

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

LPA No. 23/2023
CM No. 1134/2023

**Balqees Akhter W/O Mohd. Shabir
R/O Haji Mohalla, Ward No. 5,
Panchayat Halqa Mangal Narh Upper,
Tehsil Manjakote, District Rajouri**

.....Applicant(s)/Petitioner(s)

Through :- Mr. A A Khan, Advocate

v/s

1. UT of J & K through

.....Respondent(s)

**Commissioner/Secretary to Govt.,
Social Welfare Department,
J & K Govt., Civil Secretariat, Jammu/Srinagar**

2. Director, Social Welfare Department, Jammu

3. Program Officer, ICDS Project, Rajouri

4. District Social Welfare Officer, Rajouri

5. Child Development Project Officer, Manjakote Rajouri

6. Maryam Kouser D/O Haji Mohd. Amin

**W/O Shokat Hussain R/O Panchayat Halqa Galhutti,
Tehsil Manjakote, District Rajouri**

Through :- Mr. Ramesh Arora, Sr. AAG for R-1 to 5
None for R-6

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

**ORDER
13.10.2023**

(ORAL)

(Sanjeev Kumar J)

1. This *intra court* appeal is directed against the judgment dated 16.02.2023, passed by a Single Bench of this Court (**for short, “the Writ Court”**) in SWP No. 2571/2010 titled “*Maryam Kouser vs.*

State of J & K & Ors.” whereby, the Writ Court has disposed of the writ petition filed by Respondent No. 6 herein and quashed the engagement order dated 17.08.2010. The Writ Court has simultaneously directed the Respondent No. 3 also to enquire into the factum of residence of the Respondent No. 6 herein as it was, at the time of advertisement and selection within a period of one month.

2. The impugned judgment of the Writ Court is assailed by the appellant primarily on the ground that the Writ Court ought not to have quashed the impugned order dated 17.08.2010 and paved the way for the ouster of the appellant, who at the time of passing of the judgment was performing her duties as Anganwari Helper in Anganwari Centre Haji Mohalla, Ward No. 5, Panchayat Halqa Mangal Nar Upper, Rajouri and more particularly when the Writ Court had issued a direction to Respondent No. 3 to enquire into the factum of residence of Respondent No. 6 herein.
3. Heard learned counsel for the parties and perused the material available on record.
4. Respondent No. 6, despite presumptive service has not turned up and therefore appeal as against her is heard in **ex parte**.
5. The short grievance projected by the appellant in this appeal is that Respondent No. 6, despite not being the resident of Ward No. 5, Haji Mohalla of Panchayat Halqa Mangal Nar Upper, Rajouri was erroneously selected provisionally on the basis of merit obtained by

her in the selection process. This too was objected by the appellant. Objection raised by the appellant with regard to the residence of Respondent No. 6 was found tenable by the official respondents and accordingly, in the place of Respondent No. 6, the appellant came to be selected and engaged as Anganwari Helper in Anganwari Centre Haji Mohalla, Ward No. 5, Panchayat Halqa Mangal Nar Upper, Rajouri. This engagement of the appellant made by Respondents vide order dated 17.08.2010 was made subject matter of the challenge by Respondent No. 6 in SWP 2571/2010.

6. The Writ Court considered the entire matter in the light of a rival case, set up by the parties and came to a conclusion that residence of Respondent No. 6 was the question of factum and therefore, required to be determined by holding an enquiry.
7. Learned counsel for the appellant submits that so far as the order of the Writ Court, directing Respondent No. 3 to conduct an enquiry into the factum of residence of Respondent No. 6 is concerned, the appellant may not have any grievance. He however submits that the Writ Court in all circumstances ought to have allowed the appellant to continue as Anganwari Helper in the concerned Anganwari centre till the conclusion of the enquiry and the passing of appropriate orders by the competent authority thereupon.
8. We find sufficient substance in the submission made by learned counsel for the appellant. The mere fact that the Writ Court has directed the Respondent No. 3 to conduct an enquiry into the

factum of residence of Respondent No. 6, lends support to the argument of learned counsel for the appellant that the question, as to whether Respondent No. 6 was or was not the resident of the Ward No. 5, Haji Mohalla of Panchayat Halqa Mangal Nar Upper, Rajouri, is a question of fact which needs to be determined after holding an enquiry. Once the Writ Court directed the Respondent No. 3 to conduct an enquiry to find out the residence of Respondent No. 6, as it was at the time of issuance of advertisement, it was in the fitness of things to allow the appellant to continue as Anganwari Helper till the conclusion of the enquiry and the passing of appropriate orders by the competent authority.

9. The Writ Court in terms of order impugned has quashed the engagement of the appellant, which would in turn mean that the Writ Court has put the Respondent No. 6 back in position without allowing the enquiry into her residence to be conducted and completed.
10. For the foregoing reasons, we allow this appeal to the extent that the direction of the Writ Court to Respondent No. 3 to enquire into the factum of residence of Respondent No. 6, as it was at the time of advertisement and selection, is upheld. However, the direction of the Writ Court contained in Para 13 of the impugned judgment, quashing the impugned order dated 17.08.2010 is set aside.
11. The appellant herein, who was in position as on the date of passing of judgment dated 16.02.2023, passed by the Writ Court and has

continued thereafter as per interim direction passed by this Court in this appeal vide order dated 02.03.2023 shall continue in service till the conclusion of the enquiry and passing of the appropriate orders thereupon by the competent authority.

12. *Disposed of along with connected CMs.*

(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

JAMMU
13.10.2023
Manan

Whether the order is speaking : Yes/No

Whether the order is reportable : Yes/No

