

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

**SWP No. 1513/2010
CMP Nos. 2107/2010, 3059/2010, 3092/2010 & 2482/2012**

Date of Decision: 22.08.2012

Seema Devi and anr. Vs. State of J&K & ors.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s) : Mr. Ajay Abrol, Advocate.
For the Respondent(s) : Mr. Ravinder Sharma, AAG
Mr. Sudershan Sharma, Advocate.

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

JUDGMENT

The petitioners are aggrieved by their deletion from the Panel for engagement of Rehbar-e-Taleem in *P.S. Dhaki*. Questioning their introduction therein, they seek quashing of Naresh Kumar and Raman Kumar-respondent Nos. 5 and 6's empanelment therein.

Finding that the empanelment or otherwise of the petitioners and respondent Nos. 5 and 6 rested on determination of actual residence at village *Blater Mohra Dhaki* of the petitioners which fact was hotly contested by the respondents, and in view of the parties' reliance on documents on the basis whereof it was not possible to ascertain true factual position regarding petitioners' actual

residence, this Court, vide its order dated 28.09.2010, directed the Deputy Commissioner, Samba to find as to whether or not the petitioners were actually residing in village *Dhaki*. The parties were left free to produce material on which they may rely on, to support their respective stand, before the Enquiry Officer.

The Deputy Commissioner has filed his Report that the petitioners were not actually residing in village *Blater Morha Dhaki*.

Contesting the findings in the Report, the petitioners have filed Objections thereto.

The petitioners' learned counsel questions the Deputy Commissioner's Report as factually incorrect and legally unsustainable, for, the documents relied upon by the Deputy Commissioner were irrelevant and the material documents produced by the petitioners had been ignored consideration erroneously and that too without hearing the petitioners during the enquiry.

Considered the submissions of learned counsel for the parties and examined the Deputy Commissioner's Report and petitioners' Objections thereto.

To consider the petitioners' Objections, the Deputy Commissioner's Report was perused. There is no merit in the petitioners' learned counsel's submission that the petitioners were not heard in the matter, in that, Deputy Commissioner's Report specifically indicates

the petitioners to have appeared before him, making statements and producing documents on which they relied upon to prove that they were actually residing in village *Blater Morha Dhaki*. Learned Commissioner has considered their submissions and taken note of the documents relied upon by them before recording his findings.

In coming to the conclusion that the petitioners were not residing in village *Blater Morha Dhaki*, he has relied upon various documents besides the statements that the villagers and *Numberdar* of the village made to him during his visit to the village. The villagers and the *Numberdar* had categorically stated before him that the petitioners were not residing in the village. He has, *inter alia*, relied upon Voter List, Declaration Form submitted by petitioner No.1's father, Certificate issued by AEE, EM&RE Hiranagar indicating installation of electric connection on petitioner No.1's father's name at village *Tapyal*, Voter List indicating the name of the family members of petitioner No.2 in village *Mela*, Marriage Card of petitioner No.2. In addition to the above documents, he relied on Tehsildar Samba's Certificate to the effect that petitioner Nos. 1 and 2 were not actually residing in village *Dhaki*.

The petitioners' plea that reliance on Tehsildar's Certificate was misplaced because the Certificate was later

annulled, does not affect, in any way, the factual findings recorded by the Deputy Commissioner, in that, the Certificate was annulled only on the ground that the Tehsildar was not the designated Competent Authority to issue Residence Certificate and not on any ground of its being factually incorrect.

This apart, even if the Tehsildar's Certificate were not to be taken into consideration, there was still ample evidence and material before the Deputy Commissioner to justify the findings reached at by him.

The petitioners' plea that the documents relied upon by the Deputy Commissioner were irrelevant too is without merit.

In view of the categoric statements of the villagers and the *Numberdar* of the village to the effect that the petitioners were not actually residing in village *Blater Morha Dhaki*, there may not be any scope for interference with the Deputy Commissioner's Report in Judicial Review, particularly, when the selection is yet to be finalized. The findings recorded by the Deputy Commissioner are found supported by the documentary evidence as also by the best evidence of the villagers and the Numberdar.

Therefore, satisfied with the enquiry conducted by the Deputy Commissioner and finding no merit in the Objections raised by the petitioners to the Enquiry Report

5

and the findings recorded therein, the petitioners' Claim for empanelment fails.

For all what has been said above, the petitioners' Writ Petition is found meritless, hence *dismissed*.

(J. P. SINGH)
Judge

JAMMU
22.08.2012
Vinod.

