

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

SWP No. 2143/2015

Reserved On: 18th of December, 2024

Pronounced On: 3rd of January, 2025.

Mohammad Umar Ullah Rather

... Petitioner(s)

Through: -

Mr R. A. Jan, Senior Advocate with
Mr Syed Yahaya, Advocate.

V/s

State (now UT) of J&K and Ors.

... Respondent(s)

Through: -

Mr Furqan Yaqoob Sofi, Government Advocate.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE

(JUDGMENT)

01. The case of the Petitioner, as pleaded in the Petition on hand, is that in terms of Advertisement Notice published in the Daily Rising Kashmir, Srinagar in its edition dated 2nd of May, 2013 as also in the Daily Srinagar Times in its edition dated 4th of May, 2013, applications on plain papers came to be invited from educated youths of Village Shistergam on habitation basis, for having educational qualification of 10+2 and above, with a stipulation that only those candidates having Mathematics and Science background should apply within the cut of date *viz.* 07 days after the publication of the said Notice.

02. The Petitioner, being possessed of the requisite qualification, submitted his application form supported by the requisite documents for his selection and consequent engagement as *Rehbar-e-Taleem* (Science) in the newly upgraded Primary School, Shistergam.

03. Accordingly, the candidature of the Petitioner, along with other eligible candidates, was entertained and the selection process, as per the procedure prescribed was undertaken, whereafter, a tentative select list came to be drawn and notified by the Respondent No.5 vide notification published in daily Greater Kashmir in its edition dated 3rd of June, 2013.

04. Thereafter, objections were invited from the aggrieved persons, if any, with respect to the said tentative select list, to be submitted in the office of Respondent No.6. The Respondent Nos. 8 and 9, for the obvious reason of not having any valid cause or reason, either in fact or in law, to contest the legal validity of the tentative select list, chose not to avail the opportunity of objecting to the tentative select list, as afforded vide the aforesaid notification, instead, rushed to this Court by filing Writ Petition bearing SWP No. 1068/2023, thereby impugning the aforesaid tentative select list.

05. In the Writ Petition filed by the Respondent Nos. 8 and 9, they pleaded that they are possessed of the eligibility prescribed as regards the residence in the Advertisement Notice, however, the said assertion, on scrutiny by the concerned Authorities, including the Respondent Nos. 3 and 7, were found to be false and baseless. Resultantly, a team of Officers was appointed to visit the spot and submit a factual report thereof, whereafter, the said team undertook the requisite exercise and, on 7th of February, 2014, submitted a detailed report to the Respondent No.3. However, despite the said report, the Respondent Nos. 8 and 9, in connivance of the official Respondents, were able to obtain and get the requisite State Subject certificates as per their needs and requirements depending upon the post/position advertised. Accordingly, the Writ Petition filed by the Respondent Nos. 8 and 9 was disposed of by this Court vide Judgment dated 29th of May, 2015, whereafter, in purported compliance of the said Judgment passed by this Court, the Respondent No.3-Deputy Commissioner, Anantnag issued Order No. DCA/Lit/015-382-84 dated 29th of July, 2025.

06. The Petitioner has assailed the validity of the aforesaid Order dated 29th of July, 2025 issued by the Respondent No.3 through the medium of the present Writ Petition, primarily, on the ground that the same has been, in fact, issued in violation of the directions passed by this Court vide Judgment dated 29th of May, 2015. It has been stated during the course of the proceedings in the Writ Petition filed by the Respondent Nos. 8 and 9, being SWP No. 1068/2013, it had been clearly established that the Petitioners therein/ Respondent Nos. 8 and 9 herein are residents of Village Sheikhpura and not village Shistergam habitation, which fact has not been taken into consideration by the Respondent No.3, while issuing the impugned Order.

