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

Reserved on: 01.10.2026
Pronounced on: 23.10.2026
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Whether the operative part or full judgment is pronounced: ***Full***

SWP No.1736/2013

MAFOOZA BANO

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Mir Umar, Advocate.

Vs.

STATE OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. T. A. Lone, Dy. AG.
Mr. I. Sofi, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioner was engaged as an Anganwadi Helper in the year 2011 at Anganwadi Centre, Ahangar Mohalla, Putshai. The order of engagement of the petitioner was challenged by respondent No. 6 before the Deputy Commissioner, Kupwara i.e. respondent No. 3, by way of an appeal, which came to be dismissed for non-prosecution in terms of the order dated 14.01.2012.

2) The order of the Deputy Commissioner, Kupwara i.e. respondent No. 3, was challenged in appeal before the Divisional Commissioner, Kashmir. In terms of order dated 24.07.2012, a report was called from the Deputy

Commissioner regarding the eligibility of each party after visiting the spot. Upon submission of the report dated 23.01.2013, the Divisional Commissioner remitted the matter to respondent No. 3 vide order dated 09.07.2013. Subsequently, vide order dated 13.07.2013, the Anganwadi Centre was directed to be shifted and the petitioner was disengaged, subject to the outcome of the appeal pending before the Deputy Commissioner.

3) The order dated 13.07.2013 was assailed by the petitioner through the medium of SWP No.1566/2013, and the order impugned therein was stayed and the Deputy Commissioner, Kupwara, was directed to decide the appeal in terms of the directions of the Divisional Commissioner, Kashmir.

4) The Deputy Commissioner decided the appeal in terms of order dated 26.08.2013, and acting thereupon, respondent No.5, vide order dated 27.08.2013, terminated the petitioner and selected respondent No.6 in place of the petitioner.

5) The petitioner, being aggrieved by both the aforesaid orders, has challenged the same through the medium of this writ petition on the following grounds:

a. That the petitioner was engaged after proper selection and as per the guidelines laid down by the scheme. Therefore, there

was no occasion for respondent No.5 to issue the disengagement order dated 27.08.2013, which, in fact, shows that the same has been passed to pave way for the engagement of respondent No.6. It is further stated that the previous report, which recommended the petitioner as the most deserving candidate, was intentionally suppressed to unlawfully accommodate the private respondent.

b. That the Deputy Commissioner has even lost sight of his earlier report submitted to the Divisional Commissioner, wherein it was admitted that the petitioner had better accommodation than the other candidate, and once the petitioner was better placed, there was no occasion for the Deputy Commissioner to pass an order in contradiction to his own report.

c. That the CDPO, in his report, admitted that the private respondent was not married on the relevant date for receipt of applications and was thus ineligible for consideration; whereas the petitioner had solemnized her Nikah with one Mushtaq Ahmad Ahangar, a resident of the same Mohalla. As such, treating the private respondent as a married candidate belonging to village under reference is contrary to the actual facts and has been done merely to accommodate her.

d. That the Deputy Commissioner has not taken into account the report submitted by Court Commissioner, so appointed by Divisional Commissioner, which reveals that the family of respondent No. 6 has three male and three female members, and all males are working, whereas the family of the petitioner has five female and three male members, out of which one is handicapped, meaning thereby the family of the petitioner is more deserving, as stated in the report of CDPO earlier.

e. That the reason assigned for cancelling the petitioner's appointment, that she owns 17 kanals of land, is completely baseless and contrary to the record. In fact, the petitioner holds and possesses only 4 kanals of *Khushki* (unirrigated) land.

6) The official respondents, in their reply, have detailed the proceedings initiated by the private respondent by way of appeal and revision, as well as the writ petition previously filed by the petitioner. They further state that pursuant to the order dated 01.07.2013 passed by the Divisional Commissioner, Kashmir, the Deputy Commissioner, Kupwara i.e. respondent No. 3, conducted a comprehensive enquiry and afforded a hearing to both parties. In this process, respondent No. 3 called for a factual report from respondent No. 5. Respondent No. 5 submitted the report

dated 19.08.2013, stating that respondent No. 6 is more meritorious and holds a preferential right over the petitioner because she resides at a central location in Ahangar Mohalla, Putshai, with suitable accommodation and proper sanitation for housing the Anganwadi Centre, whereas the petitioner resides at the far end of the Mohalla. The report further noted that respondent No. 6 belongs to the poorest of the poor and holds an Antyodaya Anna Yojana (AAY) ration card, whereas the petitioner holds a Below Poverty Line (BPL) ration card. Consequently, the Deputy Commissioner, Kupwara, vide order dated 26.08.2013, allowed the appeal and set aside the petitioner's engagement order. Pursuant to that order, respondent No. 5 disengaged the petitioner vide order dated 27.08.2013 and engaged the private respondent as an Anganwadi Helper for the Anganwadi Centre, Ahangar Mohalla, Putshai.

