

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW 107/2010, CMA no. 149/2010

Date of order: 24.12.2012

Neena Devi

v

Suman Lata and ors.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice
Hon'ble Mr. Justice Hasnain Massodi, Judge.

Appearing counsel:

For the appellant(s) : Mr. Sudershan Sharma, Advocate.

For the respondent(s) : Mrs. Z. S. Watali, Dy. AG.
Mrs. S. Kour, Sr. Advocate with
Mr. Rajiv Gorka, Advocate.

-
- | | | | |
|----|--|---|--------|
| 1. | Whether approved for reporting
In Press/Media | : | Yes/No |
| 2. | Whether to be reported in
Digest/Journal | : | Yes/No |
-

M. M. Kumar, CJ

1. These two* appeals have been filed by the candidates who have participated in the selection process for appointment as Anganwari Worker. In the writ petitions relatable to these appeals, they have raised various issues including the issue that the selected candidate was not resident of the Village where the Anganwari Centre was situated and the post was to be filled. According to the scheme each centre is manned by an Anganwari Worker who performs the function of providing supplementary food to the needy persons and imparting education to children. Such Anganwari Workers are paid an honorarium of Rs.1200/- or

Rs.1400/- per month. Various other aspects of the scheme and the constitution of the committee have been discussed by the learned Single Judge in the impugned order. For the view we are taking, it would not be desirable to burden this order with details.

2. Mr. Sudershan Sharma, learned counsel for the appellant and Mrs. S. Kour, learned senior counsel for the respondent as well as Mrs. Watali, Dy. AG have agreed that in this appeal the learned Single Judge has erroneously neglected discussion on the submissions made by the appellant-writ petitioners to the effect that the selected candidates were not the resident of the area where the Anganwari Centre is situated which brings to the fore front the issue of their eligibility. If a meritorious candidate for that reason is not eligible then his merit would be insignificant. The learned Single Judge has discussed only one issue, namely, *inter se* merit of the candidates and has decided the writ petition on the basis that the writ petitioner had secured far less marks than the selected candidates. Simply on the basis of the higher marks secured by the private respondent, the writ petitions could not have been decided. The question of eligibility would assume significance because once a candidate is found ineligible on the ground that he or she is not a permanent resident of the area where the

Anganwari Centre is located and therefore, not eligible, then the higher merit of a candidate would not be of any consequence. Such a candidate has to make room for a person even with inferior merit who is the permanent resident of the area where the Anganwari Centre is located.

3. At one stage it was submitted that there is no necessity to adjudicate the aforesaid issue and the merit must be permitted to prevail. The learned counsel has made efforts to support the view taken by the learned Single Judge by arguing that *inter se* merit has to be regarded but eventually an agreement has emerged for determination of eligibility of such candidates.

4. After hearing learned counsel for the parties and perusing the pleadings in the writ petitions, we find that there are averments made in various paragraphs of the writ petitions setting up the case that the respondent or the selected candidates were not eligible on the ground that they were not permanent resident of the area where the Anganwari Centre is located and the post was to be filled up. Once the aforesaid factual position is available on record then the only one option open before us is to send the matter back to the learned Single Judge so that the issue of eligibility or any other issue may adequately be dealt with and decided.

5. As a sequel to the above discussion, the order passed by the learned Single Judge is set aside. The matter is remanded back to the learned Single Judge for a decision afresh in accordance with law and merit. The writ petitions are restored on the board of the learned Single Judge and be posted for hearing on 26.02.2013 as per the Roster. The parties are given liberty to file pleadings before the aforesaid date by handing over a copy to the learned counsel opposite. We wish to make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the learned Single Judge shall proceed to decide the controversy afresh in accordance with law.

6. These appeals alongwith CMA(s) stands disposed of.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
20.12.2012
Parshant

S. No.	Title
1	LPASW No. 107/2010, CMA no. 149/2010 Neena Devi v. Suman Lata and ors.
2	LPASW no. 110/2010 Neena Devi v. State of J&K and ors.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
20.12.2012
Parshant