

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

Reserved on: 30.07.2026
Pronounced on: 07.08.2026
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*Whether the operative part or full
judgment is pronounced: **Full***

**SWP No.2166/2011
c/w
SWP No.949/2018**

**NASEER AHMAD KHAN & ANR.
NASEER AHMAD WANI & ANR.**

...PETITIONER(S)

*Through: - Mr. Sheikh Manzoor, Advocate, with
Mr. Irfan Ahmad Mir, Advocate (in SWP No.2166/2011).
Mr. N. A. Tabassum, Advocate (in SWP No.949/2018)*

Vs.

STAE OF J&K AND ORS.

...RESPONDENT(S)

*Through: - Mr. T. A. Lone, Dy. AG.
Mr. N. A. Tabasum, Advocate (for R7 & R8 in SWP
No.2166/2011)
Mr. Sheikh Manzoor, Advocate, with
Mr. Irfan Ahmad Mir, Advocate (for R5 & R6 in SWP
No.949/2018)*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of this common judgment, the afore-titled two writ petition are proposed to be disposed of. Writ petition bearing SWP No.2166/2011 has been filed by Naseer Ahmad Khan and Altaf Ali Lone. The said petitioners happen to be the private respondents in writ petition bearing SWP No.949/2018, which has been filed by

Naseer Ahmad Wani and Mushtaq Ahmad Malik, who happen to be the private respondents in SWP No.2166/2011.

2) The facts leading to the filing of these writ petition, as culled out from the pleadings of the parties, are that vide Order No.SSA/Kup/Op/117-175 dated 17.06.2010, sanction was accorded for opening of a new Primary School under the Sarva Shiksha Abhiyan (SSA) Scheme in Kanwal Mohalla, Batpora of Revenue Village Hyhama of District Kupwara. After the establishment of aforesaid school, the Zonal Education Officer, Kupwara, issued Advertisement Notice dated 08.08.2010, inviting applications from eligible candidates possessing the qualification of 10+2 or above for engagement as Rehbar-e-Taleem (ReT) Teachers, inter-alia, in the aforesaid school, for which two posts of ReTs were advertised.

3) It appears that Naseer Ahmad Khan and Altaf Ali Lone (hereinafter “the petitioners”) as also Naseer Ahmad Wani and Mushtaq Ahmad Malik (hereinafter “the private respondents”) responded to the Advertisement Notice. A tentative selection list of the candidates was issued by the Chief Education Officer, Kupwara, which was published in

the newspaper on 11.12.2010. In the said list, names of the petitioners figured as the selected candidates.

4) It appears that the private respondents filed their objections to the tentative select list but the said objections were found to be without any merit because the petitioners were found to be having superior merit than that of the private respondents.

5) Aggrieved by the aforesaid decision, the private respondents made a representation before the Chief Education Officer, Kupwara, raising a plea that the school, for which engagement of ReTs is to be made, is located in Kanwal Mohalla Balhama whereas the petitioners belong to habitation Batpora. It was contended by the private respondents that Kanwal Mohalla is recorded as a habitation of Balhama having a separate revenue identity.

6) Upon receipt of the objections from the private respondents, the Chief Education Officer Kupwara constituted a committee to enquire into the matter. The enquiry Officer, District Education Planning Officer, Kupwara, submitted a report that habitation Kanwal Mohalla is a part of Patti Balhama and not a part of Patti Batpora. This report was submitted by the officer on the basis of the report of Tehsildar, Kupwara. The Enquiry

Officer recommended that the candidates belonging to Batpora be expelled and a fresh panel be prepared from the meritorious candidates belonging to Kanwal Mohalla Balhama.

7) Pursuant to the aforesaid report, a corrigendum was issued by the Chief Education Officer, Kupwara, on 31.03.2011, whereby it was provided that instead of Kanwal Mohalla Batpora, as provided in Order No.1171-75 dated 17.06.2010, the selection of ReTs in respect of the school in question would be made within the jurisdiction of Patti Balhama. It was further provided that the applications received from the candidates belonging to Batpora be expelled accordingly.

