

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 27th December, 2023
Pronounced on: 30th December, 2023

WP(C) 2750/2021

Shakeela Akhter (Aged: 36 years) ...Petitioner(s)
D/O Ghulam Hassan Sheikh
R/O Naira Tahab, Pulwama District Pulwama
Kahmir.

Through: Mr. L. A. Latief, Advocate.

Vs.

1. Union Territory of Jammu and Kashmir ...Respondent(s)
through Principal Secretary to Govt.
Education Department Civil Secretariat.
Srinagar/ Jammu.
2. Director School Education, Kashmir,
Srinagar.
3. Chief Education Officer, Pulwama.
4. Zonal Education Officer, Tahab, Pulwama.
5. Headmaster Govt. Girls Middle School,
Tahab, Pulwama.

Through: Mr. Faheem Nisar Shah, Government Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.

JUDGMENT

Sanjeev Kumar; J

01. The petitioner invokes extraordinary writ jurisdiction of this Court vested by Article 226 of the Constitution of India to call in question an Order and judgment dated 26th July, 2021 passed by the Central

Administrative Tribunal, Jammu (the Tribunal), whereby the Tribunal has dismissed TA No. 62/3229/2021 (SWP No. 1633/2017) titled “Shakeela Akhter vs State of J&K and Others.”

02. Before we advert to the grounds of challenge urged by the learned counsel for the petitioner, we deem it proper to take note of few facts, which are material to the determination of this petition.

03. The petitioner was appointed as Lab Bearer by the Chief Education Officer, Pulwama, vide his Order bearing No. CEO/Pul/95/198 dated 30th June, 1995. The appointment of the petitioner as Lab Bearer was not in pursuance of any selection process conducted by any competent selection body, but was pursuant to the desire expressed by the then District Development Commissioner, Pulwama. While the petitioner was performing her duties as Lab Bearer, her salary came to be stopped in the year 1998. This was on account of an FIR registered with Vigilance Organization, Kashmir, pertaining to the alleged fake appointments made in the District of Pulwama. The petitioner filed a writ petition being SWP No. 1577/1999, before this Court, seeking *inter alia* a direction to the respondents to release her salary. The writ petition was disposed of vide Order dated 7th February, 2009, directing the respondents to pay the petitioner salary for the post on which she had been working, within a period of two months. It was also directed that the petitioner shall not be dislodged without due process of law. The matter, it seems, came up for consideration before the respondents and the Director, School Education Kashmir, passed an Order bearing No. 661/DSEK of 2017, dated 19th June, 2017 whereby the petitioner was disengaged retrospectively with effect from 21st November, 2012 and the petitioner was not held entitled

to any salary. This order was passed by the Director, School Education, purportedly in compliance to the directions passed by the Single Bench of this Court in SWP No. 1577/1999. It is this consideration Order, whereby the services of the petitioner were deemed to have been terminated/disengaged with effect from 21st November, 2012, which was called in question by the petitioner before the Tribunal.

04. The order was assailed *inter alia* on the ground that the petitioner having been appointed against a civil post on permanent basis, could not have been terminated without holding proper inquiry and without providing an adequate opportunity of being heard.

05. The writ petition was contested by the respondents. In their counter affidavit filed before the Tribunal, the respondents took a plea that the engagement of the petitioner as Lab Bearer was against a non-existent post; by an authority not competent to issue such order; and without any proper selection process. It was also pleaded by the respondents that being aware of the fate of her engagement, the petitioner had voluntarily left the services and was not working anywhere since 21st November, 2012.

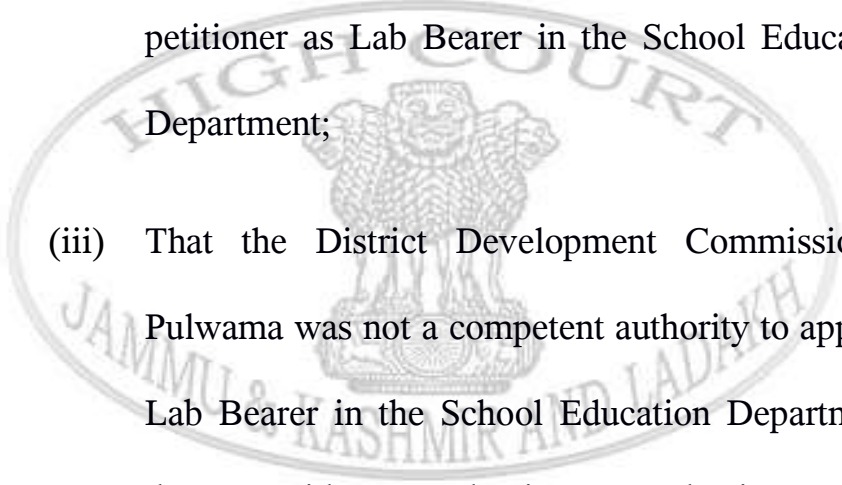
06. The Tribunal considered the rival contentions of both the sides and came to the conclusion that there was no merit in the petition filed by the petitioner and that the disengagement of the petitioner ordered by the Director, School Education, vide Order impugned dated 19th June, 2017 did not suffer from any legal infirmity. The petition was accordingly dismissed by the Tribunal in terms of Order and judgment impugned in this petition.

