

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**OWP No. 18/2009
C. M. P Nos. 281/2009 & 23/2009**

Date of Decision:09.11.2011

Shabnam Kouser vs. State J&K and ors.

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing Counsel:

For the Petitioner(s) : Mr. S. K. Shukla, Advocate.

For the Respondent(s) : M/s. B. R. Chandan, G. A. & V.B. Gupta, Advocate.

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| i) | Whether approved for reporting in Press/Media | : | Yes |
| ii) | Whether to be reported in Digest/Journal | : | Yes |
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The facts leading to the filing of this Writ Petition may be stated thus:-

Ms. Shabnam Kouser was engaged as Ration/Sugar Dealer for Centre Drah by Assistant Director, Food and Supplies Department, Rajouri vide his Order No. FSR/1312-13/FSR dated 23.3.2002. She sub-let her Dealership in April, 2004 to a relative, Khadim Hussain-respondent No. 5. Documents including one indicated as Irrevocable Power of Attorney were executed by her in this behalf transferring all rights in the Dealership in favour of the respondent. Respondent No. 5 was, thereafter appointed as Ration/Sugar

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Dealer, on temporary basis, vide Assistant Director, CA&PD, Rajouri's No. 979-81/CAPD dated 19.5.2006, in place of the petitioner, who had left the job due to domestic problems.

The petitioner's case in the Writ Petition is that respondent No. 5's order was not put into execution and it was she alone, who was functioning as Ration Dealer at Drahia. On refusal of the State-respondents to supply her Ration, which the Department is stated to have started supplying to respondent No.5, she approached this Court urging that she received Ration up to December, 2008, but the respondents discontinued supplying her ration for its distribution to people of the area, without any justification.

Respondent No. 5 contests the petitioner's Writ Petition saying that right from the beginning, it was he who was discharging the functions of Ration/Sugar Dealer at Drahia because the petitioner, being a female, was unable to act as Dealer additionally because of her domestic problems and that having been formally appointed as Ration/Sugar Dealer in the year 2006, he is entitled to continue his Dealership for supplying Ration/Sugar to public at Drahia.

Respondent No. 5 too had approached this Court by his Writ Petition OWP No. 14/2010 seeking quashing of Directorate of Consumer Affairs and Public Distribution

Department's Communication No. DCAJ/FPS-33/Rajouri/1603 dated 23.12.2009, whereby the Assistant Director was informed to cancel his temporary engagement as the order issued in the year 2006 did not appear to have been implemented.

Khadim Hussain's Writ Petition was, however, dismissed in default of appearance on 11.07.2011.

By her Writ Petition, the petitioner seeks quashing of Assistant Director, CA&PD Department, Rajouri's No. 979-81/CAPD dated 19.5.2006, and issuance of directions to the State-respondents to allow her to continue as Ration/Sugar Dealer.

I have considered the submissions of learned counsel for the parties advanced at the time of hearing of the Petition.

The petitioner's plea projected to nullify the effect of her admission that she had sublet the Dealership to respondent No.5, saying that the respondent had got the documents executed from her playing foul, is purely factual in nature, which can be considered, only if, evidence was led by the parties for and against it, which course may not be permissible in exercise of the Court's Extra Ordinary Civil Writ Jurisdiction. However, even otherwise, there does not appear *prima facie* merit in the petitioner's plea that taking advantage of her position as female, respondent No. 5 had got the

documents executed from her, in view of her candid admission in Paragraph No. 7 of the Writ Petition that she had sublet the Dealership to respondent No. 5 for some period. One of the documents executed by the petitioner, authorizing respondent No. 5 to work as Ration/Sugar Dealer at Drahā, is a registered document, which carries presumption of authenticity. Petitioner's plea that the document was later revoked and she had not consented to respondent No. 5's running the Dealership, may not, therefore, be germane for disposal of the Writ Petition because the plea projected, otherwise strengthens and supports her admission to have sublet the Dealership executing documents in this behalf which include a registered document too.

Petitioner's admission that she had sublet Dealership to her relation Khadim Hussain-respondent No. 5, is sufficient enough to disentitle her to continue as Dealer even if one were to proceed on the premise that her engagement having not been cancelled by the Competent Authority, appointment of respondent No.5 as Temporary Dealer in her place was unjustified. This is so because having admitted to have sublet the Dealership, which, in view of the norms, she could not otherwise do because permission to operate the Ration Dealership, being purely personal to her, she has no right to invoke the equitable Writ Jurisdiction of the Court to seek her

continuance as Ration Dealer at Draha which she had, violating the prescribed norms, sublet to Khadim Hussain, who appears to have been getting Ration from the Department, for its supply to public under the Public Distribution System, in view of the tacit permission of the petitioner to work in her place.

Petitioner's subletting Ration/Sugar Dealership to respondent No. 5 would not, however, confer any benefit on respondent No. 5 to perpetuate his continuance as Dealer because he had obtained it initially pursuant to an illegal agreement between him and the petitioner without express consent and approval of the Department.

The State-respondents are, therefore, required to follow the laid down procedure for appointment of a new Ration/Sugar Dealer at Draha.

The petitioner's Writ Petition does not call for issuance of any directions to the respondents for her continuance as Ration/Sugar Dealer at Draha.

Therefore, while dismissing the petitioner's Writ Petition, the State-respondents are directed to initiate process for engagement of Ration/Sugar Dealer at Draha. However, in the circumstances and to see that public of the area does not suffer because of the non-supply of Ration, it is provided that until finalization of process for engagement of a new Ration/

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Sugar Dealer for Draha, respondent No. 5 be permitted to work as Ration/Sugar Dealer purely as a temporary measure.

(J.P. SINGH)
JUDGE

JAMMU
09.11.2011
Tilak, Secy.