8) After the issuance of aforesaid corrigendum, the Zonal Education Officer issued a fresh selection list of candidates for the aforesaid school, in which the private respondents were included in place of the petitioners.

9) When the initial selection list, whereby the petitioners were selected for their engagement as ReTs, was not being acted upon, they moved this Court by way of writ petition bearing SWP No. 2166/2011, seeking a direction upon the official respondents to proceed ahead in the matter of selection against the post of ReTs, against which they were

shown to be tentatively selected in terms of selection list dated 08.08.2010. However, the private respondents were not impleaded as parties to the said writ petition. During the pendency of the writ petition, the petitioners came to know about the issuance of corrigendum dated 31.03.2011, as also about the inquiry conducted by the District Education Planning Officer, Kupwara. They amended the writ petition and incorporated the challenge to both the corrigendum as well as to the enquiry report.

10) It is pertinent to mention here that the learned AAG, appearing on behalf of the official respondents, made a statement before the Court that the corrigendum is not in consonance with the norms of the scheme and that the same has to be set aside. The writ petition was, accordingly, disposed of with the consensus of parties on 26th July, 2012, and the official respondents were directed to make selection for engagement of ReTs in Primary School, Kanwal Mohalla, by taking the revenue village as zone of consideration. It was further provided that merit of the competing candidates shall be determined on the basis of their academic qualification which they possessed on the last date of filing of applications. The official respondents were further directed to issue corrigendum informing all

the eligible candidates of the revenue village Hyhama to file their applications for seeking consideration for being selected and engaged on the posts of ReTs in Primary School Kanwal Mohalla.

11) Pursuant to the aforesaid directions passed by this Court, it seems that a corrigendum was issued by Zonal Education Officer, Kupwara, which was published in the newspaper on 10.08.2012. Vide the said corrigendum, all the eligible candidates were invited to file applications for seeking consideration for being selected and engaged on the post of ReTs in PS Kanwal Mohalla. It was also notified that the zone of consideration for engagement would be the revenue village.

12) Pursuant to the aforesaid corrigendum, the merit list of candidates belonging to revenue village Hyhama was prepared and in that merit list, the petitioners figured at the top. Accordingly, select list was issued by the Zonal Education, Kupwara, whereafter, engagement orders came to be issued in favour of the petitioners on 20.10.2012. It is pertinent to mention here that the petitioners are performing their functions as ReTs since then on the strength of interim order passed in the writ petition.

13) In the meanwhile, another development took place. The private respondents, who were not parties to the writ petition bearing SWP No.2166/2011, filed Letters Patent Appeal against order dated 26th July, 2012, passed by the learned Single Judge. The appeal filed by the private respondents bearing LPA No.79/2012 came to be allowed by the Division Bench of this Court vide order dated 11th March 2014. While setting aside the order passed by the Writ Court on 26th July 2012, the matter was remanded to the learned Single Judge for dealing with it afresh. The appellants were impleaded as respondents No.7 and 8 to the writ petition and they were permitted to file their reply to the writ petition. Accordingly, the private respondents contested the writ petition and filed their reply to the same.

14) During the pendency of the writ petition, the private respondents filed another writ petition bearing SWP No.949/2018, whereby they laid challenge to the engagement orders dated 20.10.2012 issued in favour of the petitioners and sought a direction that instead of the petitioners, they may be appointed as ReTs.

15) As per the stand of the petitioners, the school has been established in terms of order dated 17.06.2010 specifically for habitation Kanwal Mohalla Batpora, and

merely because the Zonal Education Officer, Kupwara, while issuing Advertisement Notice dated 08.08.2010, has omitted to mention Batpora along with Kanwal Mohalla as the name of the habitation, does not mean that the school has been established in habitation Balhama, as is being claimed by the private respondents. It has been contended that Balhama does not qualify to be a habitation in terms of the Government Order No 288-Edu of 2009 dated 08.04.2009, as its distance from nearby habitation is less than one kilometer. Therefore, locality of Balhama could not have been made the unit of selection.

16) The stand of the private respondents, on the other hand, is that the impugned enquiry report of respondent No.6 is based upon the report of the Tehsildar, according to which Kanwal Mohalla is located in habitation Balhama and not in habitation Batpora. Therefore, the unit of selection has to be habitation Balhama.

