

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****Civil Appeal No 9183 of 2019
(Arising out of Special Leave Petition (C) No 2035 of 2019)****Meena Sharma****... Appellant(s)****Versus****State of Jammu and Kashmir & Ors****...Respondent(s)****J U D G M E N T****Dr Dhananjaya Y Chandrachud, J**

1 Leave granted.

2 This appeal arises from a judgment of a Division Bench of the High Court of Jammu and Kashmir dated 31 December 2018. The High Court upheld a judgment of a learned Single Judge dated 15 December 2014 setting aside the appointment of the appellant under a scheme called the Rehbar-e-Taleem¹ Scheme. The learned Single Judge directed the State to consider the case of the fifth respondent, for her appointment as an RET in the Government Middle School, Bakore.

3 The RET Scheme was notified by the State Government on 28 April 2000. Some of the salient features of the Scheme are extracted from the judgment of the High Court:

1 "RET"

"Sanction is accorded to launching of the Scheme of Rehbar-e-Taleem" with the objective of:-

a/ Promoting the decentralized management of elementary education with the community participation and involvement.

b/ To ensure accountability and responsiveness through a strong backup and supervision through the community.

c/ To operationalize effectively the schooling system at the grass roots level.

The scheme shall be effectuated for provision of services of Teaching guides called „Rehbar-e-Taleem“ in the Primary and Middle Schools to make up the deficiency of the staff as per the existent norms.

Concept of Rehbar-e-Taleem

The person to be provided to make up the deficiency of the staff at the elementary level of education will be designated as Rehbar-e-Taleem. The underlying objective is to posit the role of the teaching guide as catalyst for quality education and to ensure the overall development of the personality of the children. Drawn from the local community, the accountability of the teacher called as „Rehbar-e-Taleem“ would be immediate providing for constant interface and interaction with the community to secure universal enrolment and to check the incidence of drop outs.

Role of Village Level Committee

Rehbar-e-Taleem (Teaching Guide) shall be engaged by VLC conceptualized vide Circular order No.Edu/Plan-184/2000 dated 17.02.2000. However, for the purpose of selection of Rehbar-e-Taleem, the composition of VLC as visualized in the aforesaid Circular shall be modified to the extent of associating ZEO in place of Headmaster as the Convenor.

Xxxxxxxx

i/ VLC shall assess the requirement of teachers in the Primary/ Middle Schools within the area of their operation in due regard to the approved norms of staffing and the Roll. On the basis of the said assessment, VLC would draw up a panel of eligible qualified persons from the village.

.....

Eligibility

i/ Rehbar-e-Taleem should be the permanent resident of the State.

ii/ He or she should belong to the village where there is assessed deficiency of staff. On the certification of VLC that no local candidate from within the village is available, VLC can draw up the panel from the adjoining village."

4 By a Government Order dated 24 August 2005, the expression "village" was clarified thus:

"It is hereby clarified/ re-affirmed that the expression "Village" used in the instructions/ orders aforesaid shall mean, and shall always be deemed to have meant, a Revenue Village."

5 The two villages in question in the present case are Chak Koura, to which the appellant belongs and the village of Bakore, to which the fifth respondent belongs. Both these villages are situated on the international border at a distance of four kilometers. There was no school in the village of Chak Koura to which the appellant belongs. An advertisement was issued on 23 November 2001 by the Zonal Education Office seeking applications from local candidates of the villages where the educational institution(s) were situated for engagement as RET teaching guides. Two posts were vacant, one each in the Middle School for Boys and Girls at Bakore. Fourteen applications were received. A panel was formed in which the first nine candidates belonged to village Bakore and the rest to the adjoining village of Chak Koura. The panel was submitted to the Deputy Commissioner Jammu. The residents of Chak Koura raised an objection on the ground that the persons belonging to the village of Bakore

were placed above them. A meeting of the Village Education Committee² was held on 15 December 2002. A decision was taken to prepare a combined panel for the two villages in view of the topography of the two adjacent villages and to furnish an opportunity to the educated youth of village Chak Koura in which there was no school. A Select List was prepared in December 2002 including candidates of both the villages. The Select List consisted of fourteen candidates including the appellant at Serial No 1 and the fifth respondent at Serial No 7.

