
(2019) 03 J&K CK 0083

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 656 Of 2010, IA 943 Of 2010, 01 Of 2018

Sushma Choudhary

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Citation : (2019) 03 J&K CK 0083

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Himanshu Beotra, Ravinder Gupta, Aruna Thakur

Final Decision : Disposed Off

Judgement

1. Vide advertisement Notice No.3 of 2009 dated 02.5.2009 issued by respondent No.4, apart from others, two posts of Rehbar-e-Taleem (Ret) in Middle School, Manna falling in zone Arnia, were notified . The petitioner along with other candidates including the respondent Nos. 6 and 7, responded to the aforesaid notification. The Zonal Education Officer, Arnia , respondent No.5 prepared the merit panel and placed the respondent Nos. 6 and 7 at serial Nos. 1 and 2 followed by the petitioner who was put at serial No.3. As against the respondent Nos. 6 and 7, respondent No.5 in the remarks column noted " she is residing at Manna as per PRC and " he is residing at Manna as per PRC" respectively. The panel is claimed to have been displayed for objections and thereafter sent to respondent No.3 through respondent No.4 for finalisation. The petitioner objected to the empanelment of the respondent Nos. 6 and 7 to the respondent Nos. 3 and 4. The empanelment of respondent Nos. 6 was objected on the ground that she was not actually residing in village Manna at the time of issuance of advertisement notification but was actually residing at House No. 101 Private, Rampora, Last Morh, Gandhi Nagar, Jammu. With regard to respondent No.7, it was alleged that he too was not actually residing in village Manna but was residing at House No. 823/5, Nanak Nagar, Jammu. It was also alleged by

the petitioner that the qualification of graduation possessed by respondent No.7 was forged and purportedly obtained from Vinayaka Mission University.

2. On the objections raised by the petitioner, respondent No.3 called for the report from respondent No.4. In response, respondent No.4 vide communication No. CEOJ/9204 dated 2.7.2009 submitted his report to respondent No.3. It appears that acting upon the report of respondent No.4, the respondent No.3 finalised the panel and consequently, formal orders of engagement in favour of the respondent Nos. 6 and 7 were issued.

3. Aggrieved, the petitioner is before this court by way of instant writ petition. The empanelment of the respondent Nos. 6 and 7 and their consequent engagement as ReT in Middle School, Manna, is called in question on the grounds which the petitioner had taken in her objections filed before respondent Nos. 3 and 4. Placing reliance upon voter list of Lok Sabha Parliamentary Election of the year 2009, it is contended that on the date of issuance of advertisement notification in question, the respondent No.6 was actually residing at Satwari, Jammu and not in village Manna. Similarly, reliance was placed on voter list of Lok Sabha Parliamentary Election prepared for the year 2008 in which the name of respondent No.7 has been indicated in Nanak Nagar, Jammu to contend that respondent No.7 too was not actually and physically residing in village Manna at the time of issuance of advertisement notification and even thereafter. The petitioner has also filed an application for placing on record information which he received from Vinayaka Mission Research Foundation (deemed University) in response to application filed by the petitioner under RTI Act. From perusal of the information supplied by the aforesaid University vide its communication No.153/PIO/2018 dated 8.6.2018, it is evident that marks sheets of Ist year, 2nd year and 3rd year B.A. shown to be purportedly issued in the name of respondent No.7 are fake and not issued by the Directorate of Distance Education of the University.

4. The respondents have contested the petition by filing their objections. The official respondents have filed their objections justifying the selection of respondent Nos.6 and 7 on the basis of available documents which were produced by the candidates at the time of selection. The respondent Nos. 6 and 7 have also justified their selection on the ground that as per PRCs issued by the competent authority, they have been shown to be the residents of village Manna, which fact has been further fortified by the certificate of the Tehsildar concerned issued indicating the residence of the respondent Nos. 6 and 7 at village Manna. Strong reliance has been placed on the report of the Chief Education Officer, Jammu prepared pursuant to the direction issued by the respondent No.3 i.e. the Director School Education, Jammu.

5. Having heard learned counsel for the parties and perused the record, I am of the view that there are serious disputed question of fact which needs determination in this petition. As per Rehbar-e Taleem Scheme promulgated vide Government order No.396-Edu of 2000 dated 28.4.2000 amended from time to

time, the unit of selection is village and under certain conditions as laid down in Government Order No.288-Edu of 2009 dated 8.4.2009, the habitation meeting certain requirements can also be taken as unit of selection. It is not in dispute that in the instant case, the panel was prepared on the basis of revenue village and all eligible candidates of the revenue village Manna were entitled to be considered. The respondent Nos. 6 and 7 claiming to be the residents of the aforesaid village on the strength of their PRCs, submitted their application and sought consideration. The petitioner objected to their candidature on the ground that they were no longer residents of village Manna and had taken up their residence in Satwari and Nanak Nagar areas of Jammu city. The aforesaid submission was substantiated by the petitioner by placing on record the voter list of the year 2008-2009. That apart, objection was taken by the petitioner with regard to the validity of degree of respondent No.7 as well. The matter was considered by the respondent No.3 who after calling a report from respondent No.4, finalised the panel.

6. I have carefully gone through the report prepared by the Chief Education Officer, Jammu and am of the considered view that the Chief Education Officer, Jammu has not addressed the issue raised by the petitioner in proper perspective. The report is more concealing than revealing in nature.

7. In view of the fact that the objections raised by the petitioner have not been properly considered by the respondent No.2, this court is left with no other option but to dispose of this petition by providing as under:

i) An enquiry into the residence of the respondent Nos.6 and 7 with reference to date of issuance of advertisement notification shall be conducted by a committee of two district level officers i.e. Assistant Commissioner (Revenue)/Additional District Magistrate, Jammu as may be nominated by the Deputy Commissioner, Jammu and the Chief Education Officer, Jammu.

ii) In the enquiry, the petitioner as well as respondent Nos. 6 and 7 shall be provided an adequate opportunity of being heard and to place on record the documents in support of their respective claims.

iii) The enquiry shall be concluded as far as practicable within a period of six weeks.

iv) The report of the committee shall be submitted to the Director School Education, Jammu who shall take final decision in the matter and return a specific finding with regard to the actual residence of the respondent Nos.6 and 7 at the relevant point of time i.e. the date of issuance of Advertisement Notification. The Director School Education, Jammu shall also get the qualification certificates submitted by the respondent No.7 verified. The degree purportedly issued by the Vinayaka Mission Foundation (deemed University) shall also be got verified.

v) In case, upon enquiry, the respondent Nos. 6 and 7 are found to be actually

residing in village Manna on the date of issuance of Advertisement Notification and the qualification of respondent No.7 is found to be genuine, they shall be permitted to continue in service.

vi) In case the enquiry reveals that the respondent Nos.6 and 7 were not actually residing in village concerned but had taken up their residence outside the village at the relevant point of time, their formal order of disengagement shall be passed forthwith and the petitioner or any other candidate who is/are next in order of merit, shall be appointed/engaged.

vii) The Director School Education, Jammu shall complete the whole exercise within two months from the date he receives the enquiry report from the committee.

8. Disposed of alongwith connected IA(s).