07. The learned counsel appearing for the petitioner reiterated the grounds of challenge which he had urged on behalf of the petitioner before the Tribunal. He submits that the petitioner came to be engaged as Lab Bearer on the directions of the District Development Commissioner, Pulwama and, therefore, her order of engagement was not by an incompetent authority. He further submits that since the petitioner had been appointed against a permanent post in the Department of School Education, as such, her services could not have been terminated without holding an inquiry and providing her an adequate opportunity of being heard.

08. *Per contra*, Mr. Faheem Nisar Shah, the learned Government Advocate submits that the engagement of the petitioner was *per se* illegal and void ab initio and, therefore, no regular inquiry was required. He submits that the petitioner was put on notice and given an adequate opportunity to explain her position, but she failed to attend the respondents after 21st November, 2012.

09. Having heard the learned counsel appearing for the parties and perused the material on record, we are of the opinion that the order and judgment passed by the Tribunal impugned in this petition, does not call for any interference for the following reasons:

- a. That the engagement of the petitioner as Lab Bearer in the School Education Department made by the Chief Education Officer, Pulwama vide his Order bearing No. CEO/Pul/ 95/198 dated 30th June, 1995, is illegal and void ab initio for the following reasons:

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- (i) That the appointment of the petitioner is without any advertisement notification and without any regular selection process conducted by any competent authority;
- (ii) That the appointment is on the basis of desire expressed by the then District Development Commissioner, Pulwama for appointing the petitioner as Lab Bearer in the School Education Department;
- (iii) That the District Development Commissioner, Pulwama was not a competent authority to appoint Lab Bearer in the School Education Department, that too without conducting any selection process and providing fair opportunity to all eligible candidates to compete;
- (iv) That the appointment of the petitioner was made without ascertaining as to whether any post of Lab Bearer was available in the Middle School Sadipora Zone Tahab or anywhere else in the District of Pulwama;

10. True it is that in the instant case, regular inquiry was not conducted by the respondents but the fact remains that the petitioner was provided an adequate opportunity to explain her position. She was issued several notices to appear before the competent authority but she

voluntarily and without any justification abandoned the services with effect from 21st November, 2012.

11. The learned counsel for the petitioner was asked to demonstrate by reference to any document that the petitioner had been in the service of the respondents after November, 2012 till the order of her disengagement was passed by the Director School Education, Kashmir, but the learned counsel could produce no material either before the Tribunal or before us. With a view to provide an opportunity to the petitioner to explain her position, this Court pointedly asked the learned counsel for the petitioner to justify the engagement of the petitioner, but he miserably failed to do so.

12. The argument of Mr. L. A. Latief, learned counsel appearing for the petitioner that the District Development Commissioner, Pulwama is competent to appoint a Class-IV person within his District, is totally misconceived and deserves outright rejection. Even if the District Development Commissioner is competent to appoint a Class-IV employee in the School Education Department on a post available in his District, yet he cannot do so unless a proper selection process is conducted by issuing advertisement notification and providing fair opportunity to all eligible candidates to participate in the selection process. The appointment made by any authority howsoever high it may be, without conducting a selection process to be initiated by issuing advertisement notification, is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India.

13. We have carefully gone through the record produced by the respondents and find that several notices were issued by the respondents to provide an opportunity of hearing to the petitioner, but she avoided and chose not to appear before the respondents, to explain her position. She actually abandoned her services with effect from 21st November, 2012 and thereafter is not in the services of the School Education Department. It is as a matter of fact, a case of voluntarily abandoning the services.

14. Though we do not find that in the instant case, the principles of natural justice have been violated, yet even if we were to assume that the petitioner was entitled to an adequate opportunity of being heard, we are of the considered opinion that no useful purpose would be served even if we provide a post decisional hearing to the petitioner in the matter. Having regard to the fact that the engagement of the petitioner is nullity in law, providing an opportunity of hearing to the petitioner would be a useless formality.

15. Mr. L. A. Latief, learned counsel appearing for the petitioner has relied upon a judgment passed by the High Court of Himachal Pradesh in case titled as *“Tek Chand vs The State of H. P. & Others”* decided *on 20th August, 1986* as also the judgments of this Court passed in: (i) *SWP no. 1583/2007* titled *“Gulshan Rashid vs State of J&K and Others”* reported in *“2009 (1) SLJ 218”*; *LPA No. 276/1998* titled *Manzoor Ahmad Bhat & Anr vs State and Others* reported in *“2003 (1) SLJ 107”*, and *“LPA No. 52/1999”* titled *“Miss Nargis vs State and Others”* reported in *“2002 (2) SLJ 359”*, to substantiate his argument that the mode and manner in which selection process is conducted and the appointment order is issued, is not within the control of the selectee/

appointee and, therefore, no appointment can be cancelled only on the ground that no selection process was conducted prior to making such appointment or that the authority which issued the appointment order, was not competent to do so.

16. We have gone through the judgments relied upon by the learned counsel for the petitioner and do not find any such proposition of law laid down therein. The judgements have been passed in the peculiar facts and circumstances of the case and have thus no bearing on the controversy on hand.

17. Viewed from any angle, we do not find the Order and judgment impugned passed by the learned Tribunal bad in the eye of law. The petition is, therefore, found to be without any merit and the same is accordingly **dismissed**.

18. The record produced by Mr. Faheem Nisar Shah, the learned Government Advocate be returned him.

(JAVED IQBAL WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
30.12.2023
“Hamid”

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| i. | Whether the Judgement is Reportable? | Yes/No |
| ii. | Whether the Judgment is Speaking? | Yes/No |