

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No.890/2012
CMA No.1358/2012

Date of Decision: 14.08.2012

Mohd. Arif & Ors. **v.** **State of J&K & ors.**

CORAM:

Mr. JUSTICE J. P. SINGH.

Appearing counsel:

For Petitioner(s) : Mr. M.I.Sherkhan, Advocate.

For Respondent(s) : Mr. Ravinder Sharma, AAG.

i)	Whether approved for reporting in Press/Media	:	Yes/No.
ii)	Whether to be reported in Digest/Journal	:	Yes/No.

The petitioners were engaged as Education Volunteers in Seasonal Camps at different Dhoks to provide educational support to Nomadic children during their migration to upper reaches and temporary stay thereat, on temporary basis, under AIE component of Sarva Shiksha Abhiyan, a Central Government Scheme to provide education to rural masses. Their temporary engagement on contractual basis had to terminate with the end of the season for which they were engaged. This, however, does not appear to have happened and the State-respondents continued to engage them even after the termination of their initial engagement.

They continued working as such from 2005 onwards in Dhoks/Bheks (seasonal schools) in zone Darhal, Gurez,

Bandipora, Quilmuqam, Kangan, Harigangman, Drass, Tab, Shopian, Tral, Sathra, Surankote, Buffaliaz, Thanamandi, Peeri, Tangmarg, Hajan, Magamkhag, Uri, Largam, Verinag, Keegam Mandi, Kalakote, Pulwama.

The petitioners have filed this joint Writ Petition for Restraint directions against their disengagement and initiation of fresh process for engagement of seasonal EVs in Mobile Schools.

During the pendency of the Writ Petition, the Chief Education Officer, Rajouri invited Applications for engagement of Education Volunteers to provide educational support to nomadic children under AIE component of SSA Scheme, in identified Bheks/Dhoks indicated as such in the Advertisement Notice. The Advertisement Notice, *inter alia*, provides for engagement of candidates purely on the basis of merit.

It is not disputed by the petitioners' learned counsel that the petitioners too had participated in the Selection process and names of some of them appear in the Merit List.

According to the petitioners' learned counsel, having been engaged pursuant to a selection process, the petitioners' services are required to be continued until the AIE component of SSA Scheme continues to operate and there was need to provide educational support to the Nomadic children. He says that the petitioners have acquired right to permanent engagement because of the services rendered by them during the period of their temporary engagement.

The petitioners have, however, not placed any material on records on the basis whereof it be said that all the petitioners had served from the date of their initial engagement until the issuance of Advertisement for selection of fresh EVs.

Considered the submissions of learned counsel for the parties.

The petitioners were engaged to provide educational support to Nomadic children during the period of their stay in Dhoks/Bheks under SSA Scheme. This Scheme neither hints at nor provides any mechanism for continuance of EVs in every season. Nothing has been pointed out by the petitioners to indicate that the Scheme provides for retention of EVs on permanent basis either.

Therefore, there being no provision in the Scheme for retention of seasonal EVs on permanent basis, the petitioners' Claim for continuance of their engagement, which otherwise terminates automatically after the season, is found untenable, additionally because continuance of petitioners, on a temporary assignment, would not, as such, vest in them any right of permanence thereagainst.

This apart, other meritorious candidates, who may become entitled to seek consideration for engagement as seasonal EVs, would be deprived of their right to consideration, if permanence had to be attached to the temporarily engaged EVs. Such a course may not serve the concept of equality and many entitled to consideration for engagement, to earn their sustenance, though for a limited

period, would be deprived of such consideration by retention of already temporarily engaged Education Volunteers.

This apart, continuance of already engaged seasonal EVs may not be justified, in that, it deprives the right of consideration to similarly situated persons without any justification therefor.

Even otherwise, having participated in the subsequent selection, the petitioners cannot seek continuation of their retention for every season to deny right of consideration to those who may be entitled to engagement on the basis of their merit obtained in the selection process.

There is, therefore, no merit in the Writ Petition, which is accordingly, dismissed leaving the State-respondents free to engage Education Volunteers on the basis of their merit. Orders for continuance of petitioners issued by the State-respondents pursuant to the interim orders passed in the case be withdrawn and fresh orders issued on the basis of merit of the candidates in the selection.

(J. P. Singh)
Judge

JAMMU:
14.08.2012
Vinod.