

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

Case: SWP No.913/2013

Date of Order:26.07.2016

Nazama Akhter

vs.

State and ors.

Coram:

**Hon'ble Mr. Justice B.S.Walia, Judge**

**Appearing counsel:**

For Petitioner(s) : None.

For Respondent(s) : Mr. Vishal Bharti Dy.AG

Mr. Z.A.Mughal Advocate for R-6

Whether to be reported in  
Press/Media

: Yes/No

Whether to be reported in  
Digest/Journal

: Yes/No

Judgment.,

1. Instant writ petition has been filed praying for the issuance of a writ of Certiorari for quashing Annexure H i.e. order / letter No.PS/DDCR/2012-13/2827 dated 04.10.2012, order dated 04.03.2013 as also order No.01-POR/ICDS of 2013 dated 03.04.2013 i.e. Annexure J passed by respondent No.4 directing respondent No.5 to disengage the services of the petitioner and to engage respondent No.6 as Anganwari Worker in Anganwari Centre Mohra Okhla Ward No. 6. Prayer has also been made for the issuance of a writ of Mandamus for directing the official respondents to allow the petitioner to work as Anganwari Worker in Mohra Okhla, Ward No.6 of Village Nagrota and to pay her wages regularly. A writ of

Prohibition has been sought for restraining the respondents from disengaging the petitioner, for staying operation of order / letter No. PS/DDCR/2012-13/2827 dated 04.10.2012 i.e. Annexure H, subsequent order dated 04.03.2013 if any passed by respondent No.3 as also consequential order of respondent No.4 i.e. Annexure J dated 03.04.2013.

2. A short question which arises for consideration is as to whether order Annexure J directing disengaging of the services of the petitioner without conducting enquiry in accordance with the principles of Natural Justice on account of not supplying her material relied upon against her, is legally sustainable.

3. That the brief facts of the case leading to the filing of the instant writ petition are that the petitioner applied for the post of Anganwari Worker in Ward No.6, Mohra Gura Okhla, Panchayat Nagrota, ICDS Project, Rajouri, pursuant to advertisement Annexure D dated 03.07.2010. Conditions of eligibility relevant for the adjudication of the controversy in issue in the instant writ petition is as under :

**"05.** The candidate should belong to the Hamlets and Wards in respect of the urban areas where the Anganwadi Centre is sanctioned. "

4. Petitioner, claims that on account of her fulfilling the eligibility condition's she applied for the post of Anganwari Worker, Ward No.6 of Anganwadi Centre Gura Okhla, Panchayat Saldhar and being the most suitable candidate

was selected and appointed as such vide order Annexure E dated 04.10.2011. Pursuant to order of appointment, the petitioner joined duty and was deputed for one month training which petitioner claims to have completed successfully where after she was paid wages in her account as evident from Annexure F and G respectively i.e. copy of training and bank certificate.

5. That relevant conditions in order of appointment i.e. Annexure E dated 04.10.2011 are as under :

II. The candidate is liable to be rejected summarily in case any of the Marksheet / Certificate furnished by the candidate is found to be false and forged.

III. The engagement is liable to be terminated if it comes to the notice that :-

a) The candidate has more than one living spouse and / or shifted to a place other than the Panchayat Constituency/Ward where the Anganwari Centre is located and for which she has been selected.

b) The candidate has furnished wrong address to get herself selected against the designated Anganwari Centre.

2. This order is also subject to the verification of following certificates in original :-

III. Permanent residence Certificate / Ration Card / any other documentary proof in respect of place of residence.

IV. Certificate of proof of residence in concerned Mohalla/Ward, issued by the Competent Authority.

6. That a perusal of Annexure R-1 i.e. letter dated 15.09.2012 written by respondent No. 5 to respondent No. 3 reveals that the candidate below the petitioner in the select list i.e. respondent No.6 lodged a complaint with respondent No. 3 of the petitioner not being resident of Ward No.6, but of Mohra Kopra, i.e. Ward No.3 whereupon the case was got examined from the Tehsildar / BDO Rajouri, who after verification issued another Ward / habitation certificate in respect of the petitioner showing her to be resident of Ward No.3 Mohra Kopra instead of Ward No.6 Mohra Saldar. Certificate issued by the BDO, Rajouri dated 15.03.2012 i.e. Annexure R-2 reflects petitioner's father i.e. Altaf Hussain as resident of Ward No.3 as per the voter's list of Panchayat Election's 2011 of Panchayat, Halqa Nagrota, Saldhar.

