

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

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**LPA no.91/2020
CM nO. 4802/2020**

Reserved on: 29.02.2024

Pronounced on: 19.04.2024

1. Union Territory of Jammu and Kashmir through
Principal Secretary to Government, School Education Department,
Civil Secretariat, Srinagar/Jammu
2. Director, School Education Department, Jammu
3. Chief Education Officer, Udhampur
4. Zonal Education Officer, Kalwanta, Udhampur.

.....Appellant(s)

Through: Mr P.D.Singh, Dy.AG

Versus

1. Mohan Lal S/O Sh. Ruru Ram,
R/O Sattian (Ansoo), Tehsil Ramnagar,
District Udhampur.
2. Babli Rani W/O Sh. Sanjeev Singh,
R/O Sattian, Ramnagar, Udhampur.

.....Respondent(s)

Through: Mr D.S.Chouhan, Advocate with
Ms. Damini Singh Chouhan, Advocate
Mr. Vilakshan Singh, Advocate.

CORAM:

**HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE**

JUDGEMENT

1. This Letters Patent Appeal is directed against and for setting-aside the
judgment dated 18th December 2018, passed by the learned Single
Judge in SWP no.691/2014 titled as *Mohan Lal v. State of J&K and*

others, whereby the learned Writ Court has directed that writ petitioner – respondent no.1 herein shall continue in service as Rebhar-e-Taleem (ReT) in terms of order no.ZEO/K/SSA/ 979-81 dated 17.01.2018 and be paid salary for the period he has rendered service and in future also till he renders the same. The learned Single Judge has also directed the official writ respondents-appellants herein, to regularize the services of writ petitioner/respondent no.1 as General Line Teacher after completion of five years' service as ReT from 31st of March 2005 on notional basis. A prayer has been made to set aside the said judgment.

2. We have heard the learned counsel for the parties and gone through the writ record as also the impugned judgement.
3. The factual matrix of the case is that way back in the year 2004, an advertisement notice no.DSEJ/ RET/ 4011-17 dated 20.06.2004 was issued by the appellant-department for selection/engagement of ReT in Middle School Tagan Zole Kulwanta District Udhampur. Writ petitioner/respondent no.1 responded to the advertisement notice. A Panel was prepared. Respondent no.1 was selected/engaged as ReT in Middle School, Tagan vide Order no.SEO/K/SSA/641-45 dated 28.02.2005.
4. Respondent no.1 claimed that he remained out of the J&K since 2005 and it was hardly possible for him to know about the selection and appointment of a candidate as ReT in Middle School, Tagan, in June 2013 from the revelation made by the selected/appointed candidate, viz. respondent no.2 herein. According to respondent no.1, he initiated steps under RTI to get the exact information and after his

consistent struggle, he could manage to get the same through a reply dated 02.01.2014 from Zonal Education Officer, Kulwanta – appellant no.4 herein, that the engagement order, which was never issued/received by him, was cancelled on 31.03.2005 on the ground that the respondent no.1 had joined in Fisheries Department and in his place the respondent no.2 was recommended to be engaged. The respondent no.1 further claimed that the cancellation order was never issued/received/served upon him, thus, a fraud had been committed upon him by manufacturing a letter/report on behalf of his father that respondent no.1 was not been willing to work as ReT as he had joined the Fisheries Department.

5. Finally, the respondent no.1 knocked the doors of this Court through a writ petition, diarized and registered as SWP no.691/2014, seeking following reliefs:

“Writ of Certiorari quashing Order No.ZEO/K/1835 dated 31.03.2005 as passed by respondent no.4 cancelling the order of engagement of the petitioner as ReT, MS Tagan and also quashing the order No.ZEO/K/ 442 dated 09.09.2005 of engagement of respondent no.5 as ReT, MS Tagan.

And

Writ of mandamus directing the respondent nos.1 to 4 to consider and offer the petitioner engagement as ReT, MS Tagan, Zone Kulwanta, Ramnagar.”

6. The official writ-respondents 1 to 4 – appellants 1 to 4 herein filed their reply in opposition to the writ petition, disputing maintainability of the same.
7. It appears from the records that learned Writ Court in terms of an interim order dated 16.02.2016 directed the appellants not to give further benefit to respondent no.2 herein on account of her engagement as ReT and consider the writ petitioner/respondent no.1

herein for his engagement against the available ReT post and that the consideration shall be effected and decision taken within a period of one month from the date of service of copy of the said order.

