

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

Reserved On: 30th of April, 2024
Pronounced On: 7th of May, 2024.

LPA No. 187/2022 in SWP No. 1960/2016

Shazia Akhter, Age: 42 Years
D/O Mohammad Ramzan Sheikh
R/O Doligund, Masjid/ Sheikh Mohalla,
Rafiabad, District Baramulla, Kashmir.

... Appellant(s)

Through: -
Mr Asif Ahmad Bhat, Advocate.

V/S

1. **Union Territory of Jammu & Kashmir,**
Through Commissioner-cum-Secretary to Government,
Social Welfare Department,
Civil Secretariat, Srinagar/ Jammu.
2. Director, Social Welfare Department,
Kashmir, Srinagar.
3. Child Development Project Officer,
ICDS Rafiabad, District Baramulla.
4. Deputy Commissioner, Baramulla.
5. Sub Divisional Magistrate, Sopore.
6. Tehsildar Dangiwachha, Rafiabad,
District Baramulla.
7. Tasleema Bano
D/O Mohammad Amin Khan
R/O Doligund Masjid Mohalla/ Khan Mohalla,
Rafiabad, District Baramulla, Kashmir.

... Respondent(s)

Through: -
Mr Mubashir Majid Malik, Dy. AG for R-1 to 6; and
Mr Mian Tufail, Advocate for R-7.

CORAM:

Hon'ble Mr Justice Tashi Rabstan, Judge
Hon'ble Mr Justice M. A. Chowdhary, Judge

(JUDGMENT)**Chowdhary-J:**

01. Through the medium of the instant *intra* Court appeal, the Appellant has assailed the Judgment dated 9th of September, 2022 passed by the learned Writ Court in the Writ Petition filed by her bearing SWP No. 1960/2016 titled '**Mst. Shazia Akhtar v. State of J&K and Ors.**'

02. Before we advert to the grounds urged by the Appellant in relation to the aforesaid impugned Judgment, it shall be advantageous to take note of the material facts of the case leading to the filing of the present appeal, hereinbelow.

03. The Appellant claims to have been engaged as an Anganwadi Worker in Doligund Masjid Mohalla, Sheikh Mohalla, District Baramulla in terms of Order No. CDPO/Rf/Esstt/11/51-54-A dated 23rd of August, 2011; that the Appellant submitted her joining report before the concerned authority on 24th of August, 2011 and has been regularly discharging her duties as such since then; that the said selection/ engagement of the Appellant came to be challenged by one Tasleema Bano/ Respondent No.7 herein through the medium of Writ Petition bearing SWP No. 2368/2011, which was disposed of vide Order dated 25th of August, 2016, with a direction to the Deputy Commissioner, Baramulla to appoint a Senior Revenue Officer as Enquiry Officer, so as to ascertain the residential status of the Petitioner therein/ Respondent No.7 herein, after affording opportunity of being heard to both the parties; that it was further directed that if in the enquiry, it is found that the Petitioner therein/ Respondent No.7 herein does not belong to Sheikh Mohalla, Masjid Mohalla of Village Doligund, then the engagement of the private Respondent/ Appellant herein shall remain undisturbed and she shall continue to work as Anganwadi Worker, however, if in the enquiry, it is found that the Petitioner therein/

Respondent No.7 herein is also a resident of Sheikh Mohalla, Masjid Mohalla of Village Doligund, in such eventuality, the Respondent Nos. 2 to 4 shall consider the comparative merit of both the candidates and appoint/engage the meritorious one as Anganwadi Worker.

04. In compliance of the aforesaid directions, the Tehsildar, Watergam, in terms of communication dated 28th of November, 2016, submitted the enquiry report wherein it was reported that there is no geographical boundaries between the houses of the Appellant and the Respondent No.7 and that they are residents of one and the same Hamlet viz. Masjid Mohalla/ Sheikh Mohalla; that, thereafter, the Sub Divisional Magistrate, Sopore, vide communication No. SDM/Spr/C/2016-17/399 dated 1st of December, 2016, reported that after spot inspection of the site, it was found that both the residential houses of the Appellant and Respondent No.7 are almost equidistant from the Masjid and the Anganwadi Centre in question.

