

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP 1886/2012

Mst. Fozia Hussain,

...Petitioner(s)

Through: Mr. M.M. Khan, Advocate

Vs.

State of J&K and Others.

...Respondent(s)

Through: Mr. Mubeen Wani, Dy. AG.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER
21.12.2023

1. This is a petition under Article 226 of the Constitution of India, filed by the petitioner for seeking a writ of mandamus to direct the respondents to convert the services of the petitioner from Educational Volunteer ["EV"] to ReT, against the vacancy of ReT in Government Primary School, Kawoo of village Kamalkote. The petitioner also prays for restraining respondents from filling up one vacancy under the advertisement notification issued by ZEO Jhulla (Uri) dated 30th July, 2012.

2. Briefly stated, the facts leading to the filing of this petition are that one Mst. Shameema Bano, was engaged as EV in the Education Guarantee Scheme, Centre, Kawoo of village Kamalkote, under the Education Guarantee Scheme, ["EGS"]. The said Mst. Shameema Bano, who was engaged in the year 2004, ran the centre till she voluntarily resigned from the assignment in the year 2006. It is claimed by the petitioner that on the recommendations of locals and the verbal instructions of the Zonal Education

Officer, Zone Jhulla, Tehsil Uri-Respondent No. 4, the petitioner was permitted to run the centre under the norms of EGS.

3. That in the year 2008, the EGS centre along with many other centers was ordered to be upgraded to the status of Government Primary School, vide Government order No. 322-Edu of 2008, dated 26th June, 2008. The petitioner who was running the EGS Centre Kawoo, as EV, was entitled to be converted as ReT, but the respondents declined to do so, on the ground that the name of the petitioner did not exist in the official records. The respondents, as is apparent from the Government order of 2008, indicated the name of Mst. Shameema Bano, for conversion as ReT not realizing that she had since resigned from the assignment.

4. Feeling aggrieved, the petitioner claims to have represented before the local MLA, who at the relevant point of time was Minister Incharge of PHE and Flood Control, but he too could not help. The petitioner moved the Court of District Judge, Baramulla, by way of a civil suit seeking *inter alia* her permanent absorption as ReT, and also a restraint order against the respondents for making fresh engagement of ReT for the said school. The aforesaid suit was not pursued by the petitioner and the same was ultimately dismissed as withdrawn, without reserving any liberty to the petition. On the issuance of the fresh advertisement notice dated 30th July, 2012, the petitioner filed the instant petition claiming fresh cause of action to come to Court.

5. In the aforesaid backdrop, the petitioner claims that she is entitled to be converted and treated as ReT in the EGS Centre in question in terms of the Government order of 2008, with all consequential benefits.

6. On being put on notice, the respondents have filed their objections. It is submitted by the respondents that under the Education Guarantee Scheme an EGS Centre was sanctioned for habitation Kawoo in village Kamalkote, by the competent authority. A candidate, namely, Mst. Shameema Bano was engaged in the said centre vide order dated 5th August, 2004. She, however, resigned from the assignment on 5th December, 2006, with the result the EGS centre was rendered without EV. The claim of the petitioner that she was engaged as EV as per verbal orders of respondent No. 5, is refuted by the respondents in the objections. It is submitted that as per record, neither there is any engagement order issued in favour of the petitioner, nor has she been paid any honorarium for performing duties as is claimed by the petitioner. It is further submitted that prior to her marriage, the petitioner was a resident of village Lagama Uri, which is 25 Kms away from the village Kamalkote. However, she married one Abass Hussain in the year 2008, at village Kamalkote. It is thus submitted that the petitioner's claims she had been working since 2006 in the said EGS Centre is baseless.

7. It has also come in the objections filed by the respondents, that vide order No. Edu/SPD/SSA/32/2006/11260-73 dated 2nd March, 2006, issued by State Project Director, SSA, opening of EGS Centers was completely banned and a complete moratorium ordered to be maintained in respect of employment of Fresh EV's in the existing centers. It is thus stated that after 2nd March, 2006, there was no lawful authority with any person to make any engagement as EV. The objections filed by the respondents upon admission of the petition were treated as counter affidavit to which the petitioner filed rejoinder.

