

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

LPA No. 161/2021 in SWP No. 296/2018

Reserved On: 25th of February, 2026.

Pronounced On: 10th of March, 2026.

Uploaded On: 10th of March, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Waheeda Yaseen Khan, Age: 33 Years
D/O Mohammad Yaseen Khan
R/O Housing Colony, Ompora,
Ward No. 8, Budgam.

... Appellant(s)

Through: -

Ms Sabeena Naveed, Senior Advocate with
M/s Huda Parvez Khan and Kifayat Tasveer, Advocates.

V/s

1. Union Territory of Jammu and Kashmir, through
Commissioner/Secretary to Government Department of
Education, New Secretariat Jammu/Srinagar.
2. Director, School Education, Kashmir, Srinagar.
3. Deputy Commissioner, Budgam.
4. Deputy Commissioner, Kupwara.
5. Assistant Commissioner (Revenue), Budgam.
6. Chief Education Officer, Budgam.
7. Zonal Education Officer, Budgam.
8. Executive Officer, Municipal Committee, Budgam.
9. Station House Officer, Police Station, Budgam.
10. Muzaffar Mohi ud Din Mir
S/o Ghulam Mohi ud Din Mir
R/o Batpora, Handwara, District Kupwara,
Shown at Present Ompora Housing Colony, Budgam.
11. Ghulam Mohi ud Din Mir
F/o Muzaffar Mohi ud Din Mir
R/o Batpora, Handwara.

12. Masrat Mohi ud Din
D/o Ghulam Mohi ud Din Mir
R/o Batpora, Handwara.
13. Principal, Government Higher Secondary School,
Handwara.

... Respondents

Through: -

Mr Ilyas Nazir Laway, Government Advocate; and
Mr M. I. Qadri, Senior Advocate with
Mr Tawheed Ahmad, Advocate.

CORAM:

HON'BLE MS JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE

(JUDGMENT)

SHAHZAD AZEEM-J:

01. This *intra* Court appeal is directed against the Judgment dated September 23, 2021 passed by the learned Single Judge [“the Writ Court] in SWP No. 296/2018 titled ‘**Waheeda Yaseen Khan V. State of J&K and Ors.**’, whereby the Writ Petition filed by the Appellant seeking quashment of Order No. ZEO/R/RT-11/746-48 dated July 28, 2011 issued in favour of Respondent No. 10 as *Rehbar-e-Taleem* (ReT) Teacher and Enquiry dated April 28, 2011, came to be dismissed.

02. At the outset, it is noteworthy that although the Appellant has made out voluminous pleadings and submissions, we do not wish to burden this Judgment with a detailed discussion of each and every plea raised, in that, most of them being factual in nature and not germane to the determination of issue(s) involved in the instant appeal. We, therefore, restrict ourselves to the relevant facts and contentions.

03. It appears that in the year 2010, precisely on November 11, 2010, a notification came to be issued by the Respondent No.7-Zonal Education Officer, Budgam for engagement of two ReT Teachers in the Upgraded Primary School, New Colony, Ompora, Budgam, falling under

Ward No.8. The Appellant as well as the Respondent No.10 had responded to the said notification by staking their respective claims for their engagement as ReT Teachers. Accordingly, a panel came to be drawn up by the Respondent No.7, wherein the Appellant was shown at S. No.3 and the Respondent No.10 at S. No.2, respectively.

04. Against this panel, the Appellant filed representations before the Respondent No.3-Deputy Commissioner, Budgam, besides the inclusion of Respondent No.10 in the panel list was also objected to by the Welfare Committee of Government Housing Colony, Ompora, Budgam, mainly on the ground that the Respondent No.10 is a resident of Batpora, Handwara, therefore, under the ReT Scheme, he is not eligible, as such, cannot be included in the panel list. However, the Assistant Commissioner (Revenue), Budgam held an inquiry and, vide report dated April 28, 2011, returned a finding that out of the two candidates, the Respondent No.10 has the Permanent Resident Certificate (PRC) of Village Ompora, Tehsil Budgam, while as, the Appellant is having the PRC of Srinagar, therefore, the Respondent No.10 deserves to be considered for selection as ReT Teacher.