05. The Appellant, being aggrieved of the aforesaid reports submitted by the official Respondents, challenged the same through the medium of Writ Petition bearing SWP No. 1960/2016; that on notice having been issued by the learned Writ Court, the Respondents appeared and submitted Objections in opposition to the Writ Petition filed by the Appellant, whereafter, the learned Writ Court, in terms of Judgment dated 9th of September, 2022, considered the matter and disposed of the Writ Petition with the following observations:

“11. In view of the discussion made hereinabove, the Enquiry Committee has rightly observed that the appointment needs to be made on the basis of the merit of the Petitioner and the private Respondent. Be that as it may, this Writ Petition is disposed of in light of the Judgment passed by this Court on 25.08.2016 in SWP No. 2368/2011, with a direction to the Respondent Nos. 2-4/ official respondents to assess the comparative merit of the Petitioner as well as the private respondent and pass appropriate orders of engagement in favour of the meritorious candidate within a period of four weeks

from the date certified copy of this order is made available to the respondent/ authority.”

06. Feeling aggrieved and dissatisfied with the aforesaid Judgment passed by the learned Writ Court, the Appellant has preferred the instant appeal, *inter alia*, on the following grounds:

- I. The Writ Court completely failed to appreciate the issue and controversy involved in the matter as writ was filed against the enquiry conducted by the SDM, but while doing so no assistance was taken from other agencies, otherwise on the face of inquiry report, same was conducted in a casual and mechanical manner. The writ court was required to ascertain whether the inquiry conducted is in accordance with or in derogation of law. The moot point involved was almost ignored and despite the fact writ was admitted, still no writ was issued as was prayed. The Court disposed of the matter with the direction to the respondents to assess the comparative merit of the appellant as well as private respondent, in fact, the said relief was never prayed in the matter, therefore, the writ court has committed an error, that too after admitting the matter as real controversy regarding the residential status of appellant and private respondent was not touched. Hence, order impugned is bad in law, accordingly, needs to be set aside;
- II. That the trial Court failed to appreciate the fact that the appellant is already working for the advertised post since from 2011. The writ court at its wisdom should have taken note of the said fact before issuing the judgment impugned as there cannot be assessment of merit afresh unless previous order of engagement pertaining to appellant shall not be assailed or questioned. The writ court overlooked the vital facts of the matter regarding the engagement of the appellant from last 12 years and issued an order impugned which has repercussions on the service career of the appellant. Hence, the judgment impugned, on the face of it, is bad, hence, needs to be quashed and set aside;

- III. That all important aspects regarding conduct of enquiry which was otherwise an issue before the court has been completely overlooked by the writ court as appellant was aggrieved of the manner in which inquiry was conducted, as inquiry officer was supposed to follow certain norms, which he miserably failed. The writ Court should have considered the same, instead of doing so, the writ court issued the direction which has the effect of disengaging the appellant, that too without questioning her engagement order, as such, impugned judgment deserves to be quashed and set aside;
- IV. That the learned Writ Court failed to appreciate the controversy in question and the grounds urged in the writ petition and the law governing the field in its correct perspective;
- V. That the learned Writ Court has invoked certain doctrines which were not applicable to the facts of the case at hand and has misinterpreted and turned down the others which were very much applicable; and
- VI. That the impugned judgment is against law and facts and has been passed without proper appreciation of pleadings and arguments as well as the law laid down by this Hon'ble Court and also pleaded in the writ petition."

07. Learned Counsel for the Appellant, while reiterating the grounds taken in the memorandum of appeal, has vehemently argued that the learned Single Judge, in deciding the Writ Petition, had failed to appreciate the issue and controversy involved in the matter in its true and correct perspective, inasmuch as, the Writ Petition was essentially filed against the enquiry conducted by the Sub Divisional Magistrate, Sopore, wherein no assistance was taken from other agencies, otherwise also, on the face of the enquiry report, same was conducted in a casual and mechanical manner. He further argued that the learned Writ Court was required to ascertain whether the enquiry conducted was in accordance with or in derogation of law. Learned Counsel also argued that the moot point involved in the subject matter of the Petition was almost ignored by the