7. That pursuant to issuance of Annexure R-1 i.e. letter dated 15.09.2012 by respondent No. 5 to the respondent No. 3, notice Annexure-R-3 was issued to the petitioner for verification of Mohra Certificate mentioning therein that she had been selected as Anganwari Worker in Anganwari Centre Mohra Okhla, Saldar on the basis of certificate showing her to be resident of Gura Okhla, Ward No.6 issued in her favour by

the Tehsildar Rajouri vide his letter No.STG/RC/356 dated 26.07.2010 but the same had been challenged by respondent No.6. The petitioner was directed to prove her Mohra certificate in order to establish her to be resident of Ward No.6 Mohra Okhla or Ward No.3, Mohra Kopra within one week, failing which it was informed that it would be assumed that she had nothing to say in her defence and order appointing her as Anganwari Worker would be cancelled.

8. That a perusal of Annexure R-1 i.e. letter dated 15.09.2012 reveals that the Tehsildar/BDO Rajouri after verification issued habitation certificate qua the petitioner showing her to be a resident of ward No.3 Morha Kopra instead of Ward No.6, Morha Saldhar. Neither Annexure R-1 nor the fresh certificate nor the documentary proof in respect thereto are reflected in notice Annexure R-3 dated 11.02.2013 nor supplied along with the same. Thereafter, respondent No. 5 addressed communication Annexure R-4 dated 06.03.2013 to respondent No. 4 mentioning therein that the petitioner had been directed vide Annexure R-3 i.e. letter dated 11.02.2013 to prove her being resident of Gura Okhla Ward No.6 but despite lapse of four months, the petitioner had not submitted any proof of residence except that already issued by the Tehsildar in her favour on 26.07.2010.

9. That on the basis of the position as noted above, it was concluded that the petitioner was not resident of Morha Okhla, Ward No.6 leading to request being made for

necessary orders to proceed further in the matter. On the basis of the same, respondent No. 4 issued order Annexure J dated 03.04.2013 directing respondent No. 5 to disengage the services of the petitioner and to engage respondent No.6 as Anganwari Worker, Anganwari Centre Morha Okhla Ward No.6 on the ground of the petitioner having failed to produce fresh Mohra Certificate and the same proving her not to be resident of Ward No.6. Similar stand was taken on behalf of respondent No.6.

10. That before a formal order of disengagement could be passed in terms of order Annexure J dated 03.04.2013, the petitioner approached this Court and was granted an order of status quo on 26.04.2013 i.e. present status of the petitioner was not to be disturbed.

11. None is present on behalf of the petitioner. However, in view of the position noticed above, I am not inclined to adjourn the case in view of the short question noticed in paragraph No. 2 above. No proper enquiry was conducted for arriving at a finding that the certificate of residence submitted by the petitioner was factually incorrect, therefore the services of the petitioner were liable to be dispensed with. Perusal of Annexure R-1 reveals exparte examination of the matter by the Tehsildar Rajouri leading to issuance of fresh residence certificate reflecting the petitioner to be resident of Ward No.3 instead of Ward No.6 as claimed by her on the basis of certificate dated 26.07.2010 issued by the Tehsildar.

Certificate issued pursuant to fresh verification by the Tehsildar has not been produced on record nor copy thereof supplied to the petitioner nor was the petitioner made aware of the material available against her and of the same having been taken into account behind her back. Although Annexure R-1 mentions that documentary proof was attached to show the petitioner to be resident of Ward No.3 instead of Ward No.6 and pursuant thereto notice Annexure R-3 dated 11.03.2013 was issued to the petitioner requiring her to prove being resident of Ward No.6 or Ward No. 3, failing which, it would be assumed that she had nothing to say in her defence and her order of engagement as Angawari Worker would be cancelled, but no mention was made in Annexure R-3 of the verification having been done by the Tehsildar/BDO Rajouri and on the basis thereof fresh Ward/habitation certificate having been issued showing the petitioner / her father to be resident of Ward No.3 Morha Kopra instead of Ward No.6 Morha Saldhar nor was fresh verification certificate or for that matter, certificate dated 15.03.2012 issued by the office of Block Development Officer Rajouri attached to Annexure R-3 nor were said documents brought to the notice of the petitioner.

