

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

**LPA No. 218/2018
LPA No. 219/2018
LPA No. 223/2018
LPA No. 46/2019**

Reserved on 07.10.2023.

Pronounced on 12.10.2023

LPA No. 218/2018

Amresh Singh son of Angrez Singh age 29 appellants (s)
years resident of village Masri Tehsil and
District Doda.

Through :- Mr. Ajay Kumar Advocate.

V/s

- 1 State of J&K through Commissioner/Secretary to Government Education
Department J&K Govt Civil Sectt. Jammu
2. Secretary to Govt. Revenue Department Civil Sectt Jammu
- 3.Divisional Commissioner, Jammu
4. Director School Education, Jammu
5. Deputy Commissioner, Doda
6. Chie Education Officer, Doda
7. Zonal Education Officer, Doda
8. Wasim Akram son of Nazir Ahmed Zargar resident of village Tarone Tehsil
and District Doda.
9. Zahida Parveen daughter of Shri Nazir Ahmed Zargar
10. Nazir Ahmed Zargar son of Ghulam Mohd Both residents of village
Tarone, Tehsil and District Doda.
11. Tehsildar Doda.

Through :- Ms Monika Kohli Sr. AAG
Mr. Achal Sharma Advocate

LPA No. 219/2018

Amresh Singh son of Angrez Singh age 29 appellants (s)
years resident of village Masri Tehsil and
District Doda.

Through :- Mr. Ajay Kumar Advocate.

V/s

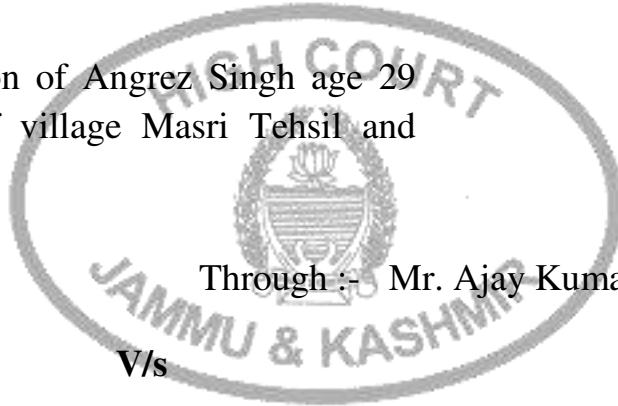
- 1 State of J&K through Commissioner/Secretary to Government Education Department J&K Govt Civil Sectt. Jammu
2. Secretary to Govt. Revenue Department Civil Sectt Jammu
- 3.Divisional Commissioner, Jammu
4. Director School Education, Jammu
5. Deputy Commissioner, Doda
6. Chief Education Officer, Doda
7. Zonal Education Officer, Doda
8. Wasim Akram son of Nazir Ahmed Zargar resident of village Tarone Tehsil and District Doda.
9. Zahida Parveen daughter of Shri Nazir Ahmed Zargar
10. Nazir Ahmed Zargar son of Ghulam Mohd Both residents of village Tarone, Tehsil and District Doda.
11. Additional Deputy Commissioner, Doda.

Through :- Ms Monika Kohli Sr. AAG
Mr. Achal Sharma Advocate

LPA No. 223/2018

..... appellants (s)

Amresh Singh son of Angrez Singh age 29 years resident of village Masri Tehsil and District Doda.



Through :- Mr. Ajay Kumar Advocate.

V/s

- 1 State of J&K through Commissioner/Secretary to Government Education Department J&K Govt Civil Sectt. Jammu
- 2.Director School Education, Jammu
3. Chief Education Officer, Doda
- 4 Divisional Commissioner, Jammu
4. Director School Education, Jammu
5. District Development Commissioner, Doda
6. Tehsildar Doda
7. Station House Office, Police Station Doda
8. Zonal Education Officer Doda
- 9.Wasim Akram son of Nazir Ahmed Zargar resident of village Tarone Tehsil and District Doda.

