
(2020) 03 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 608 Of 2016, IA No. 1 Of 2016

Sunita Kumari

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Citation : (2020) 03 J&K CK 0005

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : P.N. Bhat, Vishal Bharti

Final Decision : Disposed Off

Judgement

1 Feeling aggrieved of the order No. ICDS/SB/759-62/2011 dated 30.11.2011, the petitioner filed the instant petition seeking quashment of the said

order and also a direction to the official respondents to consider her for her conversion/appointment from Anganwari Helper to Anganwari Worker in

Anganwari Centre Makhol, Ward No.3, Halqa Panchayat Nallah.

2 Briefly stated the facts, leading to the filing of this petition, are that the petitioner having been engaged as Anganwari Helper in Anganwari Centre

Makhol vide order dated 19.01.2006 has been continuing as such since her appointment. It is pleaded that, in the absence of regularly appointed

Anganwari Worker, the petitioner had been running the said Centre single handedly. It is further submitted that services of one Nisha Sharma, who

was working as Anganwari Worker in Anganwari Centre Thumba Garan Nallah, came to be terminated and in her place, respondent No.5 was

temporarily engaged as Anganwari Worker for a period of 60 days or till the selection is made by the District Selection Committee constituted by the

Government. The engagement of respondent No.5 in Anganwari Centre Thumba Garan Nallah was resented by the villagers and with a view to

accommodate her, the official respondents vide order dated 30.11.2011 (supra), transferred and adjusted respondent No.5 as Anganwari Worker in

Anganwari Centre Makhhol against available vacancy.

3 It is the grievance of the petitioner that temporary arrangement whereunder respondent No.5 was brought as Anganwari Worker in Anganwari

Centre Makhhol continues even after a lapse of more than eight years. The petitioner filed the instant petition claiming that she being Anganwari

Helper is eligible to be upgraded to the post of Anganwari Worker in terms of Government No.7-SW of 2010 dated 18.01.2010.

4 The respondents have not filed objections. However, Mr. Vishal Bharti, learned Dy.AG appearing for the official respondents assisted this Court on

the basis of the official communications placed on record by the petitioner.

5 Heard learned counsel for the parties and perused the record.

6 Admittedly, the petitioner is working as Anganwari Helper in Anganwari Centre Makhhol against the available vacancy since 19.01.2006 as is

apparent from the order of her engagement appended with this petition as Annexure- A. It is also not in dispute that the Anganwari Centre Makhhol

right from its establishment is without regularly appointed Angawari Worker. It so happened that in the year 2010, services of Nisha Sharma, who was

working as Anganwari Worker in Anganwari Centre, Thumba Garan Nallah were terminated and with a view to make the said Centre operational,

respondent No.5 was engaged as Anganwari Worker temporarily for a period of 60 days or till the selection is made. This is apparent from the

communication of the Programme Officer ICDS, Rajouri dated 28.10.2010 which is appended with this petition as Annexure C. It further transpires

that, for the reasons best known to the official respondents, respondent No.5 came to be transferred from Anganwari Centre Thumba Garan Nallah

and posted in Anganwari Centre, Makhhol against the available vacancy till further orders. Obviously, the engagement of respondent No.5 was on

temporary basis. The petitioner, who was working as Anganwari Helper in the said Centre and had been running the same single handedly since her

engagement, came to this Court seeking her regularization/upgradation as Angawari Worker in the said Centre by placing reliance on the Government

Order No. 7-SW of 2010 dated 18.01.2010.

7 Before proceeding further, it would be appropriate to reproduce relevant extract of order dated 18.01.2010 (supra), which reads as under:

“Wherever any vacancy of Anganwari Worker arises due to the resignation, promotion or for any other reason other than death of the workers, the same shall be filled up from amongst the Helpers of the Village subject to Helper possessing a minimum qualification of Matriculation and experience of not less than 10 years at the time of accruing of vacancy”

8 From a perusal of the extracted portion of the order aforesaid, it clearly transpires that before a Anganwari Helper could put forward a claim for Anganwari Worker, she/he is required to satisfy the following criteria:

- (i) She/he must be a Helper serving the Department in the village concerned;
- (ii) She/he must possess a minimum qualification of Matriculation; and
- (iii) She/he must possess experience of not less than 10 years at the time of accruing of vacancy.

9 Admittedly, the petitioner satisfies the first two conditions, but was lacking 10 years experience on the date of accrual of vacancy i.e in the year 2010. She has also raised a grievance against the engagement of respondent No.5 as Anganwari Worker, though, temporary on the ground that she does not belong to the village concerned and is otherwise not eligible to hold the said post.

10 Learned counsel appearing for the respondents, however, submits that the request of the petitioner for her up-gradation as Anganwari Worker in Anganwari Centre Makhhol was rightly not accepted by the official respondents as on the date of accruing of vacancy of Anganwari Worker i.e year 2010, the petitioner was not possessing the requisite experience of 10 years. It is submitted that she was engaged in the year 2006 and, therefore, had barely completed four years experience at the relevant point of time.

11 In the backdrop of aforesaid submissions when the case of the petitioner is examined, it is seen that there is no dispute with regard to the fact that the vacancy of Anganwari Worker in Anganwari Centre Makhhol had not fallen vacant due to any resignation/promotion or for any other reason other than the death of the worker, but was lying vacant as there was no process of selection initiated by the respondents. The said post has remained

vacant for the last more than a decade because of the negligence on the part of the official respondents to notify the said vacancy and fill up the same

in accordance with the rules. May be, the respondents were not interested to fill up the said post on regular basis as they wanted to accommodate

respondent No.5 on the said post. The engagement of respondent No.5, if is held to be permanent, would clearly be backdrop appointment having been

made without following the prescribed procedure. It also not in dispute that the petitioner right from her engagement as Anganwari Helper in the year

2006 had been running the said Centre single handedly without there being any Anganwari Worker having been engaged and has, thus, acquired

sufficient experience in running the Centre.

6 In these circumstances, it would be appropriate to dispose of this writ petition by directing the respondents to take effective steps for filling up the

post of Anganwari Worker in the Anganwari Centre after following the prescribed procedure i.e invitation of applications and considering all the

eligible candidates in terms of the governing ICDS rules and regulations. Ordered accordingly. However, till the regular selection process is concluded

and eligible candidate on the basis of merit is appointed, the Centre aforesaid shall be manned by the petitioner, who shall work as Anganwari Worker

on the same terms and conditions on which respondent No.5 had been working. This would mean that temporary engagement of respondent No.5,

who is rank outsider in the village, shall stand terminated. Official respondents to take requisite steps and conclude the selection process within a

period of two months from the date a certified copy of this order is made available.