7) Respondent No.6, in her response, besides reiterating the factual aspects of the case, has stated that the centre of the respondent is centrally located and she had performed Nikah before the issuance of advertisement notice. Besides, she belongs to AAY, whereas the petitioner's family has 17 Kanals of land in possession as per the report prepared by official respondents after visiting the spot and, as such, the petitioner has no cause of action to file the writ petition.

8) An affidavit has also been filed by respondent No. 5 stating that respondent No. 6 is more meritorious and possesses a preferential right over the petitioner, as she belongs to the poorest of the poor and holds an AAY ration card, whereas the petitioner holds a BPL ration card. Furthermore, the private respondent has suitable accommodation with proper sanitation available for the exclusive use of running the Anganwadi Centre at a centrally located place, whereas the petitioner resides at the tail end of Ahangar Mohalla, Putshai.

9) Respondent No.6 has also filed counter affidavit stating therein that the petitioner had earlier challenged the order dated 13.07.2013 through SWP No.1566/2013, and vide interim direction dated 26.08.2013, the order dated 13.07.2013 came to be stayed, but the said writ petition came to be dismissed vide order dated 14.07.2021. It is further stated that the petitioner had earlier filed a similar writ petition on identical grounds against the impugned order, bearing SWP No.1660/2013, but the same was withdrawn with liberty to re-agitate, if cause survives. It is further stated that after the dismissal of writ petition bearing SWP No.1566/2013 in terms of order dated 14.07.2021, the order dated 13.07.2013 came to be restored.

10) The petitioner has also filed rejoinder to the counter affidavit filed by respondent No.6, stating therein that she continued to work till the present writ petition was dismissed for non-prosecution vide order dated 11.04.2018, and thereafter, pursuant to her application, the writ petition was restored on 29.06.2022. It is further stated that the petitioner filed an application before this Court for disengagement of respondent No. 6, as she was engaged during the period of dismissal of the writ petition, and this Court stayed the order passed by the CDPO but the Division Bench of this Court, vide order dated 08.12.2022, directed that neither the petitioner nor respondent No. 6 shall be allowed to work as Anganwadi Helper in Anganwadi Centre, Ahangar Mohalla, Putshai till final disposal of the main petition.

11) Heard and perused the record produced by learned Dy.A.G.

12) The case projected by the petitioner in the present petition is that she, being the most deserving candidate, was duly selected, whereas respondent No. 6 was not a resident of the said Mohalla and was, therefore, ineligible to be engaged as an Anganwadi Helper. The petitioner has mainly impressed upon the report dated 02.12.2011 submitted by

respondent No.5 to the Government Advocate, wherein it is stated that the petitioner was selected as Helper for Anganwadi Centre, Ahangar Mohalla, Putshai being the most deserving candidate and having sufficient accommodation, whereas the private respondent was not married at the time of receipt of application forms for selection of Anganwadi Helpers. The petitioner has also placed much reliance upon the report dated 23.01.2013 submitted by respondent No.3 to the Divisional Commissioner, Kashmir.

13) It needs to be noted that the appeal preferred by respondent No.6 came to be dismissed vide order dated 14.01.2012 for non-prosecution, with an observation that respondent No.6 was given opportunity to produce proof in support of her claim vis-a-vis Nikah Nama and ration card, which she failed to produce. The appeal, as is evident from order dated 14.01.2012, was dismissed for non-prosecution and not on merits.

14) The revision preferred by respondent No. 6 against the order dated 14.01.2012 was decided vide order dated 01.07.2013, whereby the matter was remitted to the Deputy Commissioner, Kupwara, to decide the case afresh after hearing the parties in accordance with the relevant

Government guidelines. Prior to passing the order dated 01.07.2013, the Divisional Commissioner, Kashmir, had, vide order dated 18.07.2012, directed the Deputy Commissioner concerned to conduct an on-spot inspection and report on the eligibility of both parties in terms of the guidelines. In compliance therewith, a report dated 23.01.2013 was submitted, stating that both parties qualified for the post of Anganwadi Helper, as both possessed the requisite qualification and belonged to the BPL category. The report noted that while one candidate had relatively better accommodation, it was virtually a tie, requiring the authorities to take a decision either way. It further observed that the selection of either candidate would leave the other aggrieved, as each deemed herself to be the most deserving. The report also highlighted that as per the *Nikahnama* produced by the private respondent, her marriage took place on 11.08.2010, prior to the issuance of the advertisement notice dated 31.01.2011.