Through :- Ms Monika Kohli Sr. AAG
Mr. Achal Sharma Advocate

LPA No. 46/2019

- 1 State of J&K through Commissioner/Secretary to Government Education Department J&K Govt Civil Sectt. Jammu
2. Director School Education, Jammu
3. Chief Education Officer, Doda
- 4 Sh. Pawan Dev Kotwal, the then Divisional Commissioner, Jammu
4. Director School Education, Jammu
5. District Development Commissioner, Doda
6. Tehsildar Doda
7. Station House Office, Police Station Doda
8. Zonal Education Officer Doda

Ms Monika Kohli Sr. AAG

vs.

1. Wasim Akram son of Nazir Ahmed Zargar resident of village Tarone Tehsil and District Doda
2. Amresh Singh son of Angrez Singh age 29 years resident of village Masri Tehsil and District Doda.

Mr. Achal Sharma Advocate
Mr. Ajay Sharma Advocate.

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

JUDGMENT

Sanjeev Kumar, J.

LPA No. 218/2018, LPA No. 219/2018 & LPA No. 223/2018

1 These three intra-Court appeals by the appellant are directed against a composite judgment dated 03.12.2018 passed by a learned Single Judge of this Court ["the Writ Court"] in SWP No. 2360/2010, SWP No. 2009/2017 and OWP No.1190/2017 whereby the Writ Court has allowed SWP No. 2360/2010 filed by respondent No.8 herein and quashed the orders dated 21.08.2010, 01.09.2010 and 17.09.2010 impugned in the said writ petition, whereas SWP No.2009/2017 and OWP No. 1190/2017 filed by the appellant have been dismissed.

2 Briefly put the facts leading to filing of these appeals are that the Chief Education Officer, Doda vide his Advertisement Notice dated

14.12.2009 invited village-wise applications on prescribed format from the permanent residents of J&K State for engagement of ReTs at village level/Panchayat level/Zone level in various upgraded Primary Schools in different education zones of District Doda. Two posts of ReTs were notified to be filled up in upgraded Primary School, Masri of revenue village, Masri.

3 The appellant and respondent No.8 herein along with others responded to the aforesaid Notification and sought their consideration against the aforesaid two posts of ReT in UPS, Masri. On the basis of eligibility and merit, the Zonal Education Officer, Doda prepared and displayed a tentative list of candidates to be engaged as ReTs in UPS, Masri under SSA Scheme. Respondent No.8 along with one Jamsheed Ahmed were tentatively found entitled to be engaged as ReTs in UPS, Masri. Since the panel was subject to objections, as such, the appellant herein filed written objections to the engagement of respondent No.8 on 19.01.2010 and brought it to the notice of the Authorities concerned that respondent No.8 was actually the resident of village Trown and had, by suppression of material facts, obtained another PRC for village Masri much after the cut-off date mentioned in the Advertisement Notification.

4 The appellant also filed an application before Deputy Commissioner, Doda seeking his indulgence to verify the authenticity and genuineness of PRC certificate issued on 18.01.2010 and RBA certificate issued by the Tehsildar, Doda dated 16.08.2004. On the basis of the complaint received by the Deputy Commissioner, Doda, an enquiry was got conducted through the Assistant Commissioner, Doda who, vide his communication dated 19.05.2010 communicated to the Deputy Commissioner, Doda that respondent No.8 had obtained the second PRC of village Masri by fraudulent means. It

was also reported that respondent No.8 and his sister Zahida Parveen had produced wrong affidavit before the Authority concerned that they had not previously obtained any PRC, nor had they made any application in this behalf. The Assistant Commissioner, Doda, thus, recommended cancellation of the second PRC issued in favour of respondent No.8.

