

(2021) 09 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 296 Of 2018, Civil Miscellaneous No. 854 Of 2020

Waheeda Yaseen Khan

APPELLANT

Vs

State Of JK And Others

RESPONDENT

Date of Decision : 23-09-2021

Acts Referred:

Citation : (2021) 09 J&K CK 0041

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

1. By the instant petition, petitioner seeks a writ of certiorari to the effect that (i) Appointment order of respondent no. 10 as R-e-T teacher made in terms of Order No. ZEO/R/RT-11/746-48 dated 28.07.2011; (ii) Enquiry issued under No. DCV/LRA/Enquiry/2011/57-59 dated 28.4.2011, be quashed. Petitioner has further sought a writ of Mandamus to the effect that petitioner be appointed as R-e-T teacher being next in merit after Respondent no. 8, on the grounds taken in the memo of petition.

2. To appreciate the issue in its proper perspective, a brief look at the events, as they happened, is desired, thus:

3. A notification dated 11.11.2010, for appointment of two number of Rehbar-e-Taleem Teachers for upgraded Primary School at New Colony Ompora, Budgam, falling under Ward no. 8, issued by respondent no. 7-Zonal Education Officer, Budgam, was responded to besides others, by the petitioner and the respondent no. 10 by offering their candidature for the said posts. The eligibility for the posts in question as prescribed in the Notification was 10+2 or above level with Mathematics and Science background aged between 18 to 37 years as on 01.01.2010. Subsequently, a panel was drawn by the Zonal Education Officer and

the petitioner is reflected at serial no. 3 therein while as the respondent no. 10 is shown to be at serial no. 2.

4. It is further stated in the writ petition that the respondent no. 10 is hailing from Batpora Handwara and is not a resident of the area for which the posts in question were advertised and the respondent no. 10 by way of fraud has managed his residential status. In that view of the matter, the petitioner, feeling aggrieved of the inclusion of the respondent no. 10 in the panel, filed a representation before respondent no. 3 objecting to the inclusion of respondent no. 10 in the panel. Besides, the Welfare Committee of Government Housing Colony Ompora, Budgam, is also stated to have objected to the inclusion of respondent no. 10 in the panel on the same ground of not being the resident of the area. It is further stated in the writ petition that even the PRC produced in support of his claim by the respondent no. 10 does not show him to be the resident of the Ward No. 8 where the posts are sanctioned but of Ompora Village.

5. Subsequent thereto, the petitioner was constrained to file a civil suit questioning the inclusion of respondent no. 10 in the panel.

6. Thereafter, the Assistant Commissioner, (Rev) Budgam, has vide No. DCB/LRA/Enquiry/2011/57-59 dated 28.04.2011 returned a finding, in an enquiry initiated on the application of the petitioner, to the effect that out of the two candidates respondent no. 10 has the PRC of village Ompora Tehsil Budgam while as the petitioner is having PRC of Srinagar, therefore, respondent no. 10 deserve to be considered for selection to the ReT post.

7. Thereafter, the interim relief application of the petitioner was rejected by the court below by vacating the interim order dated 12.2.2011 in terms of order dated 29.04.2011 providing therein that the tentative list challenged is not the final list but subject to objections, therefore, the petitioner/ plaintiff ought to have filed objections to such tentative list.

8. Thereafter, the official respondents issued an appointment order in favour of respondent no. 10 which the petitioner came to know when a writ petition, SWP no. 2192/2016 came to be filed by the respondent no. 10 before this Court, and the petitioner represented/ objected to such appointment at every administrative level but could not get justice, therefore, was constrained to file the writ petition in hand.

9. Aggrieved of the action initiated against him as indicated hereinbefore, the petitioner has filed this writ petition to seek the relief as reflected in the foregoing paragraphs on the grounds, that: the appointment earned by the respondent no. 10 is on the strength of the fraud documents as such liable to set at naught; petitioner being meritorious and eligible to hold the post of R-e-T teacher advertised in ward no. 10 Govt Housing Colony Ompora Budgam which stands usurped by the respondent no. 10, therefore, the appointment order deserves to be quashed; the appointment order in question being violative of doctrine of legitimate expectation warrants to be quashed more so when earned

by activating fraud vis-à-vis issuance of fraud documents both in terms of PRC, voter list and other allied documents, therefore, the appointment order in question deserves to be quashed; the impugned appointment order is also violative of rule of law, equity and good conscience, therefore, merits to be set at naught

10. Upon notice, the respondents appeared and filed their reply resisting the claim of the petitioner.

11. The respondents 1, 2, 6, 7, 11 and 12 have filed objections to the stand of the petitioner stating inter alia that the petitioner has raised disputed questions of fact which cannot be gone into in a writ petition; the impugned order does not suffer from any legal infirmity, as such the writ petition is liable to be dismissed; that the petitioner has relinquished her right to challenge the impugned order as she did not choose to do so while filing her earlier writ petition and the judgment passed in the said writ petition, SWP no. 1268/2017, has earned finality. It is further stated in the reply filed on behalf of the respondents 1, 2, 6 & 7 that petitioner had filed a writ petition, SWP no. 1268/2017 which came to be disposed of by this Court in terms of judgment dated 15.02.2018, providing therein that petitioner can avail the liberty to take recourse to challenge the enquiry with regard to PRC and domicile of respondent no. 10 by way of revision and in case he is of the opinion that the said respondent has obtained the documents by playing fraud, he can file FIR against the said respondent before the concerned police.

