

(2019) 07 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 23 Of 2015, IA No, 25 Of 2015

Taslima Begum

APPELLANT

Vs

State Of Jammu & Kashmir And & Ors

RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Citation : (2019) 07 J&K CK 0027

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R.K.S. Thakur, Pallavi Sharma, Ravinder Gupta

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. In this petition, the petitioner prays for the following reliefs:

â??(i) Treat the appointment/engagement of the petitioner as Rehbar-e-Taleem teacher with effect from 01.12.2004 with all consequential benefits;

(ii) Count the service of the petitioner as Rehbar-e-Taleem teacher with effect from 01.12.2004 and regularized her on permanent basis as general

line teacher after completion of five years service with effect from 01.12.2009 as per the Rehbar-e-Taleem/SSA scheme with all consequential

benefits;

(iii) Fix her salary in terms of pay revision rule (VI pay Revision Rules) with effect from 01.12.2004 as Rehbar-e-Taleem teacher and with effect

from 01.12.2009 as permanent general line teacher with arrears;

(iv) Seniority with effect from 01.12.2004;

(v) Pensionary benefits after her retirement under old lawsâ??.

2. The facts giving rise to the filing of this petition, as narrated by the petitioner in this petition, are that vide Advertisement Notice No.1703-05 dated 12.01.2004, the applications for various posts of ReT available in different schools were notified for selection. The posts of ReTs notified included three posts in Government Middle School, Gangota and one post in Government Primary School, Akhrie both falling in revenue village Alni Gangota, Tehsil Bhalessa. The petitioner claims that she responded to the aforesaid notification and staked her claim against the aforesaid post lying vacant in the twin schools situated in revenue village Alni. The respondents prepared a panel of 16 candidates in the order of merit. The petitioner was placed at Serial No.9 of the said panel, which was prepared for the revenue village Alni Gangota. It is further submitted that another notification was issued by the Zonal Education Officer, Bhalessa on 9.07.2004, whereby three posts of Rehbar-e-Taleem teachers in Middle School Alni and two posts in New Primary School Bonecha in the revenue village Alni Gangota were notified for selection .The petitioner claims that she responded to this advertisement notice as well and the panel of 18 candidates was prepared for the aforesaid schools in which the petitioner was placed at Serial No.9. It is claimed that petitioner and six other candidates challenged both the panels aforesaid in SWP No.1827/2004, which was allowed by Single Bench of this Court on 31.12.2012. The panel of selection prepared by the respondents was quashed and the matter was remitted to the Chief Education Officer, Doda to examine the petitionersâ?? and respondentsâ?? claims on their entitlement to selection and engagement as Rehbar-e-Taleem keeping in view the report of the Deputy Commissioner as also the material that the petitioners and the respondents may additionally produce before him to substantiate their respective claims. This exercise was directed to be completed within a period of four months. It appears that in compliance to the judgment of the Single Bench dated 31.12.2012, a fresh select panel of four candidates, including the petitioner in respect of posts lying vacant in the High School Gangota (earlier Middle School) in pursuance of advertisement notification dated 12.01.2004, has been prepared. The panel drawn afresh placed the petitioner at serial No.2 in the order of merit. The panel aforesaid underwent through different processes and, ultimately, got the approval from the respondent No.2. Consequently, the petitioner was appointed as Rehbari-e-Taleem in Government High School Gangota vide

ZEO's order No.ZEO/ReT/1667-69 dated 26.09.2014. The grievance of the petitioner is that although SWP No.1827/2004 was decided by this court on 31.12.2012, yet the respondents took almost one and a half years to draw the select list and one year and nine months for issuing the engagement order in favour of the petitioner. The petitioner, therefore, claims that delay on the part of the respondents in finalizing the selection, pursuant to the judgment of this Court passed on 31.12.2012, cannot act to the prejudice of the petitioner. The petitioner is, thus, entitled to be appointed as ReT w.e.f. 01.12.2004 i.e. the date, when the panel was first prepared by the respondents, which was later quashed by this Court in SWP No.1827/2004. It is in this background, the petitioner has claimed the reliefs prayed for in this petition.