8. It was only after the respondent no.1 filed a contempt petition, CPSW no.350/2016 that the writ petitioner-respondent no.1 came to be engaged as ReT in Primary School Nakki Village Sattian Zone Kulwanta vide Order dated 17.01.2018 whereafter the writ petitioner-respondent no.1 joined the services as ReT on 19.01.2018.
9. In terms of the impugned judgment, the learned Single Bench directed continuation of the services of the petitioner- respondent no.1 as ReT and at the same time the appellants were directed to regularize the services of the petitioner-respondent No.1 as General Line Teacher retrospectively by counting his service from 31st March 2005 on notional basis.
10. Learned counsel for the appellants has argued that the claim of the writ petitioner/respondent no.1 that he was outside State when his selection/engagement as ReT was made by the appellant-department, is belied by the fact that the writ petitioner/ respondent no.1 was working in the Fisheries Department of J&K when he came to be selected/engaged where he was working with effect from 15.09.2004 to 2014. In this regard, the learned counsel for the appellants has invited attention of this Court to the communication no.ADF/U/ 2019-20/ 574-76 dated 26.12.2019 (*Annexure V to the appeal*), addressed by the Fisheries Department in response to communication no.DSEJ/Legal/38159 dated 21.12.2019 (*Annexure IV to the appeal*) by virtue of which the clarification of the period was made to the extent

that the respondent no.1 has rendered his services in the Fisheries Department.

11.The above fact-situation highlighted by the appellants requires us to go through the impugned judgement. The paragraph 03 thereof mentions that the official respondents (appellants herein) did not choose to file any response to the writ petition whereas perusal of the Writ Record reflects and suggests contrary to what has been observed by the learned Single Judge. It is evident from the writ record that that the appellants had filed their Objections against the writ petition on 16.06.2014 and this would be a circumstance which needs consideration for interfering with the impugned judgment.

12.It had been in terms of Order dated 16.02.2016 that while admitting the writ petition to hearing, the appellants had been directed to consider the petitioner for engagement who vide Order no.ZEO/K/SSA/979-81 dated 17.01.2018 complied the Order dated 16.02.2016, and engaged the writ petitioner-respondent No.1 as ReT in Primary School Nakki, Village Sattian.

13.Considering the submissions of the learned counsel for the writ petitioner/respondent no.1, twofold directions were passed by the learned writ Court; one allowing respondent no.1 to continue as ReT and paid salary for the period he has rendered services and continued to be paid in future for rendering services. The other to regularize the services of respondent no.1 retrospectively from 31st March 2005 on notional basis.

14.There is a force and substance in the submission of the learned counsel for the appellants that once the respondent no.1 had been

working in the Fisheries Department from 15.09.2004 to 2014, then it is not legally permissible to give undue notional benefit retrospectively from 31.03.2005, particularly, when respondent no.1 has concealed this material fact from the learned Writ Court that he was already working in the Fisheries Department. This important fact, which was neither mentioned by the writ petitioner/respondent no.1 before the learned Writ Court nor mentioned in the writ petition itself, cannot be overlooked.

15. Insofar as the first relief granted by the learned Writ Court is concerned whereby the appellants have been directed to allow writ petitioner-respondent no.1 to continue, we feel that such a relief need not be interfered with. However, insofar as the second relief granted by the Writ Court is concerned, whereby the appellants have been directed to regularize the services of petitioner retrospectively by counting his services from 31st March 2005 on notional basis, the same could not be granted for the simple reason that the writ petitioner/respondent no.1 had concealed this fact that he was working in the Fisheries Department from 2004 to 2014. At the most, the writ petitioner/ respondent no.1 can/could have been held entitled to regularization after completion of five years' service as ReT to be counted from 17th January 2018, when his engagement order as ReT was issued and retrospectively. To this extent impugned judgement calls for interference.

16. For the foregoing reasons, this appeal is **partly allowed** and the impugned judgement to the extent it directs regularization of the services of petitioner-respondent No.1 as General Line Teacher after

completion of five years’ service as ReT to be counted from 31st of March 2005 on notional basis, is **set-aside**.

17.Disposed of in terms of above.

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Jammu
19.04.2024
Madan Verma, Secy.

Whether approved for reporting? Yes/No.

I pronounce this judgement today in terms of Rule 138(4) of the J&K High Court Rules, 1999.

(Tashi Rabstan)
Judge

Jammu
19.04.2024
“Madan Verma-Secy”

