

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No. 3565/2014

c/w

SWP No.812/2014, MP Nos. 1147/2014

Date of order: 31.05.2018

Asha Devi vs State and ors

Neha Sharma vs State and ors

Coram:

Hon'ble Mr. Justice Sanjeev Kumar, Judge.

Appearance:

For the petitioner(s) : Mr Abhinav Sharma Advocate in SWP No.3565/2014
Mrs S. Kour Sr. Advocate with Mrinal Magotra Advocate
In SWP No.812/2014

For the Respondent(s): Mr Ravinder Gupta AAG.

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| i) Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) Whether approved for publication
in press: | Yes/No |
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The facts of these two cases are inextricably interwoven, therefore, it is difficult nay impossible to decide the one without reference to the facts of the other. Accordingly, both these writ petitions were heard together and are being disposed of by this common order.

SWP No. 3565/2014

1 Vide Advertisement notice dated 19.02.2010, respondent No. 3 invited applications for engagement of ReT teachers in different schools of District Reasi which included two posts in the Primary School, Upper Bhambla. The eligible candidates were given seven days' time from the date of publication of the aforesaid Advertisement notice for the purposes of submitting their application forms. The last date for submission of application forms in terms of aforesaid Notification was, thus, 26.02.2010. Amongst others, the petitioner, claiming to be

the resident of village Bhambla, also submitted her application form. Respondent No.4 prepared a merit panel of five candidates who had responded to the aforesaid Advertisement notification in question. The name of respondent No.6 figured at S.No.1 followed by respondent No.7, who figured at S.No.2. The name of the petitioner, however, figured at S.No.3 in the merit panel so prepared by respondent No.4. As is apparent from the certificate appended at the bottom of the panel, the candidates figured in the panel on the basis of merit. The selection process ultimately culminated into engagement of respondent No.6 as ReT teacher and an order in this regard was issued by respondent No.4 vide his order dated 09.11.2010. The second candidate engaged was respondent No.7 who was figuring at S.No.2 in the merit panel prepared by respondent No.4. Respondent No.6, it is pleaded by the petitioner, proceeded on leave w.e.f 20.09.2012 which was never sanctioned by the competent authority. She remained absent without any leave for almost one year and thereafter approached respondent No.4 with an application for extension of leave. The application submitted by respondent No.6 for extension of leave was processed by respondent No.4, but in the meanwhile, as is contended in the writ petition, the residents of village upper Bhambla including the petitioner approached respondent No.5 with the grievance that the post against which respondent No.6 was engaged had been lying vacant for the last almost one year and that the students had been suffering due to the non availability of the teacher.

2 It is stated that on the representation of the villagers of Bhambla, Deputy Commissioner, Reasi got an enquiry conducted through Naib- Tehsildar and Tehsildar Reasi wherein it came to fore that respondent No.6 was not attending the school since September 2012 onwards and that no leave of whatever kind had been sanctioned in her favour. Accordingly, Deputy Commissioner, Reasi vide his order dated 03.03.2014 terminated the services of respondent No.6 retrospectively w.e.f 01.09.2012 and ordered the engagement of the candidate next in the merit i.e the petitioner herein as ReT teacher in place of respondent No.6. Accordingly,

respondent No.3 was directed to implement the order immediately so as to ensure that the studies of the students do not suffer any more. There are other observations made by the Deputy Commissioner, Reasi in its order dated 03.03.2014 (supra) against respondent No.06. The said order, it is claimed, was carried into effect by respondent No.03, who vide his communication dated 05.03.2014 directed respondent No.04 to allow the petitioner to join against the post of ReT teacher in the Primary School Upper Bhambla. In the meanwhile, one Neha Sharma, who had not earlier responded to the aforesaid Advertisement notification and had acquired eligibility subsequently approached this Court through the medium of SWP No.812/2014 and challenged the order of Deputy Commissioner Reasi dated 03.03.2014 to the extent it directed the appointment of the petitioner as ReT teacher.