5 Acting upon the report of Assistant Commissioner, Doda, the Deputy Commissioner, Doda vide his communication dated 19.05.2010 recommended to the Divisional Commissioner, Jammu for cancellation of the second PRC issued in favour of respondent No.8. The Divisional Commissioner, upon consideration of the recommendations of the Deputy Commissioner, Doda and taking note of the facts and circumstances detailed therein, forwarded the case for cancellation of second PRC to the Administrative Department with the request that same may be placed before the Hon'ble Revenue Minister for passing appropriate orders against respondent No.8 and his sister i.e respondent No.9 herein, besides the Deputy Commissioner, Doda was also directed to register a case for cheating against respondent No.8 and his sister. The Divisional Commisisoner, Jammu also directed the cancellation of appointment of respondent No.8 as ReT. The order passed by the Divisional Commissioner, Jammu was brought to the notice of Chief Education Officer, Doda by the Deputy Commissioner, Doda vide his communication dated 01.09.2010 and the former was directed to initiate appropriate action to ensure that respondent No.8 is disengaged as ReT.

6 It seems that pursuant to the directions issued by the Divisional Commissioner, Jammu and Deputy Commissioner, Doda and on the instructions of CEO, Doda, ZEO Doda prepared fresh panel showing appellant as a person entitled to be engaged as ReT in UPS, Masri in place of respondent

No.8. The Select list was, accordingly, forwarded to the Competent Authority i.e Director School Education, Jammu for approval. The Director School Education, Jammu accorded approval to the panel and paved the way for appointment of appellant as ReT in UPS Masri. Before the approved panel could be given effect to, respondent No.8 filed SWP No. 2360/2010 challenging order dated 21.08.2010 passed by the Divisional Commisisoner, Jammu, order dated 01.09.2010 passed by the Deputy Commissioner, Doda along with tentative panel prepared by the ZEO, Doda on 17.09.2010. The official respondents as well as appellant herein filed their objections.

7 With a view to determine the actual and physical residence of respondent No.8, the Writ Court, vide its order dated 09.02.2015 directed the Deputy Commissioner/Additional Deputy Commissioner, Doda to conduct an enquiry focused on following two issues:

(i) the actual and physical residence of the petitioner at Masri/Trown, the period and the duration thereof, so also in the case of the parents of the petitioner;

(ii) The benefit received by the petitioner or any member of his family on account of being a resident of backward area. Details of RBA certificate issued in favour of the petitioner and other members of his family and whether they have been renewed or cancelled.

8 It seems that in compliance with the directions passed by the Writ Court, Additional Deputy Commissioner, Doda conducted an enquiry and submitted his report to the Deputy Commissioner, Doda in which respondent No.8-the writ petitioner in SWP No. 2360/2010 was stated to be actually and physically residing in village Masri along with his parents. Since this report of the Additional Deputy Commissioner, Doda was not palatable to the appellant, as such, he challenged the same by way of SWP No. 2009/2017. Apart from

challenging the report of Additional Deputy Commissioner, Doda, the appellant also called in question the Government Order dated 18.06.2014 whereby the Government cancelled the 1st PRC of respondent Nos. 8 and 9 in respect of village Trown and upheld the 2nd PRC of respondent No.8 for village Masri. All the three writ petitions, one filed by respondents No.8 and two filed by the appellant came to be considered and disposed of by the Writ Court vide order and judgment dated 03.12.2018 which is impugned in the four different appeals: three filed by the appellant and one filed by the State of Jammu and Kashmir (now UT of J&K).

9 Having heard learned counsel for the parties and perused the material on record, it is necessary to first advert to the salient features of ReT Scheme which the official respondents followed for making engagement of ReTs under SSA scheme as well. The ReT Scheme in the then State of Jammu was promulgated vide Government Order No. 396 of Edu 2000 dated 28.04.2000 to ensure peoples' participation in the management of education at the gross root level. In terms of the Scheme, the eligibility criteria for engagement of an ReT was prescribed as under:

- (a) ReT should be the permanent resident of the State;
- (b) He or she should belong to the village where there is assessed deficiency of staff. On the certification of VEC that no local candidate from the village is available, VEC can draw up the panel from the adjoining village;
- (c) He or she should possess the minimum qualification of 10+2;
- (d) The candidate shall as far as possible fulfill the age qualification as prescribed by the State Government; and
- (e) Due consideration shall be given by the VEC to the Scheduled Castes and Scheduled Tribes.

