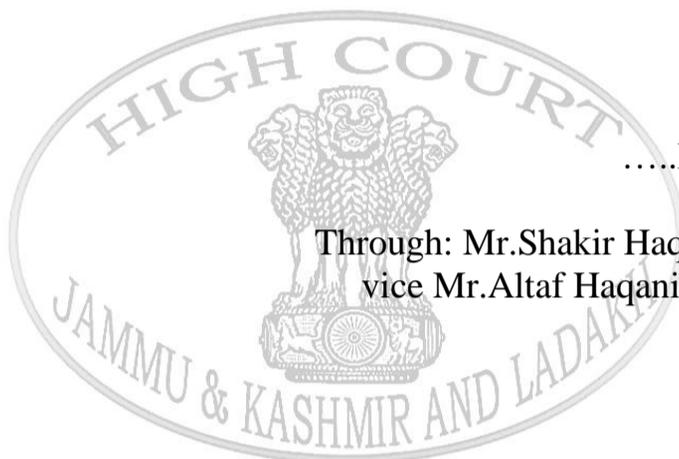


HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 28.09.2021
Pronounced on: 11.10.2021

SWP No.594/2012

Shafia Samad



.....Petitioner(s)

Through: Mr. Shakir Haqani, Advocate
vice Mr. Altaf Haqani, Sr Advocate

V/s

State of Jammu & Kashmir and Ors.

..... Respondent(s)

Through: Mr. Feroz, Dy.AG
Mr. F.A.Bhat, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

11.10.2021

1. In the instant petition, the petitioner has challenged order dated 03.03.2012 passed by respondent No.3-Dy.Commissioner Baramulla, whereby, the appeal filed by respondent No.8, calling in question the engagement of the petitioner as Anganwadi Worker in Mukdam Mohalla Matipora Rohama, has been decided. The direction restraining the respondents from causing interference into the engagement of the petitioner as Anganwadi Worker has also been sought.
2. The facts emerging from the pleadings of the parties are that, in the year 2010, an Advertisement Notice was issued by respondent No.7 inviting applications from the eligible female candidates for their engagement as Anganwadi Workers at various Anganwadi

Centres to be set in Mohallas of the Villages/Hamlets of Block Rohama. One of the locations for which Anganwadi Centre had been sanctioned and engagement of an eligible Anganwadi Worker was to be made was Mukdam Mohalla of Village Matipora.

3. It appears that pursuant to the aforesaid Advertisement Notice, petitioner as well as respondent No.8 offered their candidature for the position of Anganwadi Worker in respect of Anganwadi Centre, Mukdam Mohalla. After undertaking the process of selection, the petitioner was found to have secured the highest merit whereas the respondent No.8 found her place at the bottom of the merit list. Accordingly, tentative select list of the honorary Anganwadi Workers was issued by the respondents and the petitioner found her way in the said select list.
4. It seems that respondent No.8 made a complaint before the Sub Divisional Magistrate, Sopore, calling into question the eligibility of the petitioner, as, according to the said respondent, the petitioner was not residing in Mukdam Mohalla of Village Matipora and, as such, as per the guidelines of the scheme she was not eligible to be engaged as Anganwadi Worker for the Centre which was located in Mukdam Mohalla.
5. The complaint came to be inquired into by the Sub Divisional Magistrate, Sopore and vide his report dated 27.08.2011, he came to the conclusion that Matipora is a village of Rohama and Mukdam Mohalla is the Sub Mohalla of Matipora. It was further observed that Matipora, being a habitation of village Rohama, should be considered as a single unit. A direction was issued to CDPO Rohama to proceed strictly with the guidelines of ICDS Scheme. In light of the report of the Sub Divisional Magistrate Sopore, respondent No.7-Child Development Project Officer, ICDS Rohama issued engagement order dated 05.09.2011 in favour of the petitioner, whereby, she was engaged as Anganwadi Worker for Anganwadi Centre Mukdam Mohalla.
6. It appears that the aforesaid engagement order was challenged by respondent No.8 by way of an appeal before the Dy.Commissioner

Baramulla. The appeal came to be decided by the Dy. Commissioner vide his order dated 03.03.2012. While deciding the appeal, the Appellate Authority passed the following directions:-

“Considering and turning to the above facts & circumstances, the appeal is allowed and the matter is sent back to the official respondents with the following directions:-

- (a) to make the selection either on the Mohalla wise basis by selecting one meritorious candidate from each Mohalla or to re-advertise the posts for the entire village/areas and select two meritorious candidates, in case the boundaries of the Mohalla cannot be defined.
- (b) the exercise be completed within two months from the date, a copy of order is served upon the official respondents.”