15) The Divisional Commissioner, Kasshmir, while remitting the matter vide order dated 01.07.2013, did not record any finding on the merits of the respective claims of the parties.

16) Following the remand order passed by the Divisional Commissioner, Kasshmir, the impugned order was passed

by respondent No. 3. The said order refers to the report dated 19.08.2013 submitted by the CDPO i.e. respondent No.5, wherein it was stated that the private respondent was more meritorious than the petitioner, having centrally located accommodation and being among the poorest of the poor, as against the petitioner who was residing at the tail end of the Mohalla and holding a BPL ration card. The impugned order passed by respondent No. 3 also records that the petitioner's family owns about 17 kanals of land in the area and is, therefore, in a comparatively better position than respondent No. 6.

17) It is contended by the petitioner that the earlier report, submitted by none other than respondent No. 3 himself, was completely overlooked by the said respondent while passing the impugned order. The petitioner further contends that she holds only 4 kanals of *Khushki* land, not 17 kanals, and explicitly clarifies that her actual landholding does not exceed 4 kanals.

18) Earlier, the candidature of the private respondent was not considered for want of proof that she was married into the Mohalla where the Anganwadi Centre was proposed to be established. Perusal of the record reveals that in the initial list of candidates prepared for the post of Anganwadi

Helper, both the petitioner and the private respondent were reflected under the “AAY” category. Nonetheless, the order impugned mentions the petitioner as belonging to the BPL category, an entry seemingly made because the petitioner had declared herself as a BPL candidate in her application form, notwithstanding that she had annexed a ration card issued under the AAY category.

19) This Court would have remitted the matter to the Deputy Commissioner, Kupwara, had the petitioner been reflected in the list of candidates as a BPL category candidate; however, she was considered under the AAY category. The earlier report submitted by the Deputy Commissioner, Kupwara, dated 23.01.2013, mentions that it was a tie, and the authorities were required to take a decision either way. In terms of the selection criteria for Anganwadi Helpers laid down in Government Order No. 07-SW of 2010 dated 18.01.2010, preference must be given to the most deserving among the deserving candidates. The family of the petitioner owns 17 kanals of land, though the petitioner asserts that she possesses only 04 kanals (Ground 'f' of the petition), whereas there is nothing on record to show any landholding on the part of respondent No. 6. Furthermore, a finding has been recorded that the residence of the private respondent is centrally situated, as against

that of the petitioner, which is located at the tail end of the Mohalla.

20) There is discretion with the selecting authority in case of a tie for selection of Anganwadi Helper. The affidavit filed by the respondent No.5 reveals that the accommodation of respondent No. 6 is at a centrally located place in Ahangar Mohalla, Putshai, whereas the petitioner is residing at the tail end of Ahangar Mohalla, Putshai. The impugned order also bears reference to the said fact. Furthermore, while the petitioner admittedly owns land, there is no material on record to establish the landholding of the private respondent. These two circumstances, as rightly noted by respondent No. 3 in the order impugned, tilt the balance in favour of the private respondent. The contention of the petitioner that the earlier report of respondent No. 3 found the petitioner more suitable than the private respondent, is devoid of merit.

21) This Court considers it necessary to observe that while the Anganwadi Centre was intended to be established in 2011, it has remained entirely non-functional for a considerable period. The very purpose of setting up an Anganwadi Centre is to serve the welfare of residents of village, a benefit that has been continuously denied due to protracted litigation.

22) After examining the factual aspects in detail, this Court is of the considered view that the case of the petitioner lacks merit. The Deputy Commissioner, Kupwara, has passed a well-reasoned order and has rightly arrived at the conclusion that the private respondent has a preferential right over the petitioner and has rightly allowed the appeal of the private respondent.

23) In view of the above, the present writ petition is found to be without merit and the same is dismissed accordingly. Interim direction, if any, shall cease to be in operation.

24) The record be returned to learned Deputy AG.

(Rajnesh Oswal)
Judge

Srinagar,
23.10.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **No**

HIGH COURT JAMMU & KASHMIR AND LADAKH