

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

SWP No.463/2015
CMP No.753/2015

Date of order: **17.11.2015**

Shahida Akhter

Vs.

State & Ors.

Coram:-

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:-

For the Petitioner(s): Mr. Aftab Ahmad.

For the Respondent(s): Mr. Anees-ul-Islam, GA-for R1 to R5.

Mr. A. A. Thakur-for R6&7.

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| i) | Whether to be reported in Digest/Journal: | YES/NO |
| ii) | Whether to be reported in Press/Media: | YES/NO/OPTIONAL |
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1. Rounds of litigation, in effect, has protracted finalization of selection and engagement of two ReT teachers as were to be filled up in newly opened Primary School under Sarva Shiksha Abiyan meant for Habitation Nai Basti, Dudwagan Qammar.

2. An advertisement notice was issued inviting applications from eligible candidates on 19th November, 2009 which was published on 20th November, 2009. Last date of receipt of applications was seven days from the date of publication, means 27th November, 2009. Petitioner was proposed to be married to Nissar

Ahmad Malik S/o Mohammad Akram Malik R/o Qammar (Dudwagan). The Nikah was sermonized on 17th August, 2009. Formal function of marriage was sermonized and celebrated on 23rd November, 2009.

3. Petitioner possessing the qualification of B.Sc. and M. A/B. Ed. also applied for the post of ReT teacher as was advertised for Habitation Dudwagan Qammar, on 26th November, 2009, means well before the last date for receipt of application. The requirement was to annex PPRC with the application for which immediately after sermonization of formal marriage function, petitioner had applied to Tehsildar, Dooru who vide his communication dated 26.11.2009 had conveyed to the Zonal Education Officer, Verinagh that the petitioner has applied for Present Permanent Residence Certificate, case has been verified by Naib Tehsildar reporting therein that the petitioner is actually resident of Village Mehmoodabad and has been married with one Nissar Ahmad Malik S/O Mohammad Akram Malik R/O Qammar (Dodwagan) recently on 23.11.2009 and is now residing at Village Qammer with her

husband from last three days. Despite this, Zonal Education Officer refused to receive the application of the petitioner which constrained the petitioner to have resort to litigative process and, as such, filed suit Shahida Akhter & anr Vs. State & ors. before the Court of Sub Judge, Anantnag. During the pendency of the suit, Chief Education Officer, Anantnag had issued instruction to the Zonal Education Officer, Verinag to accept the application of the petitioner but while filing written statement in the Court of Sub Judge, Anantnag, the respondents pleaded that there is no scope to consider under process certificate, therefore, petitioner is lacking eligibility.

4. Confronted with the said position, the suit was withdrawn and SWP No.2085/2009 was instituted by the petitioner. During the pendency of the said petition, Zonal Education Officer issued tentative select list of respondents No.6 and 7 on 09.02.2010. The said petition was dismissed. The dismissal order was challenged by medium of LPA No.44/2010 which has been disposed of vide order dated 01.03.2011 with the direction to the Director School Education to hold enquiry into the matter

as to whether petitioner had submitted application form within cut-off date. In case it is found to have been submitted within cut-off date, then the petitioner shall be allowed to participate in the process of selection. The Director School Education, Kashmir Srinagar in compliance to the said judgment has passed detailed order dated 26.12.2014 concluding therein that the claim of the petitioner does not merit any consideration and is not covered under rule, therefore, rejected. Dissatisfied therewith, petitioner has again filed instant petition seeking quashment of the said order of the Director dated 26.12.2014 as well as the tentative select list of respondents No.6 and 7.

5. There is yet another importation development i.e. petitioner had also competed against the post of teacher available in GMS, Qammar. On selection order of engagement dated 28.02.2015 has been issued in her favour by Zonal Education Officer, Verinag, as such, is now working as ReT teacher.

6. In view of the said development, learned counsel for the respondents made a submission to the effect that now the petitioner is appointed, she may have no cause to pursue this writ petition.

Learned counsel for the petitioner would submit that he is under instructions to contest the case because petitioner would have been appointed in the year 2009, un-necessarily with some oblique motive she has been entangled into litigation. By now she would have completed five years as ReT and would have been appointed as a General Line Teacher.

7. In essence, contention of the learned counsel for the petitioner is suggestive of the fact that in case petitioner is selected in pursuance to notification of 2009, she may get appointment with effect from the year 2009. The argument has no substance at all because the process of selection initiated vide advertisement notice of 2009 till date has not been finalized. No one has been appointed. Even if today petitioner is declared to be eligible still necessary result would be to ask the respondents to complete the process of selection. So again selection process has to be completed today. In case petitioner makes the grade, her appointment will be with effect from the date of finalization of the selection not from the date advertisement notice has been issued.

8. One position has to be made clear here that once petitioner got married to Nissar Ahmad Malik R/O Dudwagan Qammar, she automatically became resident of that habitation. So she had every right to compete for the post. Position of the petitioner was very strong because her Nikah was solemnized in the month of August, 2009 and formal marriage was celebrated on 23rd November, 2009 i.e. the date on which she came to live with her husband as his wife in habitation Dudwagan Qammar.

9. The advertisement notice was published on 20.11.2009, last date for receipt of applications was 27th November, 2009. It was not possible for her to get PPRC within two days i.e. from the date she had come to live with her husband after celebration of her marriage, that is why Tehsildar had communicated to the Zonal Education Officer in categorical terms that petitioner after marriage is living with her husband in the village with effect from 23.11.2009. Under such circumstances her application should have been received and she should have been considered along with other candidates.

10. The Zonal Education Officer appears to have laboured under misconception by stating that the procedure does not allow receipt of applications in absence of PPRC. Such an approach of the Zonal Education Officer has given rise to an unfortunate situation as none of the candidates was engaged which was not only to the disadvantage of the candidates who were to be engaged but was more disadvantageous to the positions of the students who were to be imparted education by such teachers.

11. Petitioner, no doubt, was eligible but now to direct the respondents to consider her along with other candidates will not serve any purpose because she is already appointed as a ReT teacher. If at all she succeeds in making the grade in pursuance to the notification of 2009, still her engagement can be only prospective not retrospective. There is no scope to direct her engagement retrospectively if at all she makes the grade. So in pursuance to the notification of 2009 the candidates who are to be selected will get engagement with effect from final selection. Now no useful purpose will be served by quashing the tentative select list or by directing

the respondents to consider the petitioner along with other candidates.

12. In the afore-stated circumstances and the observations made, this petition does not survive for any further consideration, as such, is disposed of along with connected CMP. Interim direction dated 13.03.2015 shall cease to be in operation.

(Mohammad Yaqoob Mir)
Judge

Srinagar
17.11.2015
"Mohammad Altaf"

Pronounced today on 17.11.2015 in terms of Rule 138(3) of the Jammu and Kashmir High Court Rules, 1999.

(Ali Mohammad Magrey)
Judge