12. The respondents 11 and 12 have additionally adverted that petitioner was ineligible for the post in question as she did not have the requisite knowledge of Science or Math at 10+2 level which was a pre-requisite for appointment as ReT teacher.

13. Heard learned counsel for the parties and considered the submissions made.

14. The admitted facet of the case is delineated in the first instance hereunder, thus:

A post of ReT teacher was available in Upgraded School at ward No. 8 of Government Housing Colony, Ompora, Budgam which was notified by the official respondents. The petitioner and respondent no. 10 applied and participated in the section process that commenced subsequently and a panel was drawn in which both petitioner and respondent no. 10 figure at serial no. 3 and 2 respectively. Before appointment is made against the said post, a controversy arose as regards the residential status of the respondent no. 10 who stood at serial no. 2, and had a preferential right of appointment. This led to filing of a vociferous litigation which includes a civil suit filed by the petitioner wherein the selection of respondent no. 10 came to be challenged; Writ petition SWP no. 2192/2016 filed by the respondent no. 10 seeking direction in the name of respondent no. 2 therein to regularize his services as a General Line Teacher for having completed more than five years continuous services as ReT teacher; Writ

Petition, SWP no. 1268/2017 filed by the petitioner seeking a direction in the name of respondents 3 and 4 therein to hold an enquiry with regard to Permanent Resident Certificate (PRC) and domicile of respondent no. 8 and to enquire the veracity of the documents submitted by the respondent no. 8 (respondent no. 10 herein) the petitioner had further prayed for a direction in the name of Crime Branch, Kashmir to hold an enquiry with regard to providing of favorite documents to respondent no. 8 therein. Apart from these petitions, the writ petition on hand as also two more petitions which have been delinked by the order dated 20.09.2021 are also pending on the subject.

15. The petitioner has filed a Civil Suit for declaration and permanent injunction before the court below with the following relief:

"In the premises, it is therefore, prayed that a decree in the nature of declaration may be passed in favour of the plaintiff and against the defendants declaring the plaintiff to be entitled for appointment of RET teacher on the basis of merit in the Govt. Middle School, Govt. Housing colony Ompora Budgam Kashmir as being the permanent resident of District Budgam.

A decree in the nature of mandatory injunction may be passed in favour of the plaintiff and against the defendants thereby commanding the defendants to issue the appointment order of RET teacher for Govt. Middle School Govt. Housing Colony Ompora Budgam in favour of the plaintiff on the basis of merits as being the permanent resident of district Budgam."

16. The petitioner has thereafter filed an amended plaint adding a following relief clause therein:-

"A decree of mandatory injunction in favour of the plaintiff and against the defendants thereby commanding upon defendants 1 to 3 not to issue any order of appointment viz RET Middle School Ompora Housing Colony District Budgam in favour of defendant no. 4."

17. The Court below for adjudication of the matter has framed following issues for determination:

"1. Whether the plaintiff is the Permanent Resident of Ward No. 8 (newly colony Ompora, Budgam) and have the eligibility to be appointed as ReT for the newly upgraded school at Ompora Budgam in pursuance of notification challenged in this suit?(OPP)

2. Whether the defendant no. 4 is not the permanent resident of Ompora Colony and as such having no right to seek appointment against the said notification? OPP

3. Whether the eligibility fixed by the Chief Education Officer, Budgam in pursuance of the alleged notification has been fulfilled by the plaintiff/ defendant no. 4 irrespective areas of their domicile? (OP Parties)

4. Relief:- To what relief the parties are entitled?

18. The writ petition no. 2192/2016 filed by the respondent no. 10 seeking regularization of his services has been disposed of by this court in terms of order dated 31st December, 2016, with a direction to the respondent no. 2 therein to decide the claim of the petitioner for regularization of his services as General Line Teacher in accordance with the law and rules applicable by a speaking the order. While so ordering, it has been made clear by the court that it has not expressed any opinion with regard to the merits of the case.

19. The Writ Petition, SWP no. 1268/2017, filed by the petitioner seeking the relief as taken note of in the foregoing paragraphs, has been disposed of by this Court in terms of order dated 15.02.2018 in the following terms:-

"Thus from perusal of the relief claimed by the petitioner in the civil suit, as well as issues framed by the trial court, it is evident that the factum of residence of respondent no. 8 is in issue before the trial court. The petitioner cannot be allowed to prosecute two remedies simultaneously. It is also relevant to mention here that enquiry with regard to PRC and domicile of respondent no. 8 has already been held and in case the petitioner is aggrieved of the same, he is entitled to take recourse to challenge the same by way of revision. Needless to state that in case the petitioner is of the opinion that respondent no. 8 has obtained the documents by playing fraud, the petitioner is at liberty to file first information report against respondent no. 8 before the concerned official which shall be dealt with in accordance with law by concerned SHO in view of the law laid down in LALITA KUMARI V. GOVERNMENT OF UTTAR PRADESH [2014 VOL. 2 SCC 1]. The petitioner shall also be at liberty to file the documents before the trial court, if so advised.