10 What is relevant for the controversy raised in these appeals is clause (b) of the eligibility which provides that a candidate to be engaged as ReT in a particular school must belong to the village where there is assessed deficiency of staff.

11 It is not in dispute that the term 'village' has been later on explained by the Government to be a 'revenue village'. In the instant case, two posts of ReT were notified to be filled up in the upgraded Primary School, Masri which is situate within the revenue village Masri. Indisputably the appellant belongs to village Masri, whereas there is controversy with regard to the actual and physical residence of respondents NO.8. It seems that at the time of submission of application form, respondent No.8 appended with his application form a PRC issued by the Deputy Commissioner, Doda indicating his residence in the revenue village Trown. It is, however, not known as to how and on what basis, ZEO Doda empanelled him for engagement as one of the ReTs in UPS Masri. Since the name of respondent No.8 was indicated only in the tentative panel which was subject to objections, as such, the appellant, who was next in merit and was actually a resident of village Masri, raised objection.

12 With a view to meeting the objection raised by the appellant respondent No.8 hurriedly applied and got the second PRC issued by the Additional Deputy Commissioner, Doda and, this, was in respect of village Masri. The application form and the affidavit submitted by respondents No.8 and 9 in support of their claim have been placed on record by the appellant which are not refuted by respondent No.8. The application form and the affidavit submitted clearly indicate that respondent No.8 obtained the second PRC and this time in respect of village Masri by stating on oath

that this was his first application for grant of PRC and that he had not been earlier issued any certificate of permanent residence. The competent Authority believed the respondent No.8 and issued the PRC indicating the his residence in village Masri. The appellant immediately objected to it and filed a complaint before the Deputy Commissioner, Doda. Enquiry was conducted in the matter and it was found that the second PRC obtained by respondent No.8 was by misrepresentation and suppression of material information and that the same was obtained only with a view to stake claim for engagement as ReT in UPS Masri.

13 Accordingly, the Deputy Commissioner, Doda recommended cancellation of the second PRC issued in favour of respondents No. 8 and 9 to the Divisional Commissioner, Doda. Since the Revenue Minister is the competent Authority to cancel the PRC issued in favour of a person, as such, the Divisional Commissioner forwarded the case to the Administrative Department of Revenue. Simultaneously, the Divisional Commissioner, Jammu also directed the Deputy Commissioner, Doda to take necessary steps for cancellation of engagement of respondent No.8, if any, made against the post of ReT in UPS Masri. The Deputy Commissioner, Doda swung into action and called upon CEO, Doda to take immediate action. On the directions of CEO, Doda, the ZEO Doda reframed the tentative panel and showed the appellant as tentatively selected instead of and in place of respondent No.8 and forwarded the panel to the Director School Education, Jammu for approval.

14 As stated above, the panel got the approval from the Director School Education, Jammu but could not be given effect to due to filing of SWP No. 2360/2010 by respondent No.8. Pursuant to the interim directions

dated 09.02.2015 passed in SWP No. 2360/2010, the Additional Deputy Commissioner, Doda conducted fresh enquiry into the actual and physical residence of respondent No.8 and concluded that respondent No.8 was actually and physically residing in village Masri along with his parents. This report was separately challenged by the appellant in SWP No. 2009/2017. In the meanwhile, the cancellation file of respondent No.8 came up for consideration before the Administrative Department wherein it was decided to cancel the first PRC of respondent No.8 issued in the year 2004 in respect of village Trown and uphold the second PRC issued for village Masri. Accordingly, Government Order dated 18.06.2014 was issued which the appellant assailed in OWP No. 1190/2017.

15 The core issue that arises for determination before us is two fold:
 (i) whether respondent no.8 was actually and physically residing in the revenue village Masri on the date of issuance of Advertisement Notification; and (ii) whether the conduct of respondent No.8 exhibited by him from time to time would justify the exercise of equitable jurisdiction vested in this Court under Article 226 of the Constitution of India.

