

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

SWP No.413/2014
CMP No.606/2014

Date of Dec:08.06.2015

Mohammad Hussain Mohand

Vs.

State of J&K & ors.

Coram:-

***Hon'ble Mr. Justice Mohammad
Yaqoob Mir, Judge***

Appearing counsel:-

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

For the Respondent(s): None for R1 to R4.

Mr. M. A. Qayoom-for R5.

1. Applications were invited from eligible candidates for replacement of various ReT vacated due to their recruitment through SSRB which include one vacancy in PS Sudran location Habitation Sudran. 07 candidates had applied which include petitioner and respondent No.5. Petitioner figured at serial No.1 in the order of merit. His tentative selection was notified by Chief Education Officer, Anantnag for objections. When no objections were received, the order of engagement bearing No.519 dated 02.02.2011 is shown to have been issued on 04.06.2013. He has joined on the same date. On 13th June, 2013, his engagement order has been kept on hold on account of non-observance of requisite formalities and on account of stay order passed by the Court in the suit titled "Jawaza Akhter Vs. State

& ors.". Subsequently his engagement order has been cancelled vide order dated 8th June, 2013.

2. Respondent No.5 had filed a suit before the Court of Sub Judge, Anantnag. Alongside an application for grant of injunction had also been filed, on consideration whereof, the said Court vide its order dated 17.06.2010 had directed status quo to be maintained. Subsequently the said order of status quo was modified by learned Sub Judge vide its order dated 27.05.2013, based on which the order No.519 dated 02.02.2011 was issued on 4th June, 2013. The order of learned Sub Judge was challenged by medium of appeal before the Court of Additional District Judge, Anantnag and its operation was stayed by the Appellate Court vide order dated 06.06.2013. It is subsequent thereto, order of engagement was cancelled vide order dated 8th June, 2013.

3. During the entire process of these proceedings, another important situation arose i.e. petitioner at the time of issue of advertisement notice was already working as a Constable in the Police Department. Subsequently he had absented, therefore, has been discharged from the service

vide order No.64 of 2014 dated 31.01.2014 with effect from the date he absented from the battalion i.e. 2nd June, 2014, as is clear from the No Objection Certificate issued by the Commandant IRP 13th Bn. Khawaja Bagh Baramulla.

4. Another objection was raised that the petitioner is not resident of Habitation Sudran, therefore, was not eligible.

5. Confronted with the aforesaid situation, respondents, more particularly respondent 3, tentatively selected respondent No.5. Same has been notified and published in the newspaper "Kashmir Uzma" in its issue dated 26th February, 2014. As against such tentative selection of respondent no.5, petitioner has filed detailed objections, copy of which is also available on the records. In view of the said development i.e. tentative selection of respondent No.5, the appeal as was pending before the Court of Additional District Judge, Anantnag, was dismissed as withdrawn. Thereafter suit as was pending before the Court of Sub Judge, Anantnag was also dismissed for default. Now the decks have been cleared for finalizing the process of selection. The tentative selection of respondent No.5 is not final. It is open to objections and the petitioner has already filed the objections.

6. The Assistant Commissioner Revenue, Anantnag, vide his communication dated 28.04.2014 addressed to Deputy Commissioner, Anantnag, has made it clear that Village Kuthair is a revenue village having various Mohallas. Government Primary School (SSA) has been established in Sudran. The petitioner was an employee of the Police Department at the time of advertisement and has served in the department from 2007. The advertisement notice was issued on 22.07.2009. The petitioner had applied for his resignation on 01.06.2013 in the Police Department, based on which Commandant IRP 13th Bn. Baramulla has issued order No.64 of 2014 dated 31.01.2014.

7. Petitioner has sought quashment of all the orders/communications as referred to hereinabove in pursuance whereof his engagement was terminated besides has challenged tentative selection of respondent No.5.

8. In the totality of facts and circumstances of the case, the entire process of protraction has been curtailed. Now the important position as emerged is as to whether tentative selection of respondent No.5 is valid and in-keeping with the Rehbar-i-Taleem scheme. The objections as field by the petitioner against the tentative selection of respondent No.5 are required to be considered by the respondent authorities.

After considering the said objections, the respondent No.3(Chief Education Officer) has to take the final decision.

9. The first question for determination before respondent No.3(Chief Education Officer, Anantnag) as against tentative selection of respondent No.5 is as to whether Sudran is a Habitation because the advertisement notice provides that the eligible qualified candidates belonging to Habitation/Revenue Village shall apply. Vis-à-vis one post of ReT available in PS Sudran, in the column “method of recruitment” is recorded as “Habitation/Revenue Village”.

10. According to petitioner, Sudran is a not a Habitation when according to respondent No.5 Sudran is a Habitation. This is an issue to be addressed. It is to be made clear that for addressing the issue of Habitation, two conditions in terms of Govt. order No.288-Edu of 2009 dated 08.04.2009 are to be satisfied, (1) locality must have a population of 300 souls and (2) there must be a distance of one kilometre from the boundary of one Mohalla(Habitation) to the boundary of another Mohalla (Habitation).

11. In case Sudran is established as a Habitation, then petitioner may have no claim. In case it is not held to be a Habitation, then petitioner shall have a claim.

12. Another question is as to whether petitioner was eligible to apply when he was already an employed person i.e. he was on the rolls of the Police Department as a Constable from the year 2007 till 2014.

13. Said two questions are to be addressed by the respondent Chief Education Officer while according consideration to the objections as have been filed by the petitioner against the tentative selection of respondent No.5

14. Viewed thus, in the stated facts and reasons, petition is disposed of with the following directions:

- A) Respondent No.3(Chief Education Officer, Anantnag) shall accord due consideration to the objections as filed by the petitioner against the tentative selection of respondent No.5 in the context of above two questions and then to take a final decision for final selection in accordance with Rehbar-i-Taleem scheme. In the process, petitioner as well as respondent No.5 shall be given opportunity of being heard.
- B) The decision as shall be taken within a period of four weeks from the date copy of this order is served upon respondent No.3 shall be conveyed to the petitioner as well as respondent No.5.
- C) Right is reserved to the aggrieved party whosoever may be to re-agitate if thereafter cause survives.

Disposed of as above along with connected CMP.

(Mohammad Yaqoob Mir)
Judge

Srinagar
08.06.2015
"Mohammad Altaf"