HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPASW No.126/2015
MP No.01/2015

Date of Judgment:25.04.2018.

Manaz Akhter	v.	State of J&K and other

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Chief Justice(Acting)
Hon'ble Mr. Justice Sanjeev Kumar, Judge

Appearing counsel:

For the Appellant(s) : Mr M. I. Sherkhan, Advocate.
For the Respondent(s) : Mr K.K.Pathan, Advocate.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

Sanjeev Kumar-J

1. This appeal is directed against the judgment of a learned Single Judge of this Court dated 19.11.2015 passed in SWP No. 842/2015 titled Manaz Akhter v. State of J&K and others.

2. The facts giving rise to the filing of this appeal, briefly stated, are that in response to the advertisement notice dated 03.09.2011, the appellant along with others including respondent No.6 submitted their application forms for engagement as Rehbar-e-Taleem (Science) in Govt. Middle School, Pattuwali, Shindra. The select panel was prepared in which the appellant was not considered. The appellant approached the Writ Court by way of SWP No.20/2013 which was decided by a learned Single Judge of this Court on 25.11.2013, thereby directing the Deputy Commissioner, Poonch to decide as to whether the selection of Rehbar-e-Taleem (Science) stream in Govt. Middle School, Puttuwali, Shindra Tehsil Haveli was required to be made in terms of Government Order No.288-Edu of 2009 dated 08.04.2009 or not. Pursuant to the directions issued by the Writ Court, the Deputy Commissioner, Poonch conducted the enquiry after hearing the learned counsel appearing for the

appellant and respondent No.6 respectively and ultimately vide its report dated 19.02.2015 concluded that the Government Order No.288-Edu of 2009 dated 08.04.2009 was not applicable to the case of the appellant. It is this report which was assailed by the appellant in SWP No.842/2015.

3. After hearing the learned counsel for the parties, the learned Single Judge vide judgment impugned dismissed the writ petition primarily on the ground that in the first round of litigation the Writ Court while disposing of SWP No.20/2013 vide order dated 25.11.2013 had directed the Deputy Commissioner, Poonch to considered the issue as to whether the selection had to be made on habitation basis in terms of Government Order No.288-Edu of 2009 dated 08.04.2009 or not and that the Deputy Commissioner vide its report dated 19.02.2015 after providing ample opportunity of hearing to the parties concluded that the provisions of Government Order No.288-Edu of 2009 dated 08.04.2009 were not applicable. Accordingly, the official respondents proceeded to make the selection on the basis of revenue village.

4. The plea of the appellant that the report was prepared by the Deputy Commissioner without affording adequate opportunity to her was rightly rejected by the Writ Court, for, before the Deputy Commissioner the appellant was well represented by her counsel and, therefore, had no occasion to allege that she had not been heard in the matter. Feeling aggrieved of the order of the Writ Court, the appellant has come up before us in this appeal.

5. Having heard the learned counsel for the parties and after perusing the record, we find that there is no infirmity in the judgment impugned. The directions to the Deputy Commissioner to conduct enquiry with regard to the applicability of Government Order No.288-Edu of 2009 dated 08.04.2009 were issued at the instance of the appellant in a writ petition filed by him. The Deputy Commissioner, as is apparent from the report, provided adequate opportunity of being heard to the appellant as well as respondent No.6 who were represented

by their counsel. After threadbare discussion and taking note of the submissions made before him and the record made available, the Deputy Commissioner rightly concluded that the Government Order No.288-Edu of 2009 dated 08.04.2009 was not applicable in the case.

6. The Writ Court rightly did not find any infirmity in the report prepared by the Deputy Commissioner. Confronted with the aforesaid position, the learned counsel for the appellant made a feeble attempt to set up a new case before us and contended that the empanelment of respondent No.6 for selection is, otherwise, not sustainable as respondent No.6 is not actually residing in the revenue village Shindra where the school in question is located.

7. On being pointedly asked as to whether the appellant had taken this objection in the first instance when the panel was prepared by the Zonal Education Officer concerned in which the name of respondent No.6 was reflected as the proposed selectee, the learned counsel for the appellant had no answer rather he fairly conceded that no such objection was raised at the relevant point of time.

8. That being the position, the appellant cannot be allowed to set up a new case before us in this appeal. We, therefore, find no merit in this appeal, hence the same is dismissed.

9. However, before parting, we would like to point out that Rehbar-e-Taleem Scheme which was promulgated by the Government Order No.396-Edu of 2000 dated 28.04.2000 has generated unnecessary litigation and it is more because of the ambiguity created by the official respondents by issuing Government orders and circulars to supplement the Scheme from time to time.

10. In the original Scheme the Unit of selection was **"Village"**. In other words, a candidate to be eligible to apply for the post of Rehbar-e-Taleem in a school where there is assessed deficiency of staff ought to be a person belonging to the village. In all reasonableness and logic, the term **"village"** as

used in the Scheme promulgated vide Government Order dated 28.04.2000(supra) should have been understood as "Revenue Village" as defined in the land Revenue Laws more particularly the Jammu & Kashmir Land Revenue Act, 1996.

11. Initially, there erupted litigation on account of the ambiguity of the term **"Village"**. In some judgments it was noted that the term **"Village"** would be understood as **"Revenue Village"** and some took a contrary view. Taking note of the aforesaid ambiguity and cleavage of judicial opinion, the official respondents vide Government Order No.563-Edu of 2005 dated 24.08.2005 had clarified and reaffirmed that the expression **"Village"** used in the instructions/orders would mean and shall always be deemed to have been meant **"Revenue Village".** This perhaps would have solved the problem and avoided the uncalled for litigation on the aforesaid aspect but the government, in its own wisdom and guided by considerations which are not discernable, came up with Govt. order No.288-Edu of 2009 dated 08.04.2009 expanding the scope of term "Village" by adding explanation to the original Scheme promulgated in the year 2000.

