

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1622/2014

c/w SWP No.868/2014

Date of order : **31.5 .2018 .**

Pawan Kumar Vs State and others

Coram:

Hon'ble Mr. Justice Sanjeev Kumar, Judge.

Appearing counsel:

For Petitioner/appellant(s) : Mr. Sunil Sethi , Sr .Advocate with
Mr. Veenu Gupta, Advocate

For Respondent(s) : Mr. Sunil Malhotra, GA for respondent
Nos. 1 to 4.

Mr. Aditya Sharma, Adv. For R-7

i/ Whether to be reported in Yes/No Press/Media?

ii/ Whether to be reported in Yes Digest/Journal?

1. Both these petitions are inter- connected and pertain to the selection and engagement of Rehbar-e-Taleem in UPS Marhuine zone Billawar, though filed at different stages of selection and, therefore, are being disposed of by this common order.
2. The facts as projected in SWP No. 1622/2014 may be noticed. Vide Advertisement Notification No. CEOK/ReT/19321-29 dated 12.9.2013 issued by respondent No.3 applications were invited for engagement of Rehbar-e- Taleems under SSA in Upgraded Primary Schools of district Kathua. The notification inter alia pertained to selection of Rehbar-e- Taleems for three posts, one each for Math/Science, Social Science and language

Urdu/Hindi in UPS Marhuine. As is apparent from the Advertisement Notification, applications were invited at village level in case of rural area and on ward-wise basis in the urban area of TAC/NAC. It is stated by the petitioner that he was the only candidate in the village /ward level who had applied for Hindi stream before the cut off date in conformity with the terms and conditions of the Advertisement Notification. The petitioner also claims that he sought his consideration under reserved category of scheduled caste . The petitioner also states that his house is situated about 500 yards away from the school in question and that both his residence and the school fall in Ward No. 3 Municipal Committee, Billawar. It is also pleaded in the writ petition that though the petitioner had submitted his application form against proper receipt but the same was not entertained and returned back to the petitioner. It is also alleged that at one point of time, the respondents even decided to extend the zone of consideration to the zonal level so as to include the names of ineligible persons which was prevented by timely intervention of this Court in SWP No. 868/2014 filed by the petitioner, throwing challenge to the action of the respondents in extending the zone of consideration . The petitioner further pleads that while the aforesaid writ petition was pending, the respondent No. 2 published notification on 4.6.2014 indicating therein the tentative selection of respondent Nos. 5 to 7 as ReTs in the school in question. For the subject of Hindi, respondent No. 7 was indicated as selected candidate.

3. Feeling aggrieved by the Notification of respondent No.2 dated 4.6.2014, the petitioner had filed the instant writ petition. It may be noted that on first date of hearing, this Court vide its order dated 13.6.2014, restrained the respondents from issuing select

list to the extent of respondent No.7. There was, however, no stay against the selection of respondent Nos. 5 and 6. It is because of this reason, perhaps the petitioner did not take steps for the service of respondent Nos. 5 and 6. Because of failure on part of petitioner to take steps for service of respondent Nos. 5 and 6, this writ petition shall be deemed to have dismissed against the aforesaid respondents and they shall be deemed to have been deleted from the array of respondents.

4. In the backdrop of aforesaid facts, the petitioner has challenged the selection of respondent No. 7 as ReT for language stream (Hindi) in the school in question. The learned senior counsel appearing for the petitioner has assailed the empanelment of respondent No. 7 for her engagement as ReT, inter alia on the following grounds :

- i) That the respondents were not competent in law to extend the zone of consideration by including the name of respondent No.7 who belongs to a ward different from the ward where the school in question is situated.
- ii) That considering the candidature of candidates outside the ward where the school is situated, amounts to extending the zone of consideration to the zonal level which is impermissible particularly when the school is situated in a village. It is urged that since the petitioner was suitable and eligible candidate available in the village/ward, as such there was no occasion for the respondents to extend the zone of consideration to zonal level.

5. These are primary grounds of challenge pleaded in the writ petition, though the learned senior counsel during the course of argument improvised the same by urging that the Advertisement Notification did not make mention that the school in question

was situated in a particular ward of urban area i.e. TAC/NAC. Learned senior counsel also submits that the school in question is situated in village Marhuine which is not a part of any TAC/NAC as envisaged in the Advertisement Notification. Learned senior counsel also disputes that the school in question is actually situated in ward No. 4 and not in Ward No. 3. Referring to a certificate issued by the Executive Officer, Municipal Committee, Billawar which is appended by the respondents as Annexure R-1 with the objections, learned senior counsel submits that the same is not issued by the competent authority. That apart, the certificate indicates that the school in question earlier existed in ward No. 3 prior to 30.1.2012 and is now located in Ward No.4. If that be accepted, it is for the respondents to show as to by which Notification of the government, the wards of Municipal Committee, Billawar were delimited and the area where the school is situated, came to be included in ward No. 4. Learned senior counsel, therefore, contends that the aforesaid certificate issued by the Executive Officer is of no consequence and was procured only to confer wrongful benefit on private respondents.

6. In response to the writ petition, the respondents have filed their objections. The stand taken in the objections is that in the Advertisement Notification issued on 12.9.2013, the respondent No.3 had specifically mentioned that the unit of selection would be village in rural area and ward in urban areas like TAC/NAC. The Advertisement Notification further mentioned that the candidate to be appointed should be actually /presently residing in the village where the appointment is to be made. It is, however, pleaded that the school in question is located in ward No. 4 of the Municipal Committee, Billawar and, therefore, as per Advertisement Notification, only the residents of Ward No. 4

were entitled to be considered. Since the petitioner is resident of ward No. 3, as such was not entitled to participate in the selection process and accordingly his application form was rejected. Alongwith the objections, the respondents have placed on record the certificate of the Executive officer, Municipal Committee, Billawar to indicate that the school in question is situated in ward No.4.