learned Writ Court and, while directing the official Respondents to assess the comparative merit of the Appellant as well as private Respondent herein, which relief was never prayed for in the matter, the Writ Court had committed an error without touching the real controversy regarding the residential status of the Appellant and private Respondent herein. It was further argued that the Writ Court, at its wisdom, should have taken note of the fact that the Appellant had been working against the post in question since the year 2011, as such, no fresh assessment of merit was possible, unless the previous order of engagement pertaining to the Appellant would have been assailed or questioned. It was contended that the learned Writ Court overlooked all these vital aspects of the matter and passed the impugned Judgment which has serious repercussions on the service career of the Appellant, as such, the same, being bad in law, deserves to be set aside and the Writ Petition filed by the Appellant deserves to be allowed.

08. The learned Counsel appearing for the Respondents, *ex-adverso*, argued that the matter with regard to the engagement of the Appellant had already been adjudicated upon by this Court in SWP No. 2368/2011, which was filed by the private Respondent herein, earlier in point of time, vide Judgment dated 25th of August, 2016, with a direction to the Deputy Commissioner, Baramulla to get the matter enquired through a senior Revenue Officer by holding an enquiry with regard to the residential status of the Appellant as well as private Respondent herein, with a further direction that in case both of them are found to be residents of the same village, the matter may be sorted out by ascertaining their *inter se* merit of both the candidates and the meritorious candidate be appointed against the post. It is further submitted that in compliance to the aforesaid direction, the Deputy Commissioner, Baramulla, through Sub Divisional Magistrate, Sopore, got the matter enquired into and, based on the reports of the local Tehsildar and Sub Divisional Magistrate, Sopore, which were both assailed by the Appellant before the Writ Court, and after disposal of the Writ Petition on 9th of September, 2022, the Respondent No.3-Child

Development Project Officer, Mission Poshan, Rafiabab, vide Order No. CDPO/ICDS/Estt/Rf-22/255-60 dated 21st of September, 2022, had taken a decision in the matter, observing that the private Respondent herein, namely, Tasleema Bano had secured 56% marks as against the Appellant herein-Shazia Akhter, who had secured just 33% marks in her Matriculation Examination and, consequently, the Appellant herein-Shazia Akhter, Anganwadi Worker, was disengaged and private Respondent herein-Tasleema Bano was engaged as Anganwadi Worker in Anganwadi Centre Masjid/ Sheikh Mohalla, Doligund with immediate effect on monthly honorarium basis as admissible under rules, subject to fulfilment of all conditions as laid down under the ICDS guidelines. They have further argued that with the implementation of the Order passed in both the Writ Petitions, one by the private Respondent herein-Tasleema Bano and the other by the Appellant herein-Shazia Akhter, the Appellant should have challenged the Order of her disengagement and engagement of the private Respondent herein, which she has preferred not to do, though the Order had been passed by the Respondent No.3 on 21st of September, 2022. Both the Counsels appearing for the Respondents have vehemently argued that since the matter had been already decided between the parties with regard to their engagement having regard to their residential status, to be determined by the Deputy Commissioner, Baramulla and, in view of the clear directions of this Court passed in SWP No. 2368/2011 vide Judgment dated 25th of August, 2016, the official Respondents, while complying with the directions, held the enquiry and after finding that both the claimants were from the same village/ locality and were eligible for consideration to the post of Anganwadi Worker, the meritorious candidate-Tasleema Bano (private Respondent herein) was held entitled to be engaged on the said post of Anganwadi Worker for Anganwadi Centre Masjid/ Sheikh Mohalla, Doligund, after disengagement of the Appellant, who had been illegally appointed against that post and holding the post for many years illegally does not confer any right upon the Appellant.

09. We have heard the learned Counsel appearing for the parties, perused the pleadings on record and have considered the matter.