17) The stand of the official respondents appears to be confusing. In their reply to the writ petition filed by the petitioners, the official respondents are justifying the issuance of corrigendum and they are also supporting the impugned enquiry report, whereas, in their reply to the writ petition filed by the private respondents, their stand is

entirely different. They have stated that Tahsildar, Kupwara, vide communication dated 03.11.2010 2010, has issued a clarification to the effect that Kanwal Mohalla is a part of Batpora, which falls in revenue village Hyhama. They have also defended the selection process concluded by them on the basis of revenue village and have contended that the challenge thrown by the private respondents to the engagement of the petitioners is highly belated and, as such, misconceived.

18) I have heard learned counsel for the parties and perused record of the case.

19) The controversy involved in the present writ petitions is the location of the school, relating to which the selection of ReTs is the subject matter. If we have a look at the order relating to establishment of the school issued by Chief Education Officer, Kupwara, on 17.06.2010, it is clearly mentioned that the school has been established in Kanwal Mohalla, Batpora. The order bears the subject, “opening of new primary school under SSA during the year 2009-10”, and it also bears reference to “State Project Director, SSA’s Edu/SPD/SSA/17930-56/10 dated 20.01.2010”. It is, thus, clear that creation of the school has been made by the orders of State Project Director of SSA.

20) The impugned corrigendum dated 31.03.2011 has been issued by Chief Education Officer, Kupwara. It does not bear any reference to any approval or order from the State Project Director. It seems that the Chief Education Officer, Kupwara, has, on his own, on the basis of the enquiry report made by District Education Planning Officer, proceeded to issue the impugned corrigendum dated 31.03.2011, which has created the whole confusion. The Chief Education, Kupwara, was not competent to issue a corrigendum with regard to establishment of school made under the orders of the State Project Director, SSA. If at all there was any ambiguity in the location of the school, the Chief Education Officer should have referred the matter to State Project Director. He could not have, of his own, without approval from the competent authority, issued the corrigendum. On this ground alone, the impugned corrigendum is not sustainable in law. It seems that it is for this reason that the learned AAG had conceded before this Court that the said corrigendum has to go.

21) Once it is clear that the school was established for habitation Kanwal Mohalla Batpora and the unit of selection was the habitation, there was no other option for the official respondents but to confine the selection of candidates to the residents of the said habitation. It is an

admitted case of the parties that both the petitioners are residents of habitation Batpora, and they are the most meritorious candidates amongst the candidates who have participated in the selection process not only from the habitation Batpora, but also from the whole revenue village Hyhama. Therefore, the official respondents have rightly issued engagement orders in their favour.

22) Apart from the above, the record produced by the official respondents reveals that communication dated 03.11.2010 has clarified that Kanwal Mohalla is a part of Patti Batpora, which falls in revenue village Hyhama. It is also revealed that the petitioners reside in habitation Batpora. It is also shown from the record that Patti Balhama of village Hyhama is surrounded by Patti Batpora of the same village and the distance between Balhama and Batpora is only 167 meters. As per Government Order No.288-Edu of 2009, dated 08.04.2009, a candidate belonging to a habitation at least one kilometer from other habitation which is having a population of more than 300 persons, would be entitled to seek engagement as ReT in a local school. In the present case, the distance between habitation Balhama and habitation Batpora is only 167 meters. Therefore, Balhama would not qualify to be a unit

of selection in accordance with Government Order dated 08.04.2009. On this ground also, the private respondents cannot claim engagement to the exclusion of the petitioners.

23) For what has been discussed hereinbefore, writ petition bearing SWP No.2166/2011, filed by the petitioners, is allowed and the impugned corrigendum and the impugned enquiry report are set aside, whereas writ petition bearing SWP No.949/2018, filed by the private respondents, is dismissed, being without any merit. The official respondents are directed to allow the petitioners of SWP No.2166/2011 to function as ReTs in accordance with the terms of their engagement orders issued on 20.10.2012.

24) The record be returned to learned counsel for the official respondents.

(Sanjay Dhar)
Judge

SRINAGAR

07.08.2026

"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**