 600
Of 2008 LPA No. 137 Of 2008 & CMP No. 105 Of 2008

Shahmali Begum & Anr.

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 18-10-2008

Acts Referred:

Citation : (2009) 1 JKJ 132

Hon'ble Judges : Manmohan Sarin, C.J and M.Yaqoob Mir, J

Bench : Division Bench

Advocate : Shakeel Sarwar Wani, M.A.Wani, M.A.Qayoom, Advocates appearing for the Parties

Judgement

Manmohan Sarin, C.J.—By this common judgment LPA no.36/2008, LPA no.35/2008 and SWP no.335/2008 filed by Shahmali Begum

and LPA no. 137/2008 filed by Zoona Begum are being decided together with the CMPs made in the respective LPAs and the SWP. This is

being done since common questions of fact and law arise in these LPAs and the SWP.

2. Vide order dated May 20, 2008 passed in LPA no.36/2008, recognizing that the controversy involved in SWP no.335/2008 and the appeals

surrounded the same issue, the writ petition was directed to be withdrawn from the learned Single Judge to be heard and disposed of along with

these appeals.

3. Before we notice the specific orders impugned in the appeals and the writ petition and the reliefs sought therein, the facts which have led to this

quagmire of litigation, which are rather in a narrow compass, may be noticed.

4. Shahmali Begum and Zoona Begum, among others, were prospective aspirants for engagement as Anganwari Worker in the Anganwari Centre

Bhat Mohalla situated in Panchayat Halqa Manzgam, Kupwara, Project Ramhal. In response to the advertisement notice issued in the year

2005, Shahmali Begum and Zoona Begum, among others, had applied for the same. Shahmali Begum was found to be more meritorious; she had

scored 490 marks in her Matriculation Examination in 1994. She was selected and appointed vide order No.CDPO/R/Estt/17578 dated June 29,

2006 as Anganwari Worker for Bhat Mohalla, Manzgam. Zoona Begum complained against the said engagement order of Shahmali Begum

contending that the latter not being a resident of Bhat Mohalla but Arambagh was not eligible. She also filed a writ petition bearing SWP

no.992/2006. The said writ petition was disposed of on December 6, 2006, with the following operative direction:

Director Social Welfare shall enter upon the controversy and after hearing all parties regarding the factum of residence of Shahmali Begum, i.e.

respondent no.6 therein, pass appropriate orders in the matter within three weeks.

5. The complaint of Zoona Begum was that Shahmali Begum was a resident of Arambagh and was thus not entitled to be appointed as Anganwari

Worker in the Centre of Bhat Mohalla, Manzgam. The Director, Social Welfare, however, it is claimed, without giving an opportunity of hearing to

Shahmali Begum and holding a proper enquiry, passed orders on January 22, 2007, rescinding appointment order of Shahmali Begum and

appointed Zoona Begum as Anganwari Worker for the Bhat Mohalla, Manzgam centre vide order dated January 23, 2007. The Director, on

perusal of the records, observed that Shahmali Begum had actually applied for Anganwari Centre, Arambagh and had managed to tamper the

application form and get herself engaged in Bhat Mohalla.

This led to the passing of the above order rescinding the order of appointment of Shahmali Begum and appointment of Zoona Begum.

6. Shahmali Begum, thereafter, applied to the Deputy Commissioner, Kupwara for verification. The application was forwarded to Tehsildar and

Patwari for verification of residence. The Patwari visited the spot and reported that both Shahmali Begum and Zoona Begum were living in Bhat

Mohalla Manzgam and that distance between their houses was about 100 feet. Shahmali Begum, after obtaining the report from the revenue

department, submitted an application to the Minister for Social Welfare Department for investigation in the matter. The Minister forwarded her

application to the District Programme Officer of ICDS, Kupwara. The said officer submitted a detailed report to the Personal Secretary of the

Minister, mentioning that Shahmali Begum and Zoon Begum were residents of one and the same Mohalla, Shahmali Begum had better merit and

was accordingly considered for appointment. However, pursuant to the Court directions given in the writ petition, SWP no. 992/2006 the

Director, Social Welfare Department, cancelled the order of appointment of Shahmali Begum and issued direction for engagement of Zoon

Begum. Following the above verification with regard to the residence and the report of District Programme Officer of ICDS, Kupwara, the

Programme Officer, ICDS, on instructions, cancelled the order of engagement of Zoon Begum and directed issuance of fresh order of

engagement in favour of Shahmali Begum. It is in these circumstances that on March 28, 2007 order for engagement of Shahmali Begum as

Anganwari Worker was directed to remain intact with a further direction that she be paid honorarium for the period she had worked.

