
(2009) 04 J&K CK 0034
In the Jammu And Kashmir High Court

Shakeela Akhter	Vs	APPELLANT
State of J. and K. and Others		RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Citation : (2009) 2 JKJ 522

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muzaffar Hassain Attar, J.—The controversy involved in this petition relates to engagement to the post of Anganwari Workers for

Anganwari Center, Chadipora, Chitragam, ICDS project Shopian. Notification under No. DIPK/6261 dated February 17, 2005, came to be

issued by respondent No. 2, Director, Social Welfare, Kashmir where by and where under application were invited from eligible female candidates

for engagement of Anganwari Workers on honorarium basis for Anganwari Centers in different ICDS projects located in the districts of Kashmir

Province. Amongst the eligibility conditions, one of the districts of Kashmir State and should belong to permanently reside in the Panchayat Halqa

or Ward (in the case of towns/cities), where Anganwari Centre was located. The advertisement notification further provided that location of

Anganwari Centres, for which engagement of Anganwari Worker was to be made, would be available in the office of the concerned Child

Development Project Officers/Programme Officers. The respondent No. 5 came to be engaged as Anganwari Worker in Anganwari Centre

Chadipora, Chitragam by respondent No. 4 vide order No. ICDS/spn/estt. -

051/245-47 dated August 20, 2005. The petitioner feeling aggrieved of the engagement of respondent No. 5 filed complaint on the ground that respondent No. 5 does not belong to Chadipora and, accordingly, sought cancellation of her engagement and sought her own engagement being resident of Chadipora, Chitragam. A suit was instituted by the present petitioner before the Sub-ordinate Civil court in which besides official respondents, respondent No. 5 was also impleaded as party defendant. Following reliefs were sought in the said suit:

In the premises, it is therefore prayed, that the appointment order No. ICDS/Sin/Estt/057245-47 dated 20.8.2005 being illegal and against said norms of scheme be declared null and void and decree for mandatory injunction commanding the defendants to select/appoint plaintiff. Further the order from Lok Adalat dated 7.8.200 (sic) in a case titled Mubeena Anjum v. State of J & K and Ors. be recalled, set aside and any other relief which is just and proper in circumstances of the case be passed in favour of the plaintiff and against the defendants with costs in the interest of justice.

2. In the said suit, written statement was filed by official respondents 1 to 4 in which, at para 7, stand was taken by the said official respondents that the petitioner as per report of Tehsildar belongs to Chaddipora halqa Chitragam whereas defendant/respondent No. 5 belongs to Chaddipora halqa Sugan. However, the petitioner laid a motion for withdrawal of the said suit which was pending on the files of Learned Munsiff, Pulwama.

The application seeking withdrawal of the suit was allowed by the Learned trial Judge vide order dated June 4, 2008 and the suit was ordered to be dismissed as withdrawn. It was also recorded in the said order that the plaintiff has sought withdrawal of the suit without reserving any right for institution of a fresh suit. The respondent No. 5 also instituted a suit which was also pending on the files of Learned Munsiff, Pulwama and the said suit was also withdrawn by respondent No. 5. The instant writ petition came to be filed before this Court on June 13, 2008 after withdrawal of the suit filed by the petitioner. In the writ petition, following reliefs are sought:

- a. Writ, order or direction in the nature of certiorari for quashing the order of Lok Adalat dated 07.08.06 passed in the suit titled Mubeena Anjum v. State and Ors. and all other orders which may be issued on the subject

regarding the engagement of respondent No. 5 with further directions to the respondents to produce the record for the examination of the Court.

b. Writ, order or direction in the nature of Mandamus commanding the respondents to issue order of engagement in favour of the petitioner as

Anganwadi Worker for Anganwadi Centre Chitragam Mohalla Chidipora Tehsil Shopian with further directions to pay the salary to the petitioner

for the period she has worked over the last more than two years at the said Anganwadi Centre with further directions to allow her to continue to

work and pay the salary in future without any interruption.

