

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

SWP No. 735/2012
CMA No.1123/2012, CMA No. 644/2013

Vbeena Devi Vs. State and Ors.

Coram:
Hon’ble Mr. Justice Bansi Lal Bhat,Judge.
Appearing counsel:

For petitioner(s): Mr. H.C.Jalmeria, Advocate.
For respondent(s): Mr.S.A.Hussain, Adv.for R-5.

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| 1. | Whether apaproved for reporting in
Law Journals? | Yes/No |
| 2. | Whether approved for publishing
inPress/Media | Yes/No |

Through the medium of instant writ petition,
following reliefs are sought:

“ CERTIORARI

- 1)** Quashing the Sub Clause “F” of clause 3 of Government order No. 07 SW of 2010 dated 18.1.2010 of the respondent-1 whereby provision of the weightage for academic qualification and viva voce for the post of Anganwadi worker has been given as:
- i) Matriculatin : 85 points
 - ii) Viva voce :15 points.

The higher qualification has been ignored. The order is ultra vires the constitution, discriminatory and arbitrary.

- 2)** Quashing the selection of respondent-5 made for the post of Anganwadi worker in the newly opened Anganwadi center, Greater Kailash, Jammu who is already

appointed on substantive post and whose impugned selection has been made on unjustified and undisclosed criteria.

MANDAMUS :

Commanding upon respondents to :

- i) provide to recast the criteria and provide consideration and weightage to higher qualification in selection for the post of Anganwadi workers.
- ii) Select and appoint the petitioner as Anganwadi worker in the newly opened Anganwadi center at Greater Kailash Jammu being the only graduate amongst the applicants.”

Petitioner is a graduate. She claims to be the resident of Lane No. 55, Greater Kailash, Jammu. She applied in response to Advertisement notice issued by respondent-4 for the post of Anganwadi worker in the newly created Anganwadi center for Lanes 55 and 56 of Greater Kailash, Jammu for which the minimum qualification was matriculation passed. It is alleged that CDPO, Gandhinagar transferred private respondent, Sureshta Kumari from Anganwadi center, Thanger (Channi Himat) to Greater Kailash on temporary basis. Allegedly same was done at the instance of Director, Social Welfare, Jammu before the completion of selection process for the advertised post. Petitioner filed objections dated 6.2.2012 against filling up of advertised post by transfer of private respondent. CDPO then issued interview schedule. Date of interview was fixed on 17.2.2012. Petitioner appeared in the interview and submitted her testimonials. Provisional select list was published

by the CDPO on 19.2.2012. Same was republished on 20-21.2.2012 with modified name of Surishta Kumari. On the basis of information provided to petitioner on her RTI application with regard to candidates shown in select list, petitioner filed an appeal dated 27.2.2012 before the Deputy Commissioner, Jammu against the selection of private respondent, which is still pending consideration.

Aggrieved of selection of private respondent, petitioner approached this Court assailing her selection on the ground that the selection criteria providing no weightage to qualification higher than matriculation, was violative of constitutional guarantees, that petitioner was the only graduate amongst the candidates and being highest in qualification was entitled to be selected, that the private respondent was already employed as Anganwadi worker and she was transferred to fill up the only post of Anganwadi worker at Greater Kailash Center with malafide intention of defeating legitimate rights of petitioner. Eligibility of private respondent has also been assailed on the ground that she was not even a matriculate and her qualification as Rattan could not be equated with matriculation, thereby rendering her ineligible.

Respondents have contested the petition on the ground that Integrated Child Development Scheme is a Central Government Sponsored Scheme and the State Government prescribed norms for proper implementation of the same.

That Anganwadi workers are not governed by any statute and are not employees of the State. Their engagement is regulated by Order No. 07 SW of 2010 dated 18.1.2010. Presently qualification for engagement of Anganwadi workers is prescribed as 10th and additional qualification has no relevance in engagement of Anganwadi workers. That the private respondent had also qualified the English of 10th standard as additional subject from Jammu University and thus she was eligible for consideration. That as per criteria, 85% marks were prescribed for academic qualification i.e. matriculation and 15 marks were prescribed for viva. That the petitioner secured 30.43 points apportionate to her marks of 179/500 obtained in 10th whereas the private respondent obtained 58.90 points proportionate to 485/700 obtained in 10th. In viva, the petitioner obtained 10.60 points whereas the private respondent secured 12.30 points . Thus, the petitioner had secured only 41.03 points whereas the private respondent had secured 71.19 points, entitling her to selection in view of higher merit. Petition has also been contested as being not maintainable, as the petitioner had sought alternate remedy of appeal which was yet to be decided.