05. Confronted with these circumstances, the Appellant is stated to have filed a Civil Suit for declaring the Appellant to be entitled to the appointment as ReT Teacher and also to issue appointment Order in her favour. The Appellant has also prayed for a 'Decree of Mandatory Injunction' to not issue any order of appointment in favour of Defendant No.4 (Respondent No. 10 herein).

06. In the meanwhile, the Respondent No.7-Zonal Education Officer, Budgam also issued an Order of appointment dated July 28, 2011 in favour of Respondent No.10.

07. It is also important to note that the Appellant had earlier also filed a Writ Petition, being SWP No. 1268/2017 titled '**Waheeda Yaseen**

V. State of J&K and Ors., on July 06, 2017, wherein she had prayed for the following relief(s):

“A.] Writ of Mandamus commanding upon the Respondents 3 & 4 to hold a thorough enquiry vis-à-vis the PRC and domicile of the Respondent No.8 and to enquire about the veracity of all the documents of the Respondent No.8, obtained by him on the analogy of the documents produced by his father and sister vis-à-vis their PRCs and domiciles including Qualification Certificates as well; and

B.] A Writ of Mandamus may be passed by this Hon’ble Court directing Crime Branch Kashmir to hold an enquiry against all those officers who are involved in providing the favorite documents to the Respondent No.8.”

08. The Writ Petition, being SWP No. 1268/2017, came to be filed by the Appellant much after the issuance of appointment Order as ReT Teacher in favour of the Respondent No.10, but the Appellant did not call in question the said appointment. In any case, the SWP No. 1268/2017 came to be disposed of vide Judgment dated February 15, 2018 in the following terms:

“7. Thus, from perusal of the relief claimed by the petitioner in the civil suit, as well as issues framed by the trial court, it is evident that the factum of residence of respondent no.8 is in issue before the trial court. The petitioner cannot be allowed to prosecute two remedies simultaneously. It is also relevant to mention here that enquiry with regard to PRC and domicile of respondent no. 8 has already been held and in case the petitioner is aggrieved of same, he is entitled to take recourse to challenge the same by way of revision. Needless to state that in case the petitioner is of the opinion that respondent no.8 has obtained the documents by playing fraud, the petitioner is at liberty to file first information report against respondent no. 8 before the concerned official which shall be dealt with in accordance with law by concerned SHO in view of the law laid down in **Lalita Kumari V. Government of Uttar Pradesh [2014 Vol. 2 SCC 1]**. The petitioner shall also be at liberty to file the documents before the trial court, if so advised.”

09. Despite having failed to obtain relief in SWP No. 1268/2017, mainly on the ground that the factum of residence is in issue before the Trial Court in the pending Suit, the Appellant cannot be allowed to prosecute two remedies simultaneously and the observations made therein by the Writ Court have attained the finality, yet the Appellant had again made an abortive attempt to file the second Writ Petition-SWP No. 296/2018, *inter alia*, questioning the appointment order of Respondent No.10, dated July 28, 2011 and Enquiry report dated April 28, 2011 held by Respondents No. 5 and 6, respectively, mainly on the ground that the Respondent No.10 has secured his appointment as ReT Teacher on the basis of forged and fraud documents.

10. The Writ Court, vide impugned Judgment dated September 23, 2021, while dismissing the Writ Petition, held that the Appellant did not question the appointment Order in earlier Writ Petition, being SWP No. 1268/2017, issued in favour of Respondent No.10, therefore, went onto further hold that the parties are bound by the decision which is not challenged, therefore, there is no scope for quashment of appointment of Respondent No.10 is concerned on whatsoever grounds, unless the Trial Court decides the issue regarding the factum of residence of Respondent No.10.

