

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.1993/2015
Caveat No.1393/2015
MP No.01/2015

Date of Order:15.09.2015

Asif Maqbool Najar

Vs.

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing Counsel:

For the Petitioner(s)/Appellant(s):Mr. Tariq M. Shah.

For the Respondent(s):

Mr. Shah Aamir, Dy. AG vice Mr. S. A. Naik,
AAG-for R1 to R4.

Mr. N. H. Shah, AAG-for R5.

Mr. Bilal A. Malla-for caveator/R-6.

(ORAL)

1. Two posts of ReTs, one with Science background and another with Math background, were to be supplied in PS, Darbagh of village Aglar. One candidate with Science background has been appointed whereas another vacancy with Math background has remained to be filled up in view of controversy vis-à-vis actual residence of the petitioner.
2. Petitioner claims to be the resident of Aglar whereas objection is that he has shifted to Village Nicklora which is an adjacent village for all practical purposes.
3. Writ petition (SWP) No.2252/2012 was filed which has been disposed of vide judgment dated 19th March, 2015. In terms whereof, Deputy

Commissioner, Shopian stand directed to hold an enquiry regarding place of residence of the petitioner and respondent No.6 and to transmit his report to the Chief Education Officer, Shopian. In case on enquiry both are found to be residents of habitation/revenue village, the meritorious candidate be engaged. In case only one candidate is found to be eligible, then he would get engagement order and in case both are not found to be residing in the revenue village, then respondents shall issue fresh advertisement notice. Deputy Commissioner, Shopian while holding enquiry shall give reasonable opportunity to both the parties. The petitioner and respondent No.6 had been left free to supplement their stand with documents in their possession.

4. In compliance to the aforesaid judgment Deputy Commissioner, Shopian has conducted the enquiry and concluded that the father of the petitioner though having landed estate at Village Aglar cannot strictly be considered as resident of Aglar having attained the status of permanent residence of village Nicklora in view of the documents, arguments and the evidence produced before him.

5. Dissatisfied with the enquiry report formulated by the Deputy Commissioner, Shopian dated 31st August, 2015, instant petition has been filed.
6. Learned counsel for the petitioner precisely highlighted that the father of the petitioner, in fact, is actual resident of village Aglar. Originally he had two kanals of landed estate and a residential house which exist and continues to be in his name. He also possesses ration card, permanent resident certificate and Social caste certificate wherein his residence is shown as village Aglar. He also made it clear that the petitioner in addition has 12 marlas of land located in an adjacent village Nickloora wherein he has constructed a small shed for agriculture/horticulture husbandry. He is not permanently residing there and even if he would have been residing there, same would not disentitle him from having the status of being resident of village Aglar which is his ancestral village where he has property in-tact.
7. In opposition, learned counsel for the respondent No.6 highlighted that the father of the petitioner

along with his family is residing in a newly constructed house located in Nicklora. In addition, Tehsildar, Pulwama has issued a certificate certifying therein that as reported by Naib Tehsildar, Palpora, petitioner is permanent resident of Village Niklora. Further added that father of the petitioner has an electric supply connection from 100 KVA sub-station (Code-109) installed at New Colony, Nicklora and a ration card has also been issued in favour of the petitioner from Village Nickloora.

8. The PRC issued in favour of the petitioner, photocopy of which is placed on record, clearly reveal that he is resident of Village Aglar. The certificate of being member of Socially and Education Backward class issued by Tehsildar, Shopian on 9th February, 2009 also suggests that the petitioner is resident of Village Aglar. The Voter slip issued in his favour in the year 2014 also shows him as well as his parent to be the residents of Aglar. Further the ration card issued in his favour on 25th July, 2012 also suggests that he is resident of Aglar.
9. The certificate issued by Tehsildar, Pulwama certifying that the petitioner is permanent resident of Village Nickloor, in fact, has been issued on the

basis of an application, which application allegedly by practicing fraud had been moved in the name of father of the petitioner with an object of defeating right of the petitioner. As against the said fraud, father of the petitioner has lodged a report with SSP, Crime Branch, Srinagar, copy of which is on record. Further Some times electric transformers are placed at different places. Electric supply connection shall not and cannot be a determinative factor about actual residence of a person.

10. The star question which, in fact, has been catching the attention for its resolution is as to whether father of the petitioner along with his family, for all practical purposes, could be treated to be resident of Nickloora or Aglar. In case concluded to be resident of Nickloora, then petitioner will loose right of consideration against the post of ReT with Math background, otherwise he being available eligible meritorious candidate of village Aglar, as per panel, should have a superior right of engagement against the said post.
11. It appears that the Deputy Commissioner, Shopian while holding enquiry has not considered all the attending circumstances, documents and other

material as referred to above while recording his finding that the petitioner is not resident of Aglar. Though the Deputy Commissioner appears to have made an effort but the report is wanting in its particulars, so has to be ignored. It being so, Deputy Commissioner is required to hold fresh enquiry and while recording his findings shall specifically deal with the documentary evidence and the position as noticed hereinabove. In the process he shall also be at liberty to constitute a Committee of senior officers, if so required, for addressing the controversy which, in effect, will help in early finalization of the process of selection and appointment. After enquiry, fresh report shall be prepared and forwarded to Chief Education Officer, Shopian who on the basis of that report shall proceed to finalize the process of selection against the post of ReT with Match background. This entire exercise shall be undertaken and completed in all respects within a period of six weeks from the date copy of the order is served upon Deputy Commissioner, Shopian.

12. Disposed of as above along with connected MP and caveat discharged.

(Mohammad Yaqoob Mir)
Judge

Srinagar
15.09.2015
“Mohammad Altaf”