07. The Respondent Nos. 1, 2, 5 and 6, in their Objections, have stated that the present Writ Petition involves controversy regarding the engagement of ReTs (*Tehbar-i-Taleem*) for Upgraded Primary School to the Middle School, Shistergam, however, having regard to the decision of the State Administrative Council, followed by Government Order No. 919-Edu of 2018 dated 16th of November, 2018, the Writ Petition has been rendered *infructuous*, therefore, same deserves to be dismissed, as the Government has imposed blanket ban on engagement of ReTs; that owing to the upgradation of the Primary School, Shistergam to the status of Middle Level, pursuant to the instructions/reference of the Chief Education Officer, Anantnag, vide reference No. CEO/A/SSA/13/3245-47 dated 29th of April, 2013, an advertisement notice came to be issued for engagement of two teachers on ReT (*Rehbar-i-Teleem*) pattern, having Math and Science background on habitation basis. After scrutinizing the applications of the eligible candidates and also after following due process of selection under law and as per norms/rules, a panel was framed and submitted to the higher authority *viz.* Chief Education Officer, Anantnag/ Respondent No. 5 wherein, as per their merit and eligibility, M/S Javid Ahmad Shah and Mohammad Umar Ullah Rather/ Petitioner herein secured 1st and 2nd place, respectively. Accordingly, the selection list was issued by the office of Respondent No. 5 which was published in the local Daily for the purpose of

inviting Objections from the concerned, if any; that, in the meanwhile, Syed Nazia Jan/ Respondent No. 8 herein called the selection process in question before this Court through the medium of SWP No. 1068/2013, claiming therein that she, being permanent resident of the habitation of Shistergam, be considered for selection. The Petitioner herein objected to the said claim, by pleading that the Respondent No.8, along with others, are not the residents of habitation Shistergam. Consequently, upon disposal of the said Writ Petition by this Court vide Judgment dated 29th of May, 2015, an enquiry was ordered and conducted through Assistant Commissioner (R), Anantnag, BDO, Qazigund and ZEO, Qazigund; and that, as a result of pendency of the said litigation, the selection of ReTs for Upgraded Primary School to Middle Level, Shistergam remained on hold for a long time and, in the meanwhile, pursuant to the State Administrative Council decision read with Government Order No. 919-Edu of 2018 dated 16th of November, 2018, the Government has imposed blanket ban on engagement of ReTs, as such, Petition under reply has been rendered *infructuous*, therefore, the same deserves to be dismissed.

08. The Respondent No.3, in his Objections, has stated that the factual position of the case is that two posts of ReT at village Shishtergam were duly advertised by the Education Department vide No. DIPK-1221 dated 3rd of May, 2013 and the Respondent Nos. 8 and 9 had applied for the said posts in due course of time, regarding which a Writ Petition bearing SWP No. 1068/2013 came to be filed by the Respondent Nos.8 and 9. The said Writ Petition, vide Order dated 29th of May, 2015, came to be disposed of directing the Respondent No.3-Deputy Commissioner, Anantnag to personally hold an enquiry in the matter, so as to ascertain and determine whether or not the Petitioners therein/ Respondent Nos. 8 and 9 herein are presently permanent residents of village Shishtergam, where the two posts of ReTs were required to be filled in on habitation basis in the Middle School Shishtergam and the Respondent No. 3 was granted liberty to hear both the parties in respect of their claims as well as counter claims by way of producing documents or any evidence;

that before proceeding on spot at village Shishtergam, Tehsil Dooru, in pursuance of the Judgment passed by this Court, the private Respondents filed LPA bearing No.79/2015, which came to be dismissed vide Order dated 9th of July, 2015, with observation that the Deputy Commissioner, Anantnag shall enquire into the matter without taking into account outcome of any previous exercise undertaken at a lower level; that in compliance of the Order passed by the Division Bench, the Respondent No.3-Deputy Commissioner, Anantnag, accompanied by Respondent No.7-Tehsildar, Dooru, along with Patwari concerned, visited the spot with relevant records of village Shishtergam, Tehsil Dooru, where the concerned parties/ candidates reside and found that Respondent Nos. 8 and 9 herein, namely, Syed Nazia Jan and Syed Anjum Gazala, are presently residing in village Shishtergam, as their residential houses are standing upon Survey No. 280 of estate Shishtergam, Tehsil Dooru, which qualifies as a habitation in terms of Government Order No. 288-Edu of 2009. The enquiry was conducted in the matter properly and the Order dated 29th of July, 2015 passed in a transparent manner, as such, the Petitioner has got no *locus standi* to file the Writ Petition.