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

**SWP No. 1513/2010
CMP Nos. 2107/2010, 3059/2010, 3092/2010 & 2482/2012**

Date of Decision: 22.08.2012

Seema Devi and anr. Vs. State of J&K & ors.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s) : Mr. Ajay Abrol, Advocate.
For the Respondent(s) : Mr. Ravinder Sharma, AAG
Mr. Sudershan Sharma, Advocate.

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

JUDGMENT

The petitioners are aggrieved by their deletion from the Panel for engagement of Rehbar-e-Taleem in *P.S. Dhaki*. Questioning their introduction therein, they seek quashing of Naresh Kumar and Raman Kumar-respondent Nos. 5 and 6's empanelment therein.

Finding that the empanelment or otherwise of the petitioners and respondent Nos. 5 and 6 rested on determination of actual residence at village *Blater Mohra Dhaki* of the petitioners which fact was hotly contested by the respondents, and in view of the parties' reliance on documents on the basis whereof it was not possible to ascertain true factual position regarding petitioners' actual

residence, this Court, vide its order dated 28.09.2010, directed the Deputy Commissioner, Samba to find as to whether or not the petitioners were actually residing in village *Dhaki*. The parties were left free to produce material on which they may rely on, to support their respective stand, before the Enquiry Officer.

The Deputy Commissioner has filed his Report that the petitioners were not actually residing in village *Blater Morha Dhaki*.

Contesting the findings in the Report, the petitioners have filed Objections thereto.

The petitioners' learned counsel questions the Deputy Commissioner's Report as factually incorrect and legally unsustainable, for, the documents relied upon by the Deputy Commissioner were irrelevant and the material documents produced by the petitioners had been ignored consideration erroneously and that too without hearing the petitioners during the enquiry.

Considered the submissions of learned counsel for the parties and examined the Deputy Commissioner's Report and petitioners' Objections thereto.

To consider the petitioners' Objections, the Deputy Commissioner's Report was perused. There is no merit in the petitioners' learned counsel's submission that the petitioners were not heard in the matter, in that, Deputy Commissioner's Report specifically indicates

the petitioners to have appeared before him, making statements and producing documents on which they relied upon to prove that they were actually residing in village *Blater Morha Dhaki*. Learned Commissioner has considered their submissions and taken note of the documents relied upon by them before recording his findings.

In coming to the conclusion that the petitioners were not residing in village *Blater Morha Dhaki*, he has relied upon various documents besides the statements that the villagers and *Numberdar* of the village made to him during his visit to the village. The villagers and the *Numberdar* had categorically stated before him that the petitioners were not residing in the village. He has, *inter alia*, relied upon Voter List, Declaration Form submitted by petitioner No.1's father, Certificate issued by AEE, EM&RE Hiranagar indicating installation of electric connection on petitioner No.1's father's name at village *Tapyal*, Voter List indicating the name of the family members of petitioner No.2 in village *Mela*, Marriage Card of petitioner No.2. In addition to the above documents, he relied on Tehsildar Samba's Certificate to the effect that petitioner Nos. 1 and 2 were not actually residing in village *Dhaki*.

The petitioners' plea that reliance on Tehsildar's Certificate was misplaced because the Certificate was later

annulled, does not affect, in any way, the factual findings recorded by the Deputy Commissioner, in that, the Certificate was annulled only on the ground that the Tehsildar was not the designated Competent Authority to issue Residence Certificate and not on any ground of its being factually incorrect.

This apart, even if the Tehsildar's Certificate were not to be taken into consideration, there was still ample evidence and material before the Deputy Commissioner to justify the findings reached at by him.

The petitioners' plea that the documents relied upon by the Deputy Commissioner were irrelevant too is without merit.

In view of the categoric statements of the villagers and the *Numberdar* of the village to the effect that the petitioners were not actually residing in village *Blater Morha Dhaki*, there may not be any scope for interference with the Deputy Commissioner's Report in Judicial Review, particularly, when the selection is yet to be finalized. The findings recorded by the Deputy Commissioner are found supported by the documentary evidence as also by the best evidence of the villagers and the Numberdar.

Therefore, satisfied with the enquiry conducted by the Deputy Commissioner and finding no merit in the Objections raised by the petitioners to the Enquiry Report

5

and the findings recorded therein, the petitioners' Claim for empanelment fails.

For all what has been said above, the petitioners' Writ Petition is found meritless, hence *dismissed*.

(J. P. SINGH)
Judge

JAMMU
22.08.2012
Vinod.