3. Learned Counsel for the petitioner, after arguing the case, submitted that he does not press relief (a) of the writ petition as no order has been

passed by the Lok Adalat in the suit of respondent No. 5. His statement is taken on record and the writ petition, so far as it pertains to relief (a), in

this backdrop to this extent does not survive. The material which has been brought on record of the writ petition by petitioner shows that

Chadipora is mohalla of village Chitragam to which petitioner belongs and village Chadipora falls in halqa Sugan and is allegedly a different village

to which respondent No. 5 belongs. The entire controversy raised in this writ petition receives on the question as to whether respondent No. 5

belongs to village Chadipora in which Anganwari Centre is located? One of the communications placed on the writ record issued by Deputy

Director (ICDS) bearing No. DSWK/CS/07/3415-17 dated June 12, 2007 addressed to Mr. M.A. Gattoo, Public Prosecutor, District &

Sessions Court, Pulwama Reveals that the petitioner is permanent resident of halqa Chitragam, Mohalla Chadipora as she possesses the PRC of

the same Mohalla and panchayat halqa, while as respondent No. 5 is a resident of village Chadipora halqa Sugan. The official respondents on the

basis of the record have taken the stand that the petitioner belongs to Mohalla Chadipora, village and halqa Chitragam and respondent No. 5

belongs to village Chadipora, halqa Sugan. The respondent No. 5 has also filed objections to the maintainability of the writ petition. She has placed

On record communication addressed by Tehsildar Shopian to Child Development Project Officer, ICDS Shopian, dated May 9, 2006 in which

the Child Development Project officer ICDS Shopian is informed that on verification conducted by Naib Tehsildar, Zainpora it is revealed that the

petitioner is residing with her husband on outskirts of village Chitragam these families are part of village Chitragam and they are enlisted in

cholabandi register of village Chitragam but people call it Chidipora Mohalla. This part of village is not a revenue recorded village, further the

complainant and her husband produced PRC certificates which show their residence at Chitragam. The said communication further reveals that on

the side of Shopian Zainpora road is a revenue recorded village Chidpora which is included with patwar halqa Sugan and respondent No. 5 is

residing in the village with her father. The said village falls within the territorial jurisdiction of panchayat halqa Chitragam. The respondent No. 5 has

along with her objections also placed on record SRO 284 dated August 14, 1997 which determines the panchayat halqas. At serial No. 9 is

shown panchayat halqa Sugan comprising of villages Sugan, Dragger and Heffkuri whereas at serial No. 12 panchayat halqa Chitragam is shown

which comprises of villages, Chitragam, Chedipora and Kashwa. The merit position as shown in communication bearing No. Pop/ICDS-

2006/983-84 dated September 15, 2006 addressed by Programme Officer, Pulwama to the Hon'ble Minister for Social Welfare Department,

shows that the petitioner is possessing 32.58 points while as respondent No. 5 is possessing 34.34 points. Thus, admittedly, respondent No. 5 is

having superior merit than that of the petitioner.

4. Heard Learned Counsel for the parties and considered the matter. The advertisement notification which has become basis for selection reveals

that a candidate who is to be selected and engaged as Anganwari Worker on honorarium basis must belong to permanently reside in the panchayat

halqa where Anganwari Centre is located. The entire confusion in this case has cropped up because of the reason that village Chadipora falls within

halqa Sugan which is a patwar halqa and the said village falls within panchayat halqa Chitragam. The consideration zone for making selection and

engagement for the post of Anganwari Worker being panchayat halqa, respondent No. 5, admittedly belongs to the said panchayat halqa, has

been rightly selected and engaged as Anganwari Worker for Anganwari Centre of Chadipora Chitragam.

5. Learned Counsel for the petitioner, however, made an effort to canvass his point that panchayat halqa, as referred to in the Advertisement

notification dated February 17, 2005, has reference to ""where Anganwari Centre is located"" which in the wisdom of the Learned Counsel would

mean the localized place within the panchayat halqa where the Anganwari Centre is to be established. On the plain reading of the advertisement

notification, it becomes clear that the consideration zone for making selection and engagement to the post of Anganwari Worker is panchayat halqa

where Anganwari Centre is located. Admittedly, respondent No. 5 belongs to panchayat halqa where the Anganwari Centre is located, so, no fault

can be found with the engagement of respondent No. 5.

6. The stand taken by the official respondents does not show that the engagement order of respondent no 5 has been cancelled. It appears that on

the application filed by the petitioner, the engagement order of respondent No. 5 was kept in abeyance. The said action of the official respondents

would be bad in law as respondent No. 5 was not put on notice before keeping her engagement order in abeyance. The said action of official

respondents cannot be countenanced by law.

7. This writ petition, however, would also suffer dismissal for the reason that the petitioner had challenged the engagement order of respondent No.

5 in a suit which she has withdrawn without seeking any liberty from the trial court for filing appropriate proceedings. Reference in this behalf is

made by Learned Counsel for respondent No. 5 to a judgment of this Court reported in 2008 SLJ 5 which mandates that on the principle of

Order 23 Rule 1 the subsequent proceedings are not maintainable.

8. In view of the above discussion, this writ petition does not survive and is, accordingly, dismissed.