10. The genesis of this matter can be traced back to the factual background that the Government, in the year 2010, sanctioned some Anganwadi Centers for ICDS Project Rafiabad of District Baramulla and, accordingly, an Advertisement was issued by the then Child Development Project Officer (CDPO), Member Secretary of the Selection Committee for engagement to the post of Anganwadi Workers for Anganwadi Centers, including one at Masjid/ Sheikh Mohalla, Doligund, under ICDS Project Rafiabad. The Appellant, after this process, was engaged as Anganwadi Worker on 28th of August, 2011 and she joined her position on 24th of August, 2011. Aggrieved of her appointment, another contender, namely, Tasleema Bano, the Respondent No.7 herein, who had also applied for engagement, filed a Writ Petition bearing SWP No. 2368/2011 and the learned Writ Court, while disposing of the said Writ Petition, vide Judgment dated 28th of August, 2016, passed the following direction(s):

“This Writ petition along with connected CMP(s) is disposed of and Deputy Commissioner, Baramulla is directed to appoint senior Revenue Officer of the District as an enquiry officer to ascertain the residential status of the petitioner. In the enquiry, the petitioner and the private respondents shall also be afforded opportunity of hearing and any documents produced by them shall also be considered by the enquiry officer.

In the enquiry, if it is found that the petitioner does not belong to Sheikh Mohalla/ Masjid Mohalla of village Doligund, then the engagement of private respondent shall remain undisturbed and she shall continue to work as Anganwadi Worker. However, if in the enquiry, it is found that Tasleema Bano, the writ petitioner is also resident of Sheikh Mohalla/ Masjid Mohalla of village Doligund, then respondents 2 to 4 shall consider the comparative merit of the petitioner and private respondent and meritorious candidate between the two shall be appointed and engaged as Anganwadi Worker.

The entire process shall be concluded within six weeks from the date copy of this order is served on Deputy Commissioner”.

11. The Deputy Commissioner, Baramulla, in compliance to the aforementioned directions passed by the Writ Court, appointed Sub-Divisional Magistrate, Sopore, being a senior Revenue Officer, to conduct the enquiry and, on conclusion of the enquiry, it was found that both the Appellant and private Respondent herein were, in fact, residing at almost equidistant places from the Anganwadi Centre in question and both of them were found to be eligible for consideration. The moment the enquiry was finalized and submitted by the Enquiry Officer, the Appellant filed Writ Petition bearing SWP No. 1960/2016, in which, as an interim measure, the Writ Court, vide Order dated 28th of December, 2016, ordered as **“In the meantime, *status quo* be maintained”**. Thereafter, the Writ Court, vide the impugned Judgment, after considering the matter finally, disposed of the Writ Petition, in the following terms:

“11. In view of the discussion made hereinabove, the Enquiry Committee has rightly observed that the appointment needs to be made on the basis of the merit of the Petitioner and the private Respondent. Be that as it may, this Writ Petition is disposed of in light of the Judgment passed by this Court on 25.08.2016 in SWP No. 2368/2011, with a direction to the Respondent Nos. 2-4/ official respondents to assess the comparative merit of the Petitioner as well as the private respondent and pass appropriate orders of engagement in favour of the meritorious candidate within a period of four weeks from the date certified copy of this order is made available to the respondent/ authority.”

12. As a consequence of finding both the Appellant as well as Respondent No.7 herein the residents of the same village, coupled with the fact that the Respondent No.7 was more meritorious having secured 56% marks (448/800) as against the Appellant, who had secured just 33% marks (165/500), in their Matriculation Examination, the services of the Appellant

were disengaged and Respondent No.7 was engaged vide Order dated 21st of September, 2022.

13. The Appellant, in her Writ Petition, had assailed both the aforesaid enquiry reports, one formulated by the local Tehsildar on 28th of November, 2016 and another by Sub-Divisional Magistrate, Sopore on 1st of December, 2016, on the ground that the same were not conducted properly as per the directions of the Writ Court. It had been alleged that the Sub-Divisional Magistrate had merely relied on the report formulated by the local Tehsildar and, without holding any independent enquiry, the said authority had come to the conclusion that both the contenders were from the same locality/ village. It was also urged that the impugned reports are biased, arbitrary and against the rule of law and in contravention of the directions passed by the Writ Court, thus, liable to be set aside.