7. Shahmali Begum contending to be entitled to honorarium and having not been paid, filed, SWP no. 1408/2007. Zoon Begum also filed SWP

no. 265/2007 praying to the Court that official respondents be directed not to cancel her appointment order dated January 23, 2007. The above

writ petitions were decided by the learned Single Judge vide a common judgment dated February 29, 2008 with a direction that Zoon Begum be

allowed to perform her duties and the order of the Court shall not prevent Shahmali Begum to challenge the order of the Director, Social Welfare,

on any admissible ground before the competent forum. Further, that if she is found entitled to wages as admissible under rules from the date she

joined as Anganwari Worker at Bhat Mohalla, the same be released in her favour. Shahmali Begum has challenged the aforesaid judgment dated

February 29, 2008 in LPA no. 36/2008 contending that she was entitled to continue on her engagement as both, herself and Zoon Begum, are

residents of Bhat Mohalla, Manzgam. The writ petition bearing SWP no. 265/2007 filed by Zoon Begum be dismissed. Accordingly, she prays in

the LPA that her SWP no. 1408/2007 seeking honorarium be allowed and the SWP no.265/2007 filed by Zoon Begum be dismissed.

8. Let us notice now briefly the prayers made in other connected appeals and the writ petition.

(i) LPA no.35/2008:

In this LPA Shahmali Begum assails specifically the judgment passed in SWP no.265/2007 on grounds similar to those taken in LPA no.36/2008

on facts and grounds which are narrated in the preceding paragraphs. The basic contention being that both candidates having been found to be

residing in Bhat Mohalla, Shahmali Begum being the meritorious one, deserved to be appointed and order appointing her is sought to be justified.

Prayer is made for dismissal of SWP no. 265/2007 and SWP no. 1408/2007 being allowed. (ii) LPA no.137/2008:

Appellant Zoon Begum in this LPA challenges order dated February 29,2008 passed by the learned Single Judge in SWP no.1408/2007 and

265/2007 on the ground that the impugned judgment and order is vitiated in law to the extent it allows Shahmali Begum to reagitate the matter by

challenging the order of the Director, Social Welfare bearing no. DSWK/WP/2007/1983033 dated January 22,2007. It is submitted that as

Shahmali Begum had completely failed to challenge the said order in her writ petition, SWP no.1408/2007, she could not now be permitted to

challenge the same on principles of constructive resjudicata and waiver. Further that there should be an end and finality to the litigation and law

comes to the assistance of only those who are vigilant. It is urged that Shahmali Begum taking cue from the observations of the learned Single

Judge in the impugned judgment, has filed a fresh writ petition bearing SWP no.335/2008 challenging respondent no.2's (Director, Social

Welfare's) order dated January 22,2007 and that of respondent no.4's (Programme Officer's) order dated January 23, 2007. It was, therefore,

prayed that the impugned judgment be set aside to the extent that it allows Shahmali Begum to challenge the order of the Director, Social Welfare.

The judgment is further assailed on the ground that despite being aware and conscious of pendency of SWP no.265/2007 and the order of status

quo dated March 8, 2008, the engagement order dated March 26, 2007 of Shahmali Begum being stayed, Shahmali Begum filed a writ petition

bearing SWP no.1408/2007 concealing all material facts and she managed to get an ex parte status quo order on October 8,2007. Zoona Begum,

therefore, seeks quashing of the order passed by the learned Single Judge in SWP no. 1408/2007, to the extent it permits Shahmali Begum to

challenge the order of Director, Social Welfare, dated January 22, 2007. Further, dismissal of SWP no. 335/2008 filed by Shahmali Begum is

sought. (iii) SWP no.335/2008:

Shahmali Begum filed this writ petition seeking quashment of orders dated January 22, 2007 and January 23, 2007 issued by respondents 2 and 4,

namely, the Director, Social Welfare and Child Development Project Officer. She prays for being permitted to continue as Anganwari Worker for

Anganwari Centre, Bhat Mohalla, Manzgam and be paid the honorarium for the period she has worked and future payment be made without any

impediment or obstruction. She contended that the order dated January 22,2007 had been passed at her back and without giving her an

opportunity of being heard. It had been erroneously observed that she got herself engaged by tampering the application form. The order dated

January 23, 2007 was a sequel to the order dated January 22,2007. Both the orders suffer from legal infirmities and were liable to be set aside.

The grounds set forth here are similar to the grounds mentioned in LPA no.36/2008.

9. Having noticed the factual matrix in this quagmire of litigation for proving the respective contentions and reliefs sought in the LPAs filed as also

the pending SWP, the quint essential facts, shorn of unnecessary details, for appreciation of the controversy governing this litigation may be

summarized.

10. Shahmali Begum and Zoona Begum were the prospective aspirants for engagement as Anganwari Workers in Bhat Mohalla, Manzgam.

Shahmali Begum is found to be more meritorious than Zoona Begum based on her qualification, i.e., Matriculation and the marks obtained therein.