With the aforesaid directions, the writ petition shall stand disposed of along with connected MP. Interim direction shall stand vacated."

20. Now by the present writ petition which is filed by the petitioner on 19th February, 2018, the quashment of appointment of respondent no. 10 as R-e-T teacher made in terms of order No. ZEO/R/RT-11/746-48 dated 28.07.2011 is sought besides the quashment of enquiry issued in terms of Nos. DCV/LRA/Enquiry/2011/57-59 dated 28.4.2011; 621/5A/PSB/17 dated 27.04.2017 and CEOB/17/22699-700 dated 28.09.2017; with a further prayer that appointment order in favour of the petitioner be ordered to be issued with effect from the date the appointment order has been issued in favour of respondent no. 8.

21. While hearing the matter, the learned senior counsel for the respondent no.10 made reference to case law reported as 1) 2013 (iii) SLJ 777; 2) 2000 (ii) SLJ 574; 3) 2000 (i) SLJ 41; 4) AIR 2013 SC 487; 5) AIR 1977 SC 1112; 6) AIR 2016 SC 3006; 7) AIR 2009 SC 571; 8) AIR 2004 Rajasthan 247; 9) AIR 1996 SC 497; 10) AIR 1999 SC 517; 11) AIR 2008 SC 1614; 12) 2010 (ii) SLJ 580; 13) 2007 (ii) SLJ 838; 14) AIR 1990 SC 185; 15) 1989 KLJ 284; 16) 1991 SLJ 185; 17) AIR 2013 SC 487; 18) AIR 1964 SC 962; 19) AIR 1976 SC 2438

22. Given the fact that the petitioner has filed a civil suit on the subject and a

writ petition also before filing the instant writ petition, therefore, without returning finding on all the points raised by the parties, it is thought appropriate to first address a question as to whether; the writ petition survives consideration for the reliefs prayed for?

23. To have the question answered one needs to appreciate the events as they took place and the first event that comes to the fore would be the appointment of the respondent no. 10 as ReT teacher made in the year 2011 which had to be questioned by the petitioner under appropriate proceedings which has not been done although a civil suit is filed by the petitioner before the competent court of jurisdiction but that challenged the tentative selection of respondent no. 10 as the appointment order had not been issued at that point of time. There is a copy of the amended plaint also on records in which the petitioner had additionally sought a restraint in the name of defendants/ respondents herein for issuing any appointment order in favour of respondent no. 10, but there is nothing on record to show that any restraint was ever issued by the court. However, it is quite apparent that no appointment order had been issued until then.

24. Next event that takes place and assumes importance is the filing of writ petition by the petitioner bearing SWP no. 1268/2017, presented on 6th July, 2017, but the petitioner did not choose to lay a challenge to the appointment of respondent no. 10 when admittedly the appointment order was issued way before in the year 2011 and the petitioner was quite aware of it.

25. The situation would have been different in case the petitioner had not filed any writ petition on the subject after the issuance of the appointment order in delay and then go to the merits of the case, but since the petitioner has been aware of the appointment order and had filed a writ petition on the subject afterwards without questioning the same, the court would be required to see as to what effect does it carry on the merits of the case in hand. Whether it amounts to relinquishment of the right to challenge the appointment of respondent no. 10 or not?

26. Admittedly the petitioner on approaching this court in the first round of litigation had chosen not to challenge the appointment order may be because of pendency of the suit challenging selection of respondent no. 10, but on decision of the writ petition, SWP no. 1268/2017, rendered on 15.2.2018, the petitioner can by no stretch of imagination challenge the appointment as the challenge will be governed by the decision rendered in the writ petition, SWP 1268/2017.

27. Parties are bound by the decision which is not challenged and is in force as on date, therefore, there is no scope as far as quashment of appointment of respondent no. 10 is concerned on whatsoever grounds unless the trial court decides the issue regarding the factum of residence of respondent no. 10. On this finding alone, the challenge to appointment in the instant writ petition is not available. But the petitioner is at liberty to lay challenge to the appointment in the pending suit on available pleadings if the law so permits.

28. In light of the above findings based on the judgment/ final order of this court rendered in a writ petition, SWP no. 1268/2017, the petitioner's right, depending upon the decision of the Civil Court, is reserved to further relief in the said suit.

29. Having regard to what has been stated hereinbefore, the writ petition is disposed of, along with all CMs, in the following manner:

i) Writ Petition for the relief sought qua quashment of appointment of respondent no. 10 is dismissed.

ii) Petitioner is at liberty to seek further relief in the pending civil suit on the strength of the judgment/ final order rendered by this court in a writ petition, SWP no. 1268/2017, if available under law.

The writ petition along with all CMs is disposed of on the above lines.

Records be returned to Mr Shah Aamir, AAG, against receipt.

It goes without saying that the court below shall adjudicate upon the merits of the case without getting influenced by any of the observations made by this Court while deciding the instant writ petition.