6 In the meantime, a fresh notification was issued on 19 July 2003 for inviting applications. In July 2003, the appellant instituted a Writ Petition³ before the High Court challenging the fresh notification. On 7 August 2003, appointment orders were issued to two candidates, both of whom were residents of village Chak Koura in accordance with their position in the Select List. The High Court adjudicated on the Writ Petition filed by the appellant on 9 September 2003 by directing the authorities to make appointments on the basis of the panel of recommended candidates "subject to verification of habitation".

7 The appellant filed a contempt petition for non-compliance of the directions. Faced with the Contempt Petition, the Director of School Education, Jammu granted approval on 21 November 2007 to the engagement of the appellant as an RET teacher in the Middle School at Bakore against an available vacancy. The Contempt Petition was disposed of on 22 November 2007. The order of appointment was

² "VEC"

³ SWP 84 of 2003

communicated to the appellant on 3 December 2007.

8 In 2009, the fifth respondent filed a Writ Petition⁴ before the High Court. The appellant was not impleaded as a party to the Petition. The averments contained in paragraph 12 of the Writ Petition, would indicate that the fifth respondent was aware of the Select List which had been drawn up for appointment to the post of RET. The Select List was, in fact, annexed as Annexure A4 to the Writ Petition. Paragraph 12 of the Writ Petition read as follows:

“12. That out of the panel prepared by respondents which is annexed as Annexure A4, the candidates falling at serial no.2 and 3 have resigned being the persons belonging to another village. Serial no.5 Kiran Kumar was engaged from that panel being a resident of village Bakore. Candidate at serial no.6 Puja Sharma refused to join and the candidate at serial no.12 Santosh Kumari was married and is engaged in her in-laws village and the petitioner stands at serial no.13 of that panel and in case the candidates belonging to village Chak Koura are excluded from the panel, the petitioner stands at serial no.2 of the last panel and there are 3 posts of RET teachers still vacant in middle school Bakore. It is pertinent to mention here that only one candidate from the last panel was engaged and rest of the panel was not executed by the respondent authorities.”

9 Annexure A4 was the Select List containing the panel of candidates for engagement as RET guides in village Bakore. It needs to be noted at this stage that initially on 7 August 2003, the candidates at Serial Nos 2 and 3 of the Select List had been appointed. They resigned in September 2007. The name of the appellant was shown at Serial No 5 of the Select List while the fifth respondent was shown at Serial No 14. The fifth respondent did not implead the appellant as a party to the proceedings which were instituted in 2009 and instead, chose to implead two other

candidates, Sunita Rajput and Samita Rani, who were placed below the appellant at Serial Nos 9 and 10 of the Select List.

10 In January 2011, the fifth respondent instituted a second Writ Petition⁵ challenging the order dated 3 December 2007 appointing the appellant as an RET teaching guide.

11 On the completion of five years' engagement as an RET teacher, the appellant was regularized as a general line teacher on 14 January 2013. The appellant was transferred from Bakore on 24 July 2014 after her regularization.

12 A Writ Petition⁶ filed by the appellant seeking benefits under her appointment as a regular teacher was allowed by the High Court on 1 July 2013, following which the State Government issued instructions on 28 August 2014 to implement the judgment. The regularization of the appellant was given effect to with effect from 10 September 2008 on completing the initial period of five years as RET teaching guide.

13 The High Court allowed the Writ Petitions filed by the fifth respondent by a judgment dated 15 December 2014 and quashed the appointment of the appellant as an RET Teacher. The Letters Patent Appeal was dismissed by the Division Bench on 31 December 2018.

14 Mr Gourab Banerji, learned senior counsel appearing on behalf of the appellant, submitted that the fifth respondent had raised no objection to the

⁵ SWP 9 of 2011

⁶ SWP 93 of 2009

initial appointment of two candidates to the post of RET teacher in accordance with their position in the Select List, though they belonged to village Chak Koura. According to the submission, the villages of Chak Koura and Bakore are adjacent to each other without any effective separation in terms of distance. Hence a decision was taken by the VEC to have a combined Select List for the candidates from both the villages since the village Chak Koura did not have a school of its own. It was urged that when the first Writ Petition was filed in 2009, the appellant was not impleaded in spite of the fact that Annexure A4 to the Writ Petition indicated the position of the appellant in the Select List. It was only in 2011, nearly four years after the initial appointment of the appellant, that a second Writ Petition was filed in order to challenge the appointment. Thus, on merits, it was urged that there was no breach of the RET Scheme in considering persons belonging to village Chak Koura. Moreover, it was submitted that there was an unexplained delay on the part of the fifth respondent in challenging the appointment of the appellant. The appellant was regularized in 2013. She is stated to be 56 years of age with about four years left to attain the age of superannuation. Moreover, it was urged that, at this stage, quashing the appointment of the appellant would be of no benefit to the fifth respondent. The fifth respondent cannot seek appointment on the basis of a Select List which was drawn up in 2003, nearly sixteen years having elapsed in the meantime.