14. On a perusal of the impugned Judgment, it is found that the learned Single Judge had considered the assertions made in the Writ Petition, Reply filed thereto and after perusal of the pleadings on record, it has been observed in Paragraph No.9 of the Judgment that the Enquiry Reports were based not only on the statements of the Appellant as well as the private Respondent herein, but also respectable/ impartial persons of the locality, including the Panchs and Sarpanch of the concerned vicinity, as such, the contention that the enquiry is not transparent/ fair, is without merit and was, as such, rejected. It was further observed that the Enquiry Reports were prepared after taking into consideration the documents produced by both the parties to the *lis*, statements of the Lumberdar, Chowkidar and the impartial persons of the locality in ascertaining the specific location of the residential houses of the rival parties and finding no illegality or arbitrariness in the Enquiry Reports, the Petition was disposed of with the aforementioned directions.

15. It appears from the record that initially the local Tehsildar conducted an enquiry in the matter, having been so directed by the Sub-Divisional Magistrate, Sopore. He had recorded the statements of the

Appellant and private Respondent herein, as also of Shabir Ahmad Wani, Jamsheed Ahmad Dar, Manzoor Ahmad Dar, Mohammad Ashraf Mir and Irshad Ahmad Dar, members of the local Masjid Committee; Ghulam Mohammad and Abdul Rashid Mir, locals of the area; Ghulam Hassan Shah, Chowkidar of the village; and Saleema Begum, a Supervisor of zone Dangiwachha, whereupon the local Tehsildar formulated his report on 28th of November, 2016, thereby concluding that on the basis of the enquiry conducted, there was no geographical boundary between the houses of the Appellant and private Respondent herein, being residents of same Hamlet (Mohalla), namely, Masjid/ Sheikh Mohalla. Likewise, the report dated 1st of December, 2016 formulated by the Sub-Divisional Magistrate, Sopore, who had been appointed by the Deputy Commissioner, Baramulla, as Enquiry Officer in the matter, recorded that he had visited village Doligund, in particular Sheikh/ Masjid Mohalla location, so as to ascertain the factual position and, after giving opportunity of being heard to both the rival candidates and upon hearing and recording the statements of Lumberdar and Chowkidar and other respectables of the village, whose statements were recorded as also considering the detailed report formulated by the Tehsildar submitted by him along with the documents, it was concluded and reported that both the Appellant and private Respondent herein were residing at equidistant places from the Anganwadi Centre in question of village Doligund and that there seemed no locational edge between the Appellant and private Respondent herein, upon each other, as such, the selection needed to be considered on the basis of prescribed merit.

16. Both the aforesaid reports, one by the Sub-Divisional Magistrate, Sopore, having been appointed as Enquiry Officer by the Deputy Commissioner, Baramulla in terms of the directions passed by this Court in the Writ Petition filed by the private Respondent herein, and that of the Tehsildar concerned, having been so directed by the Sub-Divisional Magistrate to make a report, are based not only on the statements of both the rival partis, but on the examination of impartial/ independent locals,

including the members of the local Masjid Committee, elected public representations of the Panchayat, Lumberdar and Chowkidar, coupled with the spot visit made by the Enquiry Officer, (Sub Divisional Magistrate, Sopore) himself to the village and, therefore, it cannot be said that the Reports formulated by the Officers, which were impugned before the Writ Court, were in any way arbitrary or illegal, so as to not to be acted upon. The learned Counsel for the Appellant has not been able to satisfy us as to how these reports were arbitrary, when the local inhabitants, official functionaries and elected public representatives at the local level, had been heard, examined and the location of the Centre had also been visited and inspected in order to ascertain the residential status of the rival parties.

17. Having regard to the aforesaid observations, we do not find any illegality or infirmity in the impugned Judgment passed by the learned Writ Court. The same does not call for any interference, while exercising appellate jurisdiction by this Court. Accordingly, the present appeal fails and shall stand **dismissed**, along with the connected CM(s). Interim direction(s), if any subsisting as on date, shall stand vacated. No order as to costs.

18. Writ Court record be detached and consigned to concerned Section of the Registry.

(M. A. Chowdhary)
Judge

(Tashi Rabstan)
Judge

SRINAGAR
May 7th, 2024
"TAHIR"

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| i. | Whether the Judgment is speaking? | Yes. |
| ii. | Whether the Judgment is reporting? | Yes. |