

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP 2015/2012 IA(1/2013[2689/2013]) IA(2/2013[2870/2013])
IA(4/2012[3211/2012]) IA(3/2012[4026/2012])

SHAHEENA AKHTAR

...Petitioner(s)/Appellant(s)

Through: Mr. Sheikh Mushtaq, Advocate

Vs

STATE AND OTHERS

...Respondent(s)

Through: Mr. Furkaan Sofi, GA

CORAM:

HON'BLE MR JUSTICE RAHUL BHARTI, JUDGE

ORDER

12.02.2025

1. By virtue of an Order No. CDPO/ICDS/Pul/Estt/11/320-23 dated 02-08-2011 issued by the Child Development Project Officer, ICDS Pulwama, the petitioner came to be engaged as an anganwadi helper for Anganwadi Centre Bonder Mohalla, Khallan, District Pulwama.
2. The petitioner's said engagement was reckoned to be an undeserving by one co-competitor Nazira Akhtar, the respondent No. 8 herein, who preferred an appeal to challenge engagement order before the Appellate Authority of Deputy Commissioner, Pulwama.

3. The respondent No. 8 in her appeal set up a plea that she was the wife of a person who was having no source of income and was belonging to BPL category. The Respondent No. 8 claimed to have only 3 kanal and 2 marla of land as being an asset for sustaining her life as well as that of her husband, whereas the petitioner was alleged to be having an agricultural land measuring almost 32 kanals and, thus, was not to be reckoned to be a BPL category person to be favoured with any engagement as an anganwadi helper. The petitioner was alleged to have even received a compensation of an amount of Rs. 5 lacs for acquisition of her 2.8 kanal of land.
4. In sum and substance, the appeal filed by the respondent No. 8 assailing the engagement of the petitioner was that the petitioner was having various assets and resources and, therefore, was not eligible to be considered for the purpose of engagement as an anganwadi helper as against the respondent No. 8's well placed claim and status.
5. The Appellate Authority of the Deputy Commissioner Pulwama, in order to look into the veracity of the allegations made by the respondent No. 8 against the petitioner's financial status, solicited a report from the Tehsildar concerned as also the financial status of the respondent No. 8.

6. Purportedly acting upon the said feedback of the Tehsildar concerned, the Deputy Commissioner Pulwama came to hold that the appointment of the petitioner as an Anganwadi Helper was without complying with the norms laid down and that of the competing claims of the petitioner as well as of that of the respondent No. 8 who was financially low placed than that of the petitioner and, therefore, the petitioner's engagement was bad deserving to be set aside and, accordingly, came to be set aside with a corresponding direction to the Department to consider the respondent No. 8 for the engagement.

7. The disposal of the appeal came to take place by virtue of an Order No. DCP/LIT/ARA/Pu/12/137-38 dated 17-09-2012 of the Deputy Commissioner Pulwama on the basis of which the order of engagement No. 24 of 2012 dated 25-09-2012 of the respondent No. 8 came to be passed by Child Development Project Officer, ICDS Pulwama thereby purportedly engaging the respondent No. 8 as an anganwadi helper in Anganwadi Centre, Bonder Mohalla, Khallan, District Pulwama.

8. The institution of this writ petition came to take place on 25-09-2012. This Court in terms of an order of said date stayed the operation of the impugned order dated 17-09-2012 of the

Deputy Commissioner Pulwama meaning thereby any consequent order of engagement of the respondent No. 8 passed by the Child Development Project Officer, ICDS Pulwama was of no effect whatsoever and that result in continuation of the petitioner as an anganwadi helper.

9. The petitioner on his part came forward with amendment of the writ petition so as to question an order No. 24 of 2012 dated 25-09-2012 purportedly engaging respondent No. 8 as an Anganwadi Helper.

10. The adjudication of this writ petition rests upon the examination of legality and validity of the order dated 17-09-2012 passed by the Deputy Commissioner Pulwama as an appellate authority.

11. A singular factor which vitiates the adjudication on the part of the Deputy Commissioner Pulwama as an appellate authority is that the report of the Tehsildar concerned which came to be so acted upon by the Deputy Commissioner Pulwama in adverse against the petitioner was never ever confronted to the petitioner for soliciting her response to the said report of the Tehsildar concerned.

12. Therefore, the Deputy Commissioner Pulwama came to act upon an evidence which was an ex-parte in nature against the petitioner unknown to her and to which the petitioner was

not a privy in any manner in the sense of understanding of the contents of the said report of Tehsildar concerned as to how the petitioner came to be attributed with acquisition of property worth Rs. 81 lacs having an yearly income of Rs. 31,000/- therefrom so as to render her disqualified as against the respondent No. 8 to earn the engagement as an anganwadi helper.

13. The jurisdiction exercised by the Deputy Commissioner Pulwama was quasi-judicial in nature and was, therefore, meant to be fully governed and guided by the principles of natural justice so as not to prejudice right and entitlement of a party qua an engagement against whom an appeal had been taken out.

14. The Deputy Commissioner Pulwama is found completely silent in adverting to the report of the Tehsildar concerned as what were the actual contents of the report of the Tehsildar concerned so read and reckoned by him which have not been spelled out in the impugned order dated 17-09-2012, the effect whereof was the prospective dislodgement of the petitioner from the engagement and accommodation of respondent No. 8 in place of the petitioner.

15. In view of the aforesaid, this Court finds a good case made out by the petitioner to succeed in the writ petition and,

accordingly, writ petition is allowed by setting aside the Order No. DCP/LIT/ARA/Pu/12/137-38 dated 17-09-2012 passed by Deputy Commissioner Pulwama, as a result, whereof the original engagement of the petitioner in terms of Order No. CDPO/ICDS/Pul/Estt/11/320-23 dated 02-08-2011, shall stand salvaged and intact and the petitioner to continue as such to the exclusion of the respondent No. 8 whose engagement order is rendered non-est.

16. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR
12.02.2025
AAMIR