15 On the other hand, Mr Navyug Sethi, learned counsel appearing on behalf of the fifth respondent, supported the judgment of the High Court, contending that the condition of eligibility in the RET Scheme was that the candidate must belong to the village where the school is situated. This was clarified in a Government Order dated 24 August 2005. The learned counsel submitted that though the appellant did not belong to the revenue village where the school was situated, she was appointed following the first order of the High Court in her Writ Petition only against the threat of coercive action in a Contempt Petition. Learned counsel submitted that the order passed by the High Court envisaged a verification of the place of habitation and if such a verification had been done, it would have revealed that the appellant was not a resident of the revenue village concerned. Hence, placing reliance on the principles which have been enunciated by the High Court, it was urged that it was the fifth respondent, who belonged to the village Bakore, and not the appellant, who was entitled to the post. On the aspect of delay, learned counsel submitted that when the fifth respondent instituted the first Writ Petition in 2009, it was unknown to her that the appellant had been appointed. Consequently, it was only in 2011, after a counter affidavit was filed by the State in the earlier Writ Petition clarifying that the appellant had been appointed in the meantime, that the second Writ Petition was instituted by the fifth respondent before the High Court. Hence, it was urged that there was no delay on the part of the fifth respondent. Learned counsel submitted that upon the invalidation of the appointment of the appellant, the fifth respondent is entitled to the post and a direction should accordingly be issued to that effect.

16 We have also heard Mr G M Kawoosa, learned counsel appearing on behalf of the State.

17 In assessing the rival submissions, the central aspect of the case which needs to be emphasised is that after the appointment of the appellant on 3 December 2007, the first challenge to her appointment was four years later in the Writ Petition of 2011. The fifth respondent filed a Writ Petition earlier in 2009, but chose not to implead the appellant or to challenge her appointment. Though the fifth respondent claims that she was unaware of the appointment of the appellant, this explanation cannot be accepted for the reason that the Select List was annexed at Annexure A4 to the first Writ Petition. A diligent enquiry would have revealed that the appellant had been appointed in the meantime. The appellant was appointed after the first two candidates who had been appointed as teaching guides under the RET Scheme resigned from the position. The four year delay on the part of the fifth respondent in contesting the appointment of the appellant, disentitled her to claim any relief.

18 Apart from this, the appellant was regularized in service in 2013 before the judgment of the learned Single Judge holding that she was not eligible for appointment on the ground that she did not belong to the revenue village. The VEC took a bona fide decision to draw up a combined list for the two villages because Chak Koura had no school. Moreover, the challenge to the appointment of the appellant will not be of any benefit to the fifth respondent. The fifth respondent cannot claim a right of appointment on the basis of a Select List of 2003 after a lapse of sixteen

years. The Select List cannot have any indefinite life so as to be operated at an uncertain future date. In any event, we are of the view that if a *bona fide* decision was taken by the government to approve the appointment of the appellant following the decision of the High Court, this cannot be faulted. In deciding as to whether a fit and proper case was made out before the High Court under Article 226 of the Constitution, an important consideration is the proximity of the two villages and the fact that there was no school in village Chak Koura to which the appellant belonged. It is also significant to note that the initial appointments of the candidates were also of persons belonging to the village of Chak Koura.

19 For the above reasons, we have come to the conclusion that the Writ Petition which was filed by the fifth respondent suffered from an unexplained delay. Even on merits the appointment of the appellant is not vitiated. In the meantime, equities have ensued in favour of the appellant who has been regularized in service and has continued after regularization for nearly six years. The fifth respondent cannot at this stage claim a vested right to appointment on the basis of the Select List of 2003.

20 Accordingly, we allow the appeal and set aside the impugned judgment and order of the High Court dated 31 December 2018. In

consequence, the Writ Petitions filed by the fifth respondent shall stand dismissed. There shall be no order as to costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Ajay Rastogi]

**New Delhi;
December 03, 2019**