16 So far as the status of respondent No.8 being actual and physical resident of village Masri is concerned, the same, in our opinion, is not firmly established. Indisputably, respondent No.8 and his family originally belonged to revenue village Trown which is a backward area notified under the J&K Reservation Act 2004 and the rules framed thereunder. With a view to reap the benefit of backward area and to obtain a category certificate of RBA, respondent No.8 all along claimed and asserted to be the resident of village Trown. He was issued PRC in year 2003 in respect of village Trown. He also obtained a certificate of RBA in the year 2004 on

the ground that he was actually and physically residing in village Trown. Probably, he later on shifted to village Masri, but he did not prepare any documents, in particular, the Ration Card of village Masri for the reason that he never wanted to lose his RBA status which was conferred upon him by being the resident of village Trown. Even his name does not exist in the voter list of village Masri for the years prior to 2009.

17 As is apparent from the communication of Deputy Commissioner, Doda dated 12.07.2013 addressed to the then Additional Advocate General representing the Education Department, the father of respondent No.8 appeared before the Tehsildar, Doda on 05.05.2010 and made a statement that he had already obtained PRC in favour of his son, namely Waseem Ahmed, respondent No.8 herein, in 2003 as a resident of village Trown and that his son had erroneously obtained the PRC from the revenue Department showing himself as a resident of village Masri. He even requested that the PRC certificate issued in favour of his son for village Masri be cancelled and he be allowed to retain the PRC of village Trown issued in the year 2003. It seems that this report was not accepted by Writ Court and the Deputy Commissioner, Doda was again directed to consider the issue. The Deputy Commissioner conducted the enquiry and concluded that respondent No.8 and his sister were permanently and actually residing in village Masri with their parents and that they had not obtained any benefit of RBA certificate issued to them by the Tehsilda Doda in respect of village Trown.

18 From a reading of the report prepared by the Deputy Commissioner, Doda, it seems that he has mainly relied upon some oral statements of the villagers and some Chula Chowkidara register and also

some khasra girdwari in respect of some land of family of respondents No.8 in village Masri.

19 Admittedly, the ration card, which is a relevant document, for the year 2009 when the Advertisement Notification was issued was not obtained by the respondent No.8. In short, what we find is that the material taken into consideration by the Deputy Commissioner, Doda was not sufficient to come to a conclusion that respondent No.8 was actually and physically residing in village Masri at the time of issuance of notification or on the cut off date mentioned in the said notification. Even if we were to assume that he had taken up his residence in village Masri and was residing there in the year 2009 still the Writ Court ought not to have allowed the writ petition filed by respondent No. 8 in exercise of equitable jurisdiction vested in it by Article 226 of the Constitution of India. Respondent No.8 has all along been playing smart with the Authorities and wanted to sail in two boats simultaneously. He being the actual resident of village Trown had obtained his PRC and RBA certificate by showing himself to be the permanent and actual resident of village Trown. May be he had shifted his residence to village Masri, but he did not prepare the relevant documents which would indicate him to be the resident of village Masri till the Advertisement Notification in question was issued by the CEO, Doda in the year 2009. Since an opportunity came in the way of respondent No.8 in the year 2009 when notification was issued by the CEO Doda for filling up the posts of ReTs in UPS Masri, he submitted his application form but could not append therewith the PRC in respect of village Masri. The ZEO, Doda even considered his name though erroneously and indicated him in the tentative panel on the basis of his merit. When this was objected to by the

appellant, respondent No.8 swung into action and moved an application before the Deputy Commissioner Doda. He misrepresented before the Authorities and claimed that he had not earlier been issued any PRC nor had he made any application in this behalf. He suppressed the fact that he was already possessing PRC and RBA certificate in respect of village Trown and persuaded the Deputy Commissioner, Doda to issue fresh PRC in respect of village Masri. This is the first fraud played by respondent No.8. The appellant who felt deprived of his right did not relent and made an application to the revenue authorities for cancellation of his second PRC. The Deputy Commissioner, Doda as well as the Divisional Commissioner, Jammu have recommended the cancellation of his second PRC, but somehow the respondent No.8 seems to have managed with the Government and got the order issued in respect of cancellation of his first PRC and not the second which he had obtained by misrepresentation. Obviously, the Government acted arbitrarily and condoned the fraud played by respondent No.8.