8. In the rejoinder, the petitioner has come up with some documents to show that though there was no formal order for her engagement as EV in the erstwhile EGS centre Kawoo, yet she had been performing duties under the verbal orders.

9. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the reliefs claimed by the petitioner in this petition cannot be granted. Indisputably, the EGS centre was sanctioned in the year 2004 and one Mst. Shameema Bano, was engaged as EV in the said centre. Upon her resignation w.e.f. 5th December, 2006, no new recruitment as EV was made and rightly so, as in terms of the order of State Project Director, SSA, dated 2nd March, 2006, (supra), there was a complete moratorium ordered to be maintained on appointment of EV's in the existing or new centers. It may be true or may not be true, that the petitioner started working in the aforesaid centre under some verbal orders of the higher authority, but there is no material on record to show that the selection of the petitioner was made for engagement as EV after conducting some selection process under the EGS scheme.

10. It is also not forthcoming from the documents on record placed by the petitioners as to whether any other candidate along with the petitioner was considered for the said centre. It is also not in dispute that there is no order on record available with the official respondents to demonstrate that the petitioner was ever engaged as EV in the said scheme under a verbal or written order of the competent authority. She has not shown any documentary evidence to demonstrate that she was either paid any honorarium or that she even represented before the authorities for payment of any honorarium.

11. As a matter of fact, she had been approaching the political authorities like MLAs and Ministers to somehow adjust her as EV in the centre. When they could not help, the petitioner filed a civil suit before the District Judge, Baramulla, seeking *inter alia* a decree of declaring her as ReT in terms of the Government order of 2008, and also a decree for permanent prohibitory injunction restraining the official respondents from filling up the post by initiating fresh process of selection. As is fairly admitted in the petition, the aforesaid suit was later on not pursued by the petitioner, and the same was ultimately dismissed as withdrawn. The petitioner did not reserve any liberty to file any fresh suit or proceedings on the same cause of action. That being the position, the petitioner could not have maintained the instant petition only on the ground that issuance of fresh advertisement notification had provided her a fresh cause of action. Even if one were to agree with the learned counsel for the petitioner that the issuance of advertisement notification to fill up the post of ReT in Government Primary School, Kawoo, gave a fresh cause of action to the petitioner, yet in view of dismissal of her suit as withdrawn, the petitioner was disentitled to claim that she was legitimately appointed as EV and entitled to be converted as ReT. The very basis of challenge of the fresh advertisement notification had thus gone and, therefore, the petition at the very inception was not maintainable.

12. That apart, the petitioner is primarily aggrieved of the issuance of fresh advertisement notification to fill up the post of ReT in Government Primary School, Kawoo, village Kamalkote, notified by the respondent No. 1 vide No. ZEJ/579-83 dated 30th July, 2012, but has not disclosed in the petition that she has responded to the aforesaid advertisement notification and taken a chance for selection. The official respondents in the reply affidavit

have clearly stated that the petitioner has not only responded to the advertisement notification challenged in the writ petition, but has been found figuring at Serial No. 10 in the merit list.

13. In view of the participation of the petitioner in the selection process initiated in terms of the impugned advertisement notification and suppression of the said fact from the Court the petitioner is estopped from claiming the reliefs as prayed for in this petition. The petitioner has voluntarily participated in the selection process initiated vide impugned advertisement notification dated 30th July, 2012, and, therefore, can be permitted to challenge the same, and that too without disclosing the factum of participation in the process.

14. For all these reasons, I find no merit in this petition and the same is, accordingly, **dismissed**

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
21.12.2023
“Mir Arif”

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| <i>i.</i> | <i>Whether the order is reportable?</i> | <i>Yes/No</i> |
| <i>ii.</i> | <i>Whether the order is speaking?</i> | <i>Yes/No</i> |