11. Now, the Appellant has thrown challenge to the impugned Judgment passed by the Writ Court, on the ground that the factual assertion raised in the Writ Petition has not been properly addressed by the Writ Court. This is the bone of contention of the Appellant. Therefore, we do not wish to go into the details of all the pleas raised in the memo of the appeal, as same being not only repetitive but also are not relevant for adjudication of the point in controversy.

12. The core dispute revolves round the legality of the appointment Order of Respondent No.10, as ReT Teacher, which inherently

involves disputed question of facts, i.e., the factual controversies around eligibility regarding the genuineness of residence certificates on the basis of which the appointment Order was issued and the subject matter is *sub-judice* before the competent court of civil jurisdiction in a Civil Suit.

13. Having chosen the route of instituting the Civil Suit, which of course is the proper forum for adjudication of disputed question of facts, the Appellant is estopped from successively invoking the extraordinary Writ jurisdiction under Article 226 of the Constitution of India for the same relief and cause of action. This attempt of the Appellant is nothing, but amounts to forum-shopping. Writ jurisdiction is discretionary and extraordinary, not available when an equally efficacious and alternate remedy exists, more particularly when the said remedy is already resorted to.

14. It is trite that extraordinary Writ jurisdiction of the High Court under Article 226 cannot be converted into a Civil Court under the ordinary law, particularly when a Suit is pending and remedy of appeal or revision is available, therefore, where the Civil Court has the jurisdiction to try a Suit, the High Court cannot convert itself into an Appellate or Civil Court.

15. It is noteworthy that the cases where remedy is available before the Civil Courts in terms of the provisions of the Code of Civil Procedure (CPC), which may involve Suits and other remedies like appeals and revisions under the provisions of the CPC, same may have to be construed as a near total bar to the extraordinary Writ jurisdiction of the High Court.

16. We are fortified in our view by the law laid down by the Hon'ble Supreme Court in '**Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. V. Tuticorin Educational Society & Ors., (2019) 9 Supreme Court Cases 538**', wherein the Hon'ble Supreme Court has observed as under:

“13. Therefore, wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

17. The attempt made by the Appellant, in the first round of litigation in SWP No. 1268/2017, did not find favour, as the Writ Court specifically held that from perusal of the relief claimed by the Appellant in the Civil Suit as well as the issues framed by the Trial Court, it is evident that the factum of residence of Respondent No.8 (Respondent No.10 herein) is in issue before the Trial Court, therefore, the Appellant cannot be allowed to prosecute two remedies simultaneously. However, the findings returned by the Writ Court in SWP No. 1268/2017 rendered vide Judgment dated February 15, 2018 have attained the finality, therefore, same acts as *res judicata* insofar as the second Writ Petition is concerned. The Appellant has omitted to throw challenge to the appointment of Respondent No.10 in the earlier round of litigation, though at that point of time, the appointment Order in favour of the Respondent No.10 was in existence as same was issued much before the filing of the said Writ Petition. Therefore, the question of appointment of Respondent No.10 deemed to have been a matter directly and substantially in issue in the earlier Writ Petition, but the Appellant has deliberately omitted to question the same, thus, the Petition is barred by constructive *res judicata* also.

18. On cumulative assessment of the facts and circumstances in which the Appellant is found to have repetitively indulged in re-litigation, we have no hesitation to observe that this is a classic instance of repetitive and abuse of process of law that has been pursued through multiple rounds, despite being hopelessly barred by well-established principles of finality, election of remedies and jurisdictional propriety.

19. For the foregoing reasons, we do not find any error of law or fact having been committed by the Writ Court while dismissing the Writ Petition. Accordingly, the instant appeal is **dismissed**, along with connected CM(s). Interim direction(s), if any subsisting as on date, shall stand vacated.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR
March 10th, 2026
"TAHIR"

i. Whether the Judgment is approved for reporting? Yes/ No.