Heard the rival sides and considered their submissions in the context of documents filed in support of the pleadings.

It is not disputed that the petitioner as also the private respondent had responded to advertisement notice and applied for engagement as Anganwadi worker against the only vacancy at Anganwadi center, Greater Kailash. As per terms of engagement, the candidates were required to possess minimum qualification of matriculation in addition to other conditions of eligibility. No weightage was provided for higher qualification. It is also not disputed that private respondent was previously engaged as Anganwadi worker in Anganwadi center, Toph Sherkhania. Private respondent claims that she joined at Anganwadi center, Thanger by way of mutual transfer with Swarna Kumari. This, according to her, was necessitated due to her marriage. Private respondent was, thereafter temporarily transferred to Anganwadi center Greater Kailash on direction of respondent-2 for making the Anganwadi center operational. That was a temporary arrangement and private respondent applied afresh for the post of Anganwadi worker pursuant to advertisement notice No. DIP/J-11272/11. This factual position has not been disputed. Therefore, the earlier engagement and transfer of private respondent is of no relevance qua the impugned selection.

It is contended on behalf of petitioner that denial of weightage to higher qualification is violative of constitutional guarantees under Articles 14 and 16 of Constitution of India.

Respondents have, per contra, laid emphasis on the object of the scheme underlying selection of Anganwadi workers who are supposed to be local candidates abutting the Anganwadi center, or residing in its vicinage. The minimum qualification provided being matriculation in normal course with provision for relaxation of the qualification in the event of local candidates with matriculation qualification not being available and not providing any weightage for higher qualification, clearly indicates that the object of the scheme would be better served by engaging the talent available in the locality whose services could be enlisted without an apprehension of looking for green pastures and deserting the Anganwadi center at will. Thus, the larger interest of the community would be better served by not providing weightage for higher qualification which otherwise, may result in elimination of the candidates possessing minimum eligibility qualification and ultimately resulting in resorting to fresh selection process as and when the selected candidate with higher qualification is able to find better avenues. Viewed in this context, it is futile to contend that the eligibility criteria making no room for higher qualification, is violative of constitutional guarantees.

Petitioner has assailed the selection of private respondent on the ground that the latter was possessed of qualification "Rattan" which is not equivalent to matriculation. This objection has

to be noted only for being rejected in view of communication No.PIO/JU/12/5193 dated 10.1.2013 issued by Public Information Officer of Jammu University in response to RTI application of private respondent which specifies that " Rattan is a proficiency course, equal to 10th standard. Certificates issued by the University for these courses are valid for all purposes." It is further clarified that the candidate having passed "Rattan" from the University of Jammu, has to appear in "English only" in the Board of School Education for equivalence of matriculation. Thus, the private respondent having passed Rattan was eligible for selection only after passing English paper of matriculation elevating her to the status of a matriculate. It is not disputed that the private respondent passed English paper in matriculation subsequent to passing of Rattan. Thus, she became eligible and satisfied the eligibility criteria on the date of advertisement notice. The argument raised on this score is accordingly repelled.

It is contended on behalf of private respondent that petitioner had participated in the selection process and after being unsuccessful, she could not be permitted to assail the selection process. This argument is sound both in technique as also in substance. It is well settled that appointment / selection process cannot be challenged by the candidates who have participated in selection process but have

remained unsuccessful. This court has reaffirmed the same view in *Dr. Irfan Rasool Gadda Vs. State* and connected petitions reported in 2005 SLJ (II) 423 Para-74.

It is further contended on behalf of private respondent as also other respondents that the instant petition was not maintainable for being premature. Admittedly the petitioner has filed an appeal before the Deputy Commissioner against the selection of private respondent and the appeal is still sub judice. Thus, petitioner has chosen a remedy and it was not open for her to assail the selection of private respondent by resorting to filing of this writ petition without waiting for the out-come of the appeal.

The effect of the findings recorded hereinabove is that the instant petition being premature and the petitioner also being not found entitled to assail the eligibility criteria and the mode of selection coupled with the fact that the private respondent possessed better merit, this petition deserves to be dismissed and the same is accordingly dismissed. Interim direction, if any, shall stand vacated.

(Bansi Lal Bhat)
Judge

Jammu:
RSB, Secy.