She had secured 61.25% marks in her Matriculation examination. We have examined the original record. The application form for engagement as

Anganwari Worker as on record shows that the application was for the village Arambagh, town Manzgam. The address given by her was also

Arambagh"" Resident of Manzgam. It is this application form which has been the

origin of the controversy. This is because the description of Mohalla where Arambagh was mentioned has been scored out and in a different ink over it ""Bhat Mohalla"" has been written. Similarly, the address has been changed from resident of Arambagh Manzgam by overwriting ""Bhat Mohalla"" over Rambagh. In the undertaking signed also next to Manzgam, Bhat Mohalla has been added. These are glaring interolations and tempering of record visible to the naked eye. Based on the merit position, Shahmali Begum was selected for Bhat Mohalla, Manzgam. On the complaint of Zoon Begum and on perusal of the records and finding the tampering in the application form of Shahmali Begum led to the passing of the order dated January 22, 2007. It was pursuant to the direction given by the High Court in the writ petition filed by Zoon Begum, being SWP no.992/2006, that the Director, Social Welfare in his order recorded the finding that Shahmali Begum had tampered the application form. Further, it was patent and manifest from the application form on record that she had applied for ""Arambagh Centre"" and had managed to get herself engaged in Bhat Mohalla, Manzgam by the resultant tampering of the application form.

11. We have already noted the subsequent developments and the litigation which followed leading to the order rescinding the engagement of

Shamali Begum and appointment of Zoon Begum. This was followed by representation of Shahmali Begum to the Minister; who directed a further

detailed enquiry being conducted. In this enquiry, a finding was returned, that Shahmali Begum and Zoon Begum both were residents of Bhat

Mohalla, Manazgam. Instructions were thereupon issued for appointment of Shahmali Begum being more meritorious. This was despite the earlier

order having been passed appointing Zoon Begum based on the directions given in the writ petition and the findings of the Director, Social

Welfare. This action led to Zoon Begum getting an order by which she was allowed to continue in her job and Shahmali Begum was directed to

be paid for the period she had worked.

12. Having considered the matter in its entirety and having examined the original record before us, we find the tampering of the application form of

Shahmali Begum changing the residence from Arambagh to Bhat Mohalla, Manzgam to be clear and evident to the naked eye. In preceding para

10, we have set out in detail the interpolations and changes. It is trite said that men may lie but circumstances do not. From the record, it is

apparent that as a result of the interpolations, manipulations, overwritings and tampering of the application form the only person who actually

gained was Shahmali Begum, who got engagement under the scheme, which she would not have been entitled to, having shown her residence at

Arambagh or having sought employment in Arambagh Centre.

13. We also find that in this case Zoon Begum is clearly eligible for appointment being a resident of Bhat Mohalla, Manzgam even though having

been found with comparatively less merit as compared to Shahmali Begum. In our view, leaving aside all other legal questions and objections,

Shahmali Begum would be disentitled from seeking any relief in writ jurisdiction once her application form is found to be tampered and the

tampering being for her benefit would leave no one in doubt as to her being responsible for the tampering or the same having been done at her

behest, to benefit her, by others. In these circumstances, to our view, the representation to the Minister resulting in directions being issued which

have negated the orders passed pursuant to the directions given by the Court in the writ petition deserve to be deprecated.

14. In the view we have taken it would not be necessary to pronounce on the objections raised to SWP no. 335/2008 being barred by principles

of constructive res judicata. In our view, it is also not necessary to grant any further opportunity to Shahmali Begum to challenge and assail the

orders passed by the Director, Social Welfare which opportunity was accorded by the learned Single Judge, In a relatively simple matter, where

the original form submitted by Shahmali Begum is found to be with interpolations and tampering with a view to derive the benefit of getting

engagement at Bhat Mohalla, to which she would not have been entitled, based on the declaration of her residence at Arambagh, it does not call

for any further opportunity being granted to explain the discrepancies. Shahmali Begum has already had the opportunity to explain the said

discrepancies in the numerous petitions and appeals which have been preferred. Accordingly, fair opportunity already stands granted to her and, in

the circumstances, she cannot be heard of complaining on that count. Relatively, a simple matter relating to the question of residence has been

permitted to be enmeshed into quagmire of multiple litigation resulting in as many as four writ petitions and three LPAs. It is time that it is brought to an end.

15. In view of the foregoing discussion, we are of the view that the order passed by the learned Single Judge in SWP no.1408/2007 and SWP

no.265/2007 deserves to be maintained in so far as it directs the continuance of the engagement of Zoona Begum and allows her to perform her

duties. The liberty granted to Shahmali Begum for challenging the order of Director, Social Welfare shall stand withdrawn.

16. In view of the foregoing, LPA nos. 36/2008, 35/2008 and SWP no. 335/2008 alongwith the connected CMPs filed by Shahmali Begum shall

stand dismissed while LPA no. 137/2008 filed by Zoona Begum shall stand disposed of in terms of the above directions.