20 The Writ Court was aware of all these aspects, but, concluded that since the requirement of Advertisement Notification and the ReT Scheme is that a candidate to be engaged as ReT must be physically and actually residing in the village where the school is situate, as such, the PRC was not the primary evidence of residence. We respectfully concur with the view taken by the Writ court, but the Writ Court has not taken note of the conduct of the appellant which alone had disentitled him to invoke the extraordinary equitable writ jurisdiction of the Constitutional Court under Article 226 of the Constitution of India.

21 It is trite law that he who seeks equity must do equity and in granting relief peculiar to its own jurisdiction, the Writ Court which is also a Court of equity, acts upon this rule. The Court of equity refuses relief to a person whose conduct in respect of subject matter of litigation has been improper. Although the respondent No.8 is not found to have indulged in any fraud or misrepresentation in this litigation, yet his conduct of manipulating two PRCs and one RBA certificate claiming to be resident of two different villages is not condonable. A citizen who manipulates law to suit his need cannot seek the protection of law when law takes its own course. We could have appreciated the bonafides of the respondent No.8, had he voluntarily surrendered his PRC and RBA certificate which he had obtained by claiming to be permanent resident of village Trown by submitting before the Authorities that he has given up his residence at village Trown and has taken it up permanently at village Masri. However, the respondent No.8 wanted to have the best of both worlds. We are, thus, of the firm opinion that the Courts of equity have no place for such litigants.

22 For all these reasons, we pass the following order:

(i) **LPA No.223/2018** filed by the appellant Amresh Singh & **LPA No. 46/2019** filed by the State of J&K (now UT) are allowed. Order dated 03.12.2018 passed in SWP No. 2360/2010 set aside. Consequently, the writ petition is dismissed.

(ii) **LPA No. 219/2018** filed by the appellant Amresh Singh is allowed and the order dated 03.12.2018 passed in SWP No. 2009 is set aside. As a result, the writ petition is allowed and the enquiry report dated 07.07.2015 issued by the Additional Deputy Commissioner, Doda whereby it was held that the respondent Waseem Akram and his sister are permanently and actually residing in village Masri with their parents and, therefore,

the appellant Amresh Singh is entitled to be considered for engagement as ReT UPS Masri.

(iii) **LPA No. 218/2018** filed by the appellant Amresh Singh is allowed and the order dated 03.12.2018 passed in OWP No. 1190/2017 is set aside. Consequently, the writ petition is also allowed and the Government orders No. Rev/PRC/137 dated 18.06.2014 and No. 148-52 dated 04.05.2016 which were impugned in the writ petition are quashed. The second PRCs obtained by respondent Wasim Akram and his sister by practicing fraud and misrepresentation shall be deemed to have been cancelled.

We, however, take judicial note of the fact that with the coming into force of the J&K Reorganization Act, 2019, the concept of PRC in UT of Jammu and Kashmir has ceased to exist and the citizens of India leaving in the UT of Jammu and Kashmir are now entitled to issuance of Domicile Certificate subject to fulfillment of certain conditions as laid down in the Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules, 2020. We make it clear that, notwithstanding the quashment of aforesaid Government Orders, and cancellation of 2nd PRCs of respondents No.8 & 9, they shall be free and entitled to obtain Domicile Certificates, if not already obtained, from the Competent Authority on fulfillment of requisite formalities and meeting the required eligibility conditions.

(MOHAN LAL)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
12.10.2023

Sanjeev

Whether order is reportable: Yes