

## HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1552/2006  
CMP Nos. 1901/2006 & 93/2010

Date of decision: 20.04.2010

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Bandana Devi vs. State of J&K and ors.

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**Coram :-**

**Mr. Justice J. P. Singh, Judge.**

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**Appearing Counsel:**

For Petitioner(s) : Mr. Abhinav Sharma, Advocate.

For Respondent(s) : M/s Gagan Basotra, AAG & H.C.Jalmeria, Advocate.

i) Whether approved for reporting in Press/Journal/Media : **Yes/No**

ii) Whether to be reported in Digest/Journal : **Yes/No**

Petitioner's engagement as third Teacher under Rehbar-e-Taleem Scheme, ordered vide Zonal Education Officer's No. ZEO/V/634-61 dated 17.01.2004 was terminated by the Zonal Education Officer, Vijaypur (Samba) vide Order of October 18, 2004.

Respondent No. 5 was thereafter engaged in her place vide Zonal Education Officer's Order No. ZEO/V/975-976 dated November 01, 2004.

The petitioner represented to the Chief Education Officer, Chairman SSA, Jammu against her termination. A report was, accordingly, sent by the Chief Education Officer, Chairman SSA to the Director School Education, Jammu suggesting her re-adjustment in PS Mohargarh.

The Zonal Education Officer appears to have not permitted the petitioner to mark her attendance in the School.

Aggrieved by the conduct of the official respondents in not permitting her to mark her attendance in the School and asserting, on the basis of documents, that she was not absent

from duty and had rather been discharging her official duties pursuant to her deputation for undergoing training under Sarv Shiksha Abhiyan w.e.f June 07, 2004 to July 06, 2004, she has filed this Writ Petition seeking quashing of Zonal Education Officer's Order No. ZEO/V/951 dated October 18, 2004, besides a direction to the respondents to permit her to discharge her duties as third Teacher in Government Primary School Mohargarh.

I have heard learned counsel for the parties and considered their submissions which I propose to deal hereunder.

Zonal Education Officer's impugned termination order passed on the premise that the petitioner had absented from duty w.e.f. 01.04.2004 to 31.05.2004 is admitted by the parties to have been so passed without hearing the petitioner regarding her alleged absence from duty.

As the termination order has been issued without hearing the petitioner about her absence and recording finding as to whether or not the allegation about her absence from duty was true and correct, it may not be sustainable for violation of the principles of Natural justice.

Respondent No.5's learned counsel's plea that although the petitioner could not be condemned unheard, yet her termination may not warrant interference by the Court because the petitioner's basic engagement was invalid and unwarranted because of her ineligibility to seek engagement being a resident of a distant Village known as *Sachani* which was 35/40 kilometers away from Village *Mohargarh* where the School was located, is found misconceived, in that, the selection and engagement of the petitioner made in January 2004 having become final without any challenge thereto by anyone, cannot be pressed into service as a defence to justify her termination on the basis of her alleged misconduct of absence from duty, subsequent to her engagement as third Teacher.

As the engagement of the petitioner has been terminated by the Zonal Education Officer without hearing her, it becomes unsustainable for violation of the principle flowing from the Maxim *Audi alteram partem*.

Resultantly, the engagement of respondent No.5 in petitioner's place as a consequence of her termination too becomes unsustainable in view of petitioner's termination having been held invalid and unsustainable.

The petitioner's termination violating the principles of Natural Justice, therefore, needs to be quashed.

This Petition thus succeeds and is, accordingly, allowed quashing the petitioner's termination order passed by the Zonal Education Officer and the engagement of respondent No.5 in her place. The respondents are, however, left free to proceed against the petitioner for her absence, in accordance with law, if so warranted.

**(J. P. Singh)  
Judge**

JAMMU:  
20.04.2010  
Pawan Chopra