7. It is this order which is under challenge by way of the instant writ petition.
8. According to the petitioner, the Appellate Authority has not applied its mind to the material available before it, inasmuch as, it has not considered the report of Sub Divisional Magistrate Sopore; that the appeal filed by the respondent No.8 was presented beyond prescribed period of limitation and the Appellate Authority without making any order for condonation of delay has entertained and decided the appeal on merits; that the observation of Appellate Court that sister of the petitioner has been appointed as Anganwadi Worker at Anganwadi Centre Ganie Mohalla is against the records as she was held ineligible for the post of Anganwadi Worker for the Anganwadi Centre Ganie Mohalla; that the Appellate Authority has not proceeded in accordance with law and that its order is without jurisdiction.
9. The writ petition has been contested by the official respondents as well as by the private respondent No.8 by filing reply thereto.
10. The official respondents in their reply have defended the engagement of the petitioner as Anganwadi Worker and they have contended that it was after proper verification that the petitioner was engaged as Anganwadi Worker for Anganwadi Centre Mukdam Mohalla, as she was found to be the resident of said

Mohalla. It is further averred that the petitioner was most meritorious amongst the eligible candidates and, as such, order of engagement was issued in her favour.

11. Respondent No.8 in her reply has raised objection on the maintainability of writ petition on the ground that the petitioner has not availed the alternate remedy of filing revision petition against the order of appellate authority and, as such, the writ petition is not maintainable. On merits it has been contended that the sister of the petitioner was engaged as Anganwadi Worker for Anganwadi Centre Ganie Mohalla and it is not possible that two sisters were residing in two different Mohallas at the same time. It has been contended that the petitioner was not eligible for consideration, because she was not a resident of Mukdam Mohalla, whereas respondent No.8 was the most meritorious amongst the eligible candidates.

12. I have heard learned counsel for the parties and perused the material on record.

13. In the writ petition, the petitioner has challenged the order of Appellate Authority i.e the Dy.Commissioner Baramulla. It is not in dispute that norms for identification of Anganwadi Centres and selection of Anganwadi Workers and Helpers is governed by Government Order No.07 SW of 2010 dated 18.01.2010. Clause 5 of the said Government order provides that, wherever anybody feels aggrieved with the selection of Anganwadi Workers etc, an appeal can be preferred to the Dy. Commissioner concerned within 30 days from the date of selection of Anganwadi Worker. Clause 6 of the aforesaid Government Order provides that in case where the order made in the appeal does not satisfy the aggrieved person, a revision shall lie with the Divisional Commissioner concerned within 15 days from the date of passing of order by the Dy. Commissioner concerned.

14. Thus, against the impugned order passed by the Dy. Commissioner Baramulla the remedy of filing a revision before the Divisional Commissioner was available to the petitioner.
15. The question arises as to whether availability of an alternate remedy to a writ petitioner bars the High Court from entertaining writ petition on the subject.
16. The Supreme Court in the case of *Whirlpool Corporation v Registrar of Trade Marks Mumbai and others* (1998) 8 SCC 11, has held that in an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.
17. In *Harbanslal Sahnia and Another v. Indian Oil Corporation Ltd. And Others* (2003) 2 SCC 107, the Supreme Court has observed that rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. The Court further went to observe that in certain contingencies, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction.
18. In *Vijayabai v. Shriram Tukaram* reported I AIR 1999 SC 431, the Supreme Court observed that where the conclusions are arrived at by misconstruing the provisions of an Act and without appreciating the principle of estoppel, including adjudication of such right in earlier proceeding under the same Act between the same parties, the Court would not hesitate to reconsider such adjudication of facts.