12. That in the aforementioned background, a conclusion was reached by respondent No. 5 in Annexure R-4 dated 06.03.2013 of the petitioner not being resident of Ward No.6 on account of her having failed to submit fresh proof of being resident of Ward No.6 and of having merely submitted

residence proof of Ward No.6 as was issued to her vide letter dated 26.07.2010. Therafter respondent No. 4, vide Annexure J dated 03.04.2013 directed respondent No. 5 to disengage the services of the petitioner and to engage respondent No.6 as Anganwadi Worker for Anganwari Centre Morha Okhla, Ward No.6 in the light of respondent No. 3's letter No. PS/DDCR/2012-13 dated 04.03.2013, respondent No. 5's letter No. CDPO/R/518-21 dated 11.02.2013 and CDPO/R/586-87 dated 06.03.2013.

13. Having considered the matter in entirety, I am of the view that the writ petition is liable to succeed on the short ground of violation of principles of Natural Justice. In case the services of the petitioner were to be disengaged / terminated on the ground of her having obtained appointment / engagement as Anganwari Worker without fulfilling the eligibility condition stipulated in the advertisement of being resident of the Hamlet / Ward in which Anganwari Centre was situated, then it was incumbent on it being established by the respondents that the petitioner was not a resident of Ward No.6 but of Ward No.3. The same could have been done only by bringing the fresh verification done behind the back of the petitioner to her notice and giving her an opportunity to adduce any evidence available with her to show that the documents relied against her were factually incorrect and that she was in fact resident of Ward No. 6.



14. Apparently the petitioner was not associated during the fresh verification nor was the fresh certificate reflecting her to be resident of Ward No.3 served on her while calling upon her to prove her to be resident of Ward No.6 nor was any mention in respect thereto made in the communication i.e. Annexure R-3 i.e. letter dated 06.03.2013 which required her to prove as to whether she was resident of Ward No.6 or resident of Ward No.3. The basic requirement in aforementioned situation was to bring the aforesaid fresh certificate / other record to the notice of the petitioner and to give her an opportunity to rebut the same on the basis of any evidence available with her to show that the same was not correct and that the certificate issued to her vide letter dated 26.07.2010 was the correct certificate. However, no such opportunity was granted to the petitioner and the petitioner was not served with the material which was taken into account by the official respondent's against the petitioner while taking the decision to disengage her services and to engage respondent No.6 in lieu thereof. Thus, the impugned order i.e. Annexure J is unsustainable and liable to be quashed. In view of the reasons recorded above, Annexure J is quashed. However, liberty is granted to the official respondents to take action on the basis of fresh verification conducted by Tehsildar/BDO Rajouri leading to issuance of fresh habitation certificate reflecting the petitioner to be resident of Ward No.3 instead of Ward No.6 by supplying the petitioner the complaint, fresh mohra certificate issued by

Tehsildar/BDO Rajouri reflecting petitioner to be resident of Mohra Okhla Ward No.3 as also certificate issued by Block Development Officer dated 15.03.2012 showing the petitioner's father to be registered at S.No.9 of the voter list of Panchayat Halqa Ward No.3 and by giving her an opportunity to submit defence if any in respect thereto whereafter orders as may be warranted as per law be passed.

15. Needful be done within a period of six weeks from the date of supply of certified copy of this order. Whether the petitioner is thereafter to be allowed to continue in service or is to be disengaged would depend upon the order to be passed in the manner as indicated above.

Writ petition allowed in the aforesaid terms.

**(B.S.Walia)**  
**Judge**

Jammu  
26.07.2016  
Sanjeev