3 In the aforesaid writ petition, the petitioner Neha Sharma, *inter alia*, claimed that with the termination of services of respondent No.06 for her unauthorized absence, post of ReT teacher had become available, to be filled up by fresh advertisement. The petitioner Neha Sharma in her writ petition raised the plea that the post of ReT teacher, that had fallen vacant due to termination of services of respondent No.06, was a fresh vacancy and the same could not have been supplied by picking up Asha Devi as a wait list candidate, more so, when the life of panel had already expired. In the writ petition i.e SWP No.812/2014, this Court vide order dated 24.03.2014 stayed the order of the Deputy Commissioner Reasi dated 03.03.2014 as also the order dated 05.03.2014 issued by respondent No.3. Anticipating trouble due to filing of writ petition by Neha Sharma, the present petitioner filed SWP No.3565/2014 in which the petitioner instead of justifying the order of the Deputy Commissioner, Reasi dated 03.03.2014 attacked the very selection of Reeta Sharma i.e respondent No. 6 herein on merits. This afterthought strategy was chalked out by the present petitioner anticipating well that Neha Sharma (petitioner in SWP No.812/2014) may succeed in her writ petition and the vacancy caused due to the termination of services of respondent

No.6 Reeta Sharma may be held to be fresh vacancy and liable to be filled up by fresh advertisement notice.

4 Admittedly, the petitioner had not raised any finger with regard to the eligibility or the merit of respondent No.6 who had been placed on the top of the merit panel. It is not the allegation of the petitioner that the merit panel was not displayed or that she had no opportunity to object to her empanelment. The merit panel prepared by the ZEO concerned was approved by the Director School Education, Jammu before formal order of engagement in favour of respondent No.6 was issued. Needless to say that the Director School Education, Jammu before grant of approval had also published the panel inviting objections from the aggrieved candidates. Indisputably, the petitioner had not objected even at that time. All these circumstances clearly reveal that the petitioner had no grievance against the engagement of respondent No.6 till her services came to be terminated for unauthorized absence from duties and the vacancy caused due to her termination was directed to be supplied by the engagement of the petitioner and a candidate namely Neha Sharma did not accept the aforesaid position and approached this Court by way of SWP No.812/2014. It is, in these circumstances, the petitioner has filed the present petition which essentially is meant to preempt the orders that may be passed in the petition i.e SWP No.812/2014 filed by Neha Sharma.

5 The respondents have filed their reply affidavit in which they have justified the engagement of respondent No.6 as ReT teacher. The allegation of the petitioner, that at the time when respondent No.6 applied for engagement as ReT teacher in the school in question, she was already married to a person in Punjab and had permanently moved to Punjab since September 2012, has been refuted by the respondents. It is, thus, submitted by the respondents that there was nothing wrong with the engagement of respondent No.06 whose services, however, were terminated later on due to her unauthorized absence.

6 Having heard learned counsel for the parties and perused the record, I find that the writ petition filed by the petitioner Asha Devi is completely after thought and a veiled attempt to pre-empt the order that may be passed by this Court in SWP No.812/2014 filed by one Neha Sharma. This is so because the aforesaid Advertisement notification was admittedly issued on 19.02.2010 and the last date for submission of application forms was seven days from the date of publication of aforesaid advertisement notification i.e 26.02.2010. As per own averments made by the petitioner, respondent No.6 solemnized marriage with Harpal Singh resident of Nangal Township District Ropar (Punjab) on 03.11.2010 itself i.e much after the cutoff date. Even as per the report of enquiry conducted by the Naib-Tehsildar and Tehsildar Reasi, respondent No.6 married and shifted to Punjab on 20.09.2012. The Deputy Commissioner Reasi in its order dated 03.03.2014 has also noted that respondent No.6 got married to a person in Punjab in August 2012 and thereafter absented herself from duties unauthorizedly. That being so, it cannot be said that respondent No.6 was ineligible for being engaged as ReT teacher in the school in question. That apart, it is not the case of the petitioner that the factum of marriage of respondent No.6 to a person in Punjab was ever brought to the notice of the authorities before filing the instant writ petition. Even there is conflicting evidence with regard to the actual date of solemnization of marriage of respondent No.6. If the date indicated in the report of Deputy Commissioner Reasi is taken to be correct, then respondent No.6 was not married even at the time of her engagement.

7 In view of the aforesaid analysis of facts, I have no hesitation to conclude that the engagement of respondent No.6 as ReT teacher in the school in question pursuant to the selection process in which the petitioner too had participated is legally valid. The allegation of the petitioner that the engagement of respondent No.6 was managed by respondent No.7 and 8, who wanted respondent No.6 to serve for some time and then create space for accommodating Neha Sharma, the writ petitioner in SWP No. 812/2014 is also of no avail to the petitioner on the

ground that the petitioner has not disputed and rightly so that amongst eligible candidates who had responded to the aforesaid Advertisement notification, Reeta Sharma i.e respondent No.6 was the most meritorious candidate. The subsequent act of solemnization of marriage by respondent No.6 to a person residing in Punjab cannot vitiate the selection and engagement of the petitioner as ReT teacher which was valid when it was made. Respondent No.6 remained unauthorizedly absent and, therefore, entailed termination of her services. Without going into the legality of the order passed by the Deputy Commissioner, Reasi dated 03.03.2014, suffice it to say that by remaining unauthorizedly absent for a long time, respondent No.6 had forfeited her services and, therefore, the order of termination of her services was inevitable. Since Reeta Sharma i.e respondent No.6 has chosen not to question her termination, as such, legality of order passed by the Deputy Commissioner Reasi dated 03.03.2014 need not be gone into.

8 Since respondent No.6 had joined her services as ReT and had worked there for some time before her services were terminated for her unauthorized absence, as such, the post, that fell vacant on account of termination of her services, was a fresh vacancy and the same could not have been supplied by engaging a candidate next in the order of merit. Otherwise also, the select panel was valid for a period of six months only as is provided in the Government Order No. 1503-Edu of 2010 dated 10.06.2010 and, therefore, the same could not have been operated to supply the vacancy after it had outlived its life. Otherwise also, law in this regard is well settled that a vacancy arising due to death or resignation cannot be supplied by appointing a person from the wait list. The wait list, as is trite law, can be operated to supply the vacancy which remains unfilled due to non joining of the candidates selected. In the instant case, admittedly, respondent No.6 had joined her services and had worked for almost two years before her services came to be terminated for her unauthorized absence. It may be noted that the services of respondent No.6 were not terminated on the ground that she lacked eligibility when she was appointed, but were terminated for her mis-conduct of

having remained unauthorizedly absent. That being so, the vacancy that arose due to termination of services of respondent No.6 was a fresh vacancy and was, thus, required to be filled up by fresh advertisement notification. This exactly is the grievance projected by Neha Sharma in her writ petition i.e SWP No.812/2014. The grievance projected by Neha Sharma in her writ petition has been acknowledged by the respondents in their reply affidavit in SWP No. 3556/2014.

9 In view of the aforesaid, I do not find any merit in this writ petition. The same is, accordingly, **dismissed**.

SWP No.812/2014

1 In view of the detailed discussions made above and the reasons given, the petitioner succeeds in this writ petition. Resultantly, the order of Deputy Commissioner Reasi dated 03.03.2014 is quashed to the extent it directs the engagement of respondent No.7 herein, writ petitioner in SWP No.3565/2014, as ReT in Primary School Upper Bhambla. The consequential order dated 05.03.2014 passed by the Chief Education Officer, Reasi for the engagement of respondent No.7 herein i.e writ petitioner in SWP No. 3565/2014 is also quashed. The respondents are directed to notify the vacancy of ReT in Primary School Upper Bhambla that has become available due to termination of services of Reeta Sharma and consider all the eligible candidates in accordance with applicable norms and rules presently in vogue.

2 Writ petition **allowed** in the aforesaid terms.

(Sanjeev Kumar)
Judge

Jammu
31.05.2018
Sanjeev