- 19.** From the foregoing analysis of case law on the subject it is clear that the exclusion of writ jurisdiction by way of alternative remedy is only a rule of discretion and the High Court, in appropriate cases, can entertain a writ petition in spite of there being an alternative remedy available to the petitioner.
- 20.** In light of the aforesaid legal position, let us now proceed to determine as to whether order impugned passed by the Appellate Authority is of such a nature as would warrant interference from this Court in its writ jurisdiction in spite of there being an alternative remedy available to the petitioner.
- 21.** Upon perusal of the impugned order passed by the Dy. Commissioner Baramulla, it comes to the fore that the Dy. Commissioner has noted that the official respondents have considered sister of the petitioner herein for Ganie Mohalla and the petitioner for Mukdam Mohalla when they are residing in the same house. On this basis, the Appellate Authority has concluded that the selection has not been made on Mohalla wise basis as was required to be done as per the advertisement notice. The Dy. Commissioner has further noted that once the notification is issued on Mohalla wise basis and selection is made accordingly the appellant/respondent no.8 would emerge as meritorious candidate in Mukdam Mohalla.
- 22.** Both the aforesaid findings of the Appellate Authority are perverse and against the record. This is so because even though the sister of the petitioner had applied for her engagement as Anganwadi Worker for Anganwadi Centre Ganie Mohalla, yet she was declared ineligible by the official respondents, as she was not found residing in the said Mohalla. Merely because the sister of the petitioner had responded to the Advertisement notice by applying for the Anganwadi Centre located at Ganie Mohalla, does not lead to the conclusion that the petitioner was actually residing in Ganie Mohalla and not in Mukdam Mohalla. Instead of referring to any material that would show that the petitioner was not the

resident of Mukdam Mohalla, the Appellate Authority has latched on to un-confirmed allegations and landed itself into error.

- 23.** Similarly the observation of the Dy. Commissioner that, if the petitioner is held to be ineligible then respondent no.8 would emerge as the most meritorious candidate, is also contrary to the record. The merit list published by the official respondents, pertaining to Anganwadi Centre Mukdam Mohalla, reveals that the petitioner had obtained 53.51 marks, Tabasum Ashraf had obtained 47.97 marks, Maryam Bano had obtained 47.57 marks and respondent No.8 had obtained only 35.43 marks, meaning thereby, that the respondent No.8 was at the rock bottom of the merit list. Thus, even if the petitioner would be held ineligible to hold the post of Anganwadi Worker in Mukdam Mohalla, there is no occasion for the respondent No.8 to be engaged in her place. The conclusion of the Appellate Authority in this regard is absolutely without any basis.
- 24.** Apart from the above, it is an admitted case of the parties that on the basis of complaint made by respondent No.8 a detailed inquiry was made by the Sub Divisional Magistrate Sopore and he had submitted a report dated 27.08.2011 with a copy endorsed to the Dy.Commissioner Baramulla. In the said report it was observed that Mukdam Mohalla is a sub Mohalla of Matipora and the officer had also in his report clearly demarcated the boundaries and location of Mukdam Mohalla. Without taking this report into consideration, the Appellate Authority has directed that, in case boundaries of Mukdam Mohalla cannot be defined, the posts are required to be re-advertised for the entire village.
- 25.** On top of it all, the Appellate Authority has not referred to even a single document or material that would even prima facie suggest that the petitioner was not residing in Mukdam Mohalla at the relevant time.
- 26.** In the face of aforesaid facts, the order of the Appellate Authority that has been impugned in this writ petition, is not only perverse

and without any basis but the same also exhibits complete non-application of mind on the part of the Appellate Authority.

27. In view of the aforesaid findings, this is a fit case where this Court should exercise its writ jurisdiction and invoke its powers of judicial review, so as to set at naught the perverse and illegal order passed by the Appellate Authority. It will be doing injustice to the petitioner if she is relegated to remedy of revision after having pursued this petition for more than nine years, particularly, when the writ petition stands admitted to hearing.
28. For the foregoing reasons, the writ petition is allowed and the impugned order, passed by respondent No.2-Dy.Commissioner Baramulla, is quashed and the order of engagement of petitioner as an Anganwadi Worker for Anganwadi Centre Mukdam Mohalla is upheld.
29. The petition shall stand **disposed of** alongwith all connected CMs.

(SANJAY DHAR)
JUDGE

SRINAGAR
11.10.2021
Sarveeda Nissar

Whether the order is speaking: *Yes/No*
Whether the order is reportable: *Yes/No*