

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

**LPASW 238/2017
IA 1/2017**

**Shabana Gulzar
D/O: Ghulam-ud-din Sofi
R/O: Khanpora, Baramulla.**

...Appellant(s)

Through: Mr. T.H. Khawaja, Advocate
Mr. Naseer-ul-Akbar, Advocate

Vs.

1. **Jatinder Pal Singh
S/O: Jageer Singh
R/O: Singhbagh, Baramullah, Kashmir**
2. **State of Jammu and Kashmir through
Commissioner cum Secretary to
Government, Health and Medical
Education Department Civil Secretariat,
Srinagar/Jammu.**
3. **Director Health Services, Kashmir,
Srinagar.**
4. **District Development Commissioner,
Baramullah, (Chairman District Rural
Health Society, Baramulla).**
5. **Chief Medical Officer, Baramullah.**
6. **Joint Director, Planning, Baramulla.**

...Respondent(s)

Through: Mr. A.R. Malik, Sr. AAG with
Mr. Younis Ahmad, Assisting Counsel.
Ms. Hena Baqal, Advocate vice
Mr. Syed Sajad Geelani, Advocate for R-1.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE.**

**JUDGMENT
22.08.2024**

Sanjeev Kumar:J (Oral)

1. This intra-court appeal is directed against an order and judgment dated 6th November, 2017, passed by learned Single Judge of this Court [“the writ Court”] in SWP No. 1111/2012 titled “*Jatinder Paul Singh Vs. State of J&K and Ors*”, whereby the writ Court has allowed the writ petition of respondent No.1 and quashed the appointment of the appellant to the post of Block Monitoring and Evaluation Officer for Block Sheeri.

2. The impugned judgment is assailed by the appellant on multiple grounds. However, before we advert to the grounds of challenge urged by the learned counsel for the appellant, we deem it appropriate to notice few material facts.

3. Vide advertisement notice No. 02/DDCB of 2010 dated 09.10.2010, issued by the District Development Commissioner, Baramulla, in his capacity as Chairman, District Rural Health Society, various posts, including ten posts of Block Monitoring and Evaluation Officer, one each in ten Blocks, were notified for making the selection. The Block Sheeri was one of the ten Blocks for which a post of Block Monitoring and Evaluation Officer was also notified for selection.

4. It seems that before the selection process in pursuance to the aforesaid notification could be concluded, the Chief Medical Officer, Baramulla, who is an ex-officio, Secretary of the District Rural Health Society, Baramulla, brought to the notice of the Chairman of the Society that, as per the NRHM guidelines, in the Block where a person with MCA or BCA qualifications was already in place, second person with a commerce background alone was required to be engaged. This was communicated by the

Chief Medical Officer, Baramulla, vide his communication No. CMOB/NRHM/426-428 dated 10.02.2011. Acting on the aforesaid communication and with a view to complying with the NRHM guidelines, the Chairman, District Rural Health Society, Baramulla, withdrew the earlier notification and invited applications afresh by issuing advertisement notification No. 05/DDCB of 2011 dated 11.03.2011.

5. In the fresh advertisement notification, the qualification prescribed for the post of Block Monitoring and Evaluation Officer was B.Com. The fresh advertisement notice was with respect to all the ten Blocks, including Block Sheeri. As is evident from the record, the respondent No.1 did not throw any challenge to this advertisement notification. It was only after the process of selection was completed and the appellant was provisionally selected against the post of Block Monitoring and Evaluation Officer in Block Sheeri, the respondent No.1 woke up and made representation/objections to the official respondents.

6. Having found no response from the respondents, the respondent No.1 filed a writ petition before this Court somewhere in April 2012, challenging not only the provisional selection of the appellant but also the fresh advertisement notification issued in the year 2011. The writ petition was contested by the official respondents as well as the appellant. The writ Court considered the matter in the light of rival contentions and the material on record and came to the conclusion that the official respondents, by issuing a fresh notification and prescribing the new qualification, had changed the rules of the game, which was not permissible in law. The writ Court relied upon a couple of judgments of the Hon'ble Supreme Court and concluded that the

selection of the appellant as Block Monitoring and Evaluation Officer, Block Sheeri, was not sustainable in law. Consequently vide judgment impugned, the selection of the appellant was quashed and a direction was issued to the official respondents to consider the case of the respondent No.1 for appointment against the said post.

7. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the writ Court is not sustainable in law for more than one reason. First, the writ Court has not appreciated the operational guidelines of NRHM dealing with the subject in proper perspective and has wrongly noted that the operational guidelines of NRHM prescribe BCA as an essential qualification for the post of Block Monitoring and Evaluation Officer. It seems that the complete operational guidelines of NRHM dealing with the subject were not brought to the notice of the writ Court. For facility of reference, the relevant extract of the operational guidelines is set out below:-

“At the block level one post of Monitoring and Evaluation Officer in addition to Block Accounts Manager has been approved. The Blocks where Blocks Accounts Manager with Commerce background has been engaged, a person with BCA shall be engaged for uploading data of HMIS and strengthening of tracking pregnant women and children. On the other hand the Block where a person with BCA or MCA qualification is already in place, a person with commerce background has to be engaged, and in all at the Block Level will be two officials.”

8. From a careful reading of the guidelines extracted hereinabove, it is abundantly clear that in a Block where an Officer/Accounts Manager with qualification of BCA or MCA is already in place, the second person to be

appointed as Monitoring and Evaluation Officer or in some other post must have a Commerce background. It is in light of these guidelines, the matter was taken up by the Chief Medical Officer, Baramula, who was the ex-officio Secretary of District Rural Health Society, with the Chairman (the District Development Commissioner), Baramulla, for issuance of fresh advertisement notification with the correct qualification.

9. The Chairman of the Society, being satisfied that a person with a Commerce background was required to be engaged as the second person in the Block, issued a fresh advertisement notification. It is also important to note that the fresh advertisement notification was not only in respect to the Block Sheeri but in respect to all the ten Blocks. In these circumstances, it is not available to the respondent No.1 to allege any mala fide or arbitrary exercise of power.

10. So far as the observations of the writ Court in respect of change of rules of game is concerned, the said principle laid down by the Hon'ble Supreme Court in the judgments referred to by the writ Court in the impugned judgment, is not attracted in the case. It is not the case of the respondent No.1 that the rules of game were changed midway, that is, during the process of selection. As a matter of fact, the earlier notification which did not reflect the qualification as per the NHRM guidelines, was withdrawn, and a fresh advertisement notification was issued by inviting the qualifications strictly in terms of the requirements of the NHRM guidelines. It is not in dispute that in the Block Sheeri, there is already an Accounts Manager with a BCA qualification in place, and, therefore the second person to be engaged in the

Block as Evaluation Officer was required to be a person with Commerce background.

11. The official respondents, therefore, committed no illegality in withdrawing the earlier advertisement notification and issuing the fresh notification to indicate the correct qualification. It was a case of correcting a mistake or error and to bring the advertisement notification in tune with the NHRM guidelines and, therefore, cannot by any stretch of reasoning, be considered a change in the rules of the game. The game was reset again with the issuance of fresh notification and, thereafter, there was no change either in the qualification prescribed or the selection criteria adopted. The respondent No.1 was obviously not eligible to participate in the selection process in terms of the second notification and had no locus standi to challenge the selection of the appellant.

12. The writ Court has not appreciated this aspect in correct perspective and has landed in error in holding that the respondents had changed the rules of game and, therefore, the selection of appellant was bad in the eye of law.

13. Viewed from any angle, we do not find the judgment of the learned Single Judge sustainable in law. Accordingly, this appeal is allowed and the impugned judgment passed by the writ Court is set aside.

14. **Disposed of.**

(MOHAMMAD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

22.08.2024

“Mir Arif”

Whether the Judgment is Reportable?

Yes/No.