3. The respondents have filed their objections. The stand taken by the respondents briefly stated is that delay in finalizing the selection process initiated, vide advertisement notification dated 12.01.2004, was neither deliberate nor intentional but due to the litigation filed by the petitioner and the others challenging the select panel, which was prepared by the respondents on 01.12.2004. It is, thus, submitted by the respondents that the petitioner is not entitled to any retrospective appointment. More so, when nobody else from the panel prepared pursuant to the advertisement notification dated 12.01.2004 has been so appointed. The respondents, thus, claim that no right of the petitioner has been violated, which could give her any cause to maintain this petition. Reliance, in support of the stand taken by the respondents, is placed on several judgments of the Supreme Court, reference to which has been made in the objections filed by the respondents.

4. Having heard learned counsel for the parties and perused the record, I am of the view that this petition by the petitioner seeking retrospective appointment as ReT w.e.f. 01.12.2004, with all consequential benefits, is bereft of any merit and, therefore, deserves dismissal. Admittedly, the process for filling up of four posts of ReT i.e. three in Government Middle School Gangota which later became High School and one post in Government Primary School Akhrie situated in revenue village Alni Gangota was set in motion vide advertisement notification dated 12.01.2004. The respondents prepared the select panel on 01.12.2004 but before the panel could be given effect to, the petitioner along with six others challenged the

selection process in SWP No.1827/2004 and got the further selection process stalled. The writ petition was decided by this Court on 31.12.2012. The select panel impugned in the aforesaid writ petition was quashed and direction was issued to the respondents to examine the claims of the petitioners and the respondent with regard to their entitlement to selection and engagement keeping in view the report of the Deputy Commissioner concerned.

This is how the matter was reconsidered and fresh panel was drawn. It is true, that respondents took some time to finalize the fresh panel prepared pursuant to the direction of this Court. It was exactly on 04.07.2014, the panel was prepared by the Zonal Education Officer with the approval of the village level committee and sent to respondent No.3 and thereafter to respondent No.2 for according approval. As is the procedure, the respondent No.3 has to scrutinize all the documents and satisfy itself about the genuineness of the panel and then recommend it to the respondent No.2. The respondent No.2 who is final authority for approval of the panel under the ReT Scheme puts the select panel to notice and invites objections from the aggrieved candidates. It is only after considering the objections of the aggrieved candidates, if any, the same is approved by respondent No.2 and sent back through proper channel to the ZEO concerned for issuance of the engagement order in favour of the approved candidate/candidates. This process, obviously, takes some time to conclude. Accordingly, the panel submitted by the ZEO on 04.07.2014 upon its approval by the respondent No.2 culminated into issuance of orders of appointment of ReT Teachers in Government High School, Gangota and Government Primary School Akhrie. The petitioner was given the appointment on 26.09.2014. In these facts and circumstances, the claim of the petitioner that she is entitled to retrospective appointment from 01.12.2004, with all consequential benefits, is not tenable and cannot be accepted. It is pertinent to note that nobody from the select panels, prepared pursuant to advertisement notifications dated 12.01.2004 and 09.07.2004, in different schools of revenue village Alni Gangota, has been appointed / engaged prior to the petitioner. The petitioner, therefore, has not been affected adversely in any manner. The claim of the petitioner that on completion of five years, she has also become entitled to regularization as General Line Teacher w.e.f. 01.12.2009 is totally misconceived and cannot be accepted. Firstly, the petitioner is not entitled to appointment w.e.f. 01.12.2004, i.e. the date on which the first panel was

prepared, which was later on quashed by the Court and second, that without working as ReT to the satisfaction of the respondents for a period of five years, the petitioner cannot claim her regularization. For seeking regularization under the ReT, the petitioner is supposed to work in the School continuously for five years as ReT to the satisfaction of the respondents. This has not happened in the case of the petitioner. The petitioner, therefore, shall be entitled to seek her consideration for regularization only w.e.f. 26.09.2019, when she completes five years actual service as ReT, and the same is found by the respondents satisfactory. Be that as it may, this Court does not find any substance in this petition and the same is, accordingly, dismissed.