12. An addendum to the aforesaid Government order was issued on 09.04.2009 to provide that the word **"only"** shall supply after the comma and before the word "shall" appearing in the 6th line of the aforesaid order. As a result whereof, the unit of consideration which was earlier revenue village was further restricted to habitation fulfilling four requirements:-

i) Habitation must be scattered in the revenue village concerned.

ii) The habitation must be popularly known as village.

iii) The habitation should be atleast one kilometer away from other habitation.

iv) The habitation should have a population of more than 300 souls.

13. This Government order of 2009 whereby an explanation was introduced to the original Rehbar-e-Taleem Scheme introduced ambiguity in the matter of finding out the zone of selection and gave rise to unprecedented litigation in this Court. This was mostly because of the reason that the term **"habitation"** as used in the order is not traceable to land laws and is not defined in the Land Revenue Act or anywhere else. It has no specific boundaries documented anywhere. Besides, the Government did not provide for any guidelines for measuring the distance between two habitations, whether the distance from one habitation to another habitation is to be measured from the last house of the one habitation to the first house of the other habitation or it should be measured between central points of two habitations. Where the central point of the habitation would lie, is again a difficult thing to determine. In the absence of such guidelines, the applicability or otherwise of Government Order No.288-Edu of 2009 was, thus, left to the whims of the officials of the Public Works, Revenue and Rural Development Departments. There are also no guidelines to find out the population of a particular habitation, whether it is the latest census available in the record or physical counting of the persons residing in the village which is required to be taken into consideration or some other ways and means are to be adopted, is not provided by the government anywhere.

14. One fails to understand as to when the government had restricted the unit of consideration to the village where there was assessed deficiency of staff in the school, where was the necessity to further reduce it to the habitation. Broadly speaking, any Scheme of appointment which restricts the zone of consideration on the basis of domicile of a person, would offend the Articles 14 and 16 of the Constitution of India.

15. The Rehbar-e-Taleem Scheme which restricts zone of consideration to the village definitely compromises the merit of the candidates and deprive the

schools of the best talent to teach the students. No doubt, the Scheme was promulgated to achieve certain objects, though at the cost of merit.

16. Be that as it may, the fact remains that there is dire need to give a fresh look to the Government order No.288-Edu of 2009 dated 08.04.2009 and consider the feasibility of keeping the revenue village as a unit for consideration of the eligible candidates. This would introduce clarity in the Scheme and would avoid unnecessary litigation. We have noticed that many a schools could not be made functional or have been deprived of adequate staff due to the pendency of litigation inter se the candidates mostly prompted by the ambiguous provisions of Government Order No.288-Edu of 2009.

17. There is another aspect of the Rehbar-e-Taleem Scheme which we need to take note of. The original Scheme, as stated above, provided that a candidate to be eligible to be engaged as Rehbar-e-Taleem Teacher should belong to the village concerned where there is assessed deficiency of staff. The term **"village"** has now been explained to mean as **"revenue village".** The term **"belong to the village"** also became subject matter of litigation in this Court. Later on, the State vide Government Order No.394-Edu of 2006 dated 28.07.2006 added an explanation to Clause (i) of the eligibility clause in Government Order No.396-Edu of 2000. The explanation reads as under:-

> "Explanation: The word 'belong' and "local candidate" shall mean that the candidate to be appointed should be actually residing at the time of appointment in the village where the appointment is to be made."

18. The explanation instead of removing ambiguity actually confounded it. In terms of this explanation, the words 'belong' and 'local candidate' were provided to mean that the candidate to be appointed should be actually residing at the time of appointment in the village where the appointment is to be made. Who would be the person actually residing in the village, is again left open to be determined by the officials of revenue and rural development department etc. The term **"at the time of appointment"** is also capable of more than one

interpretation. Should it mean that the candidate who may not be actually residing in the village at the time of submitting applications but take up residence at the time of appointment would be eligible in terms of this explanation or the term **"appointment"** should be understood as recruitment process which is initiated with the issuance of advertisement notification.

19. All these questions, in the absence of proper guidelines, are capable of more than one interpretation. We have noticed that this aspect too has generated a lot of litigation which would have been conveniently avoided by the government by coming up with unequivocal and unambiguous provisions. A proactive approach in such matters is expected which otherwise is the obligation of the State to implement National Litigation Policy and its own Litigation Policy. Both the policies one framed at national level and other at State level aim at minimizing the litigation by adopting different measures. Ambiguity in many legislations and executive orders is also a source of generating, otherwise, avoidable litigation. We request the Chief Secretary of the State and Secretary to Govt., Law Department to examine aforesaid aspect at their level alongwith Education Department to take appropriate remedial measures.

20. We have ventured to discuss all this only with a hope that the authorities at the helm of affairs would take note of the observations made hereinabove and take appropriate remedial measures to bring clarity in the scheme which would, in turn, avoid unnecessary and uncalled for litigation in the Courts. With this hope, we leave the matter to the Government to take a call in this regard. Registry shall serve a copy of this order on the Chief Secretary, Secretary to Govt., Law Department and Commissioner/Secretary to Govt., Education Department.

(Sanjeev Kumar)
Judge

(Ramalingam Sudhakar)
Chief Justice(Acting)

Jammu
25.04.2018
Vinod.