09. The Respondent Nos. 8 and 9 have also filed their Objections, stating therein that against the Order dated 29th of May, 2015 passed by the Writ Court in SWP No.1068/2013, the Petitioner and one Javid Ahmad Shah had filed LPA No. 97/2015 before the Division Bench of this Court, however, the said LPA was dismissed vide Order dated 9th of July, 2015; that, after passing of the aforesaid Order by the Division Bench, the Respondent No.3-Deputy Commissioner, Anantnag summoned all the concerned parties and provided ample opportunity of putting their respective cases before it, whereafter, the parties appeared before the Deputy Commissioner, Anantnag in person as well as through their Counsel; that, after hearing both the parties, the Deputy Commissioner, Anantnag, accompanied by Tehsildar and Patwari concerned, visited the spot on 9th of July, 2015, perused the revenue records of village Shishtergam and found that the Respondent Nos. 8 and 9 are presently

residing in their residential houses standing on Survey No.280 situate at village Shistergam which is a habitation; that the Deputy Commissioner, Anantnag, thereafter, passed the Order dated 29th of July, 2015, wherein he returned a finding to the effect that the Respondent Nos. 8 and 9 are residents of habitation Shistergam and they do not reside at Sheikhpora, because Sheikhpora is not a part of Shistergam, as it is a separate revenue village known as 'Gochan'; and that the said Javid Ahmad Shah has also filed a Civil Suit for declaration and mandatory injunction with respect to the subject before the Court of learned Principal District Judge, Anantnag, who assigned the same to the Court of learned Sub-Judge, Anantnag for its disposal under law and that the said Suit is still pending disposal before the trial Court.

10. Mr R. A. Jan, the learned Senior Counsel, appearing on behalf of the Petitioner, submitted that the Deputy Commissioner, Anantnag/ Respondent No.3, under the influence of a local MLA, had decided the matter with respect to the residence of the private Respondents herein wrongly and in a biased manner, overlooking the report of the Committee of Officers, including the revenue Officers, wherein they had stated that the private Respondents were, in fact, not the residents of Shishtergam habitation, whose residents could only be considered as eligible candidates for their consideration to appointment as ReTs. He argued that the Committee, in its report, had stated that the private respondents herein were residents of Survey No. 311 falling in village Sheikhpora, whereas, the Deputy Commissioner, without any demarcation, merely on the basis of the statements of some selected persons and the spot inspection, concluded that they were the residents of Survey No. 280 of village Shistergam. The learned Senior Counsel has contended that the Deputy Commissioner had falsely prepared the report just to help the private Respondents, who had not even applied for the post in question before the cut-off date, but only after the last date fixed for receipt of the applications. Mr Jan has further argued that the private Respondents are not even interested in the matter now, inasmuch as, nobody is present to contest on their behalf, perhaps for the

reason that they have been selected somewhere else. He has also informed the Court that the Respondent No.9 has already been selected in the Department of Law of the Union Territory of Jammu & Kashmir and, as such, was not interested to defend this case any further.

11. Mr Furqan Yaqoob Sofi, the learned Government Advocate, appearing on behalf of the official Respondents, while defending the Order impugned issued by the Deputy Commissioner, Anantnag/ Respondent No.3 herein, submits that since the ReT Scheme has already been revised by the Government vide Government Order No. 919-Edu of 2018 dated 16th of November, 2018 and, as such, no panels were saved by the said Order