7. Having heard learned counsel for the parties and perused the record, I feel that before proceeding further, it is necessary to take note of some important facts.
8. In the Advertisement Notification issued on 12.9.2013, the respondent No. 3 has not indicated the ward number or the Municipal Committee area where the school in question is situated, though the applications have been invited at ward level in case of TAC/NAC and at village level in case of rural area. That being so, it is apparent that at the time of issuance of Notification, the respondent No. 3 was not sure about the actual location of the school. At the same time, the petitioner who has filed the instant writ petition, is also not clear as to whether he should assail selection of respondent No.7 on the ground that it should have been made by taking the revenue village as unit of selection or that the candidate residing in Ward No.3 alone should have been considered. It is because of this reason that at more than one place, in the writ petition, the petitioner has claimed that the selection ought to have been made at village/ward level.
9. A careful reading of averments made in the writ petition, however, makes it abundantly clear that the petitioner is not aggrieved of the selection made on the basis of ward taking the school to be situated within the municipal limits of Billawar Municipality. Residence certificate relied upon by the petitioner

has been issued by the Executive Officer, Municipal Committee, Billawar indicating therein that the petitioner is permanent resident of Ward No. 3, Municipal Committee, Billawar. The aforesaid fact alone is good enough to reject the contention of the petitioner that the school was situated in rural area outside the TAC/NAC and, therefore, the selection should have been made on village basis.

10. In view of conflicting claims made by the parties, the only thing that calls for determination in these proceedings is to find out the exact location of the school in question. If the school is situated in ward No. 4, apparently, the petitioner who himself claims to be the resident of ward No. 3, has no claim to stake for the aforesaid post against which respondent No. 7 has been selected. However, if the petitioner succeeds in establishing that the school in question is in fact located in ward No.3, then admittedly he has a claim to stake.
11. As noticed above, the Advertisement Notification is not clear on the point. The respondent No. 3 by not mentioning the ward where the school is situated, has only created scope for litigation. Respondent No.4, who prepared the tentative merit panel by considering the eligible candidates also did not take adequate steps to ascertain the fact at an appropriate stage. He, however, got the matter clarified from the Executive Officer, Municipal Committee, Billawar later on when he vide his No. MC/B/2014/398 dated 21.2.2014, issued a certificate that the GPS, Marhooiin existed in Ward No. 4. For facility of reference, the aforesaid certificate is reproduced as under :

“OFFICE OF THE MUNICIPAL COMMITTEE BILLAWAR

TO WHOM IT MAY CONCERN.

It is certified that Government Primary School Marhooiin does exist in WNo.3 prior to 30.1.2012 and now in WNo.4 Municipal Committee Billawar.

No.MC/B/2014/398	Sd/
Dated:21.2.2014	Executive Officer, Municipal Committee Billawar.”

12. A bare look at the certificate aforesaid would indicate that the Executive Officer concerned instead of clarifying the issue, has confounded it further. In his certificate, the Executive Officer, Municipal Committee, Billawar says that the school in question earlier existed in Ward No.3 and it remained there till 30.1.2012 but does not clarify as to how the same is now found existing in Ward No.4. There could possibly be two reasons for change of location of school. One that the area where the school in question is situated which was earlier in ward No. 3 has now become part of ward No.4 on delimitation. If that is so, then there ought to be a Notification issued by the government delimitating the wards of the Municipal Committee Billawar. Second possibility could be that the school is reconstructed at new place which now falls in ward No. 4. Which one of the two represents the actual position, is not discernible from the records. Certificate of the Executive Officer reproduced above, also does not indicate the correct position. As already stated above, the aforesaid issue, if determined, would decide the fate of the petitioner. However, in absence of relevant material on record, this court is incapacitated to come to any definite finding.
13. Accordingly, in view of the aforesaid, the controversy can be resolved by providing as under:

- a) The respondent No.2 shall constitute a committee headed by the Additional District Development Commissioner, Kathua with Chief Education Officer, Kathua and the Executive Officer, Municipal Committee Billawar as its members within a period of two weeks from the date of receipt of copy of this order.
- b) The committee shall enquire as to whether the school in question i.e. GPS Marhoooin is situated in ward No. 3 or in Ward No.4.
- c) During the course of enquiry, the committee shall not only record the statement of residents of the area but shall also look to the relevant record like Notification of delimitation, voter list etc to arrive at a definite finding.
- d) The committee shall complete the aforesaid exercise within two weeks from the date it receives order from the respondent No.2
- e) That if on the basis of report, it is demonstrated that the school in question is situated in ward No.4, the respondent No.2 shall accord necessary approval for the appointment of respondent No.7 and issue formal order of engagement in his favour without further wastage of time. However, if in the enquiry, it is found that the school in question is not situated in ward No.4 but is in ward No. 3, then case of the petitioner alongwith other eligible candidates, if any, belonging to ward No.3 shall be considered.

14. It is, however, made clear that the selection in this case shall be made on ward wise basis. From the pleadings of both the parties, it is demonstratively proved that the school in question falls in the urban area of Billawar Municipal Committee and the reference to

TAC/NAC in the Advertisement Notification, is to be read as reference to urban local bodies i.e. Municipal Corporation, Municipal Council and Municipal Committee as the case may be.

15. Both the petitions are, accordingly, disposed of in the aforesaid terms.

Sanjeev Kumar)

Judge

JAMMU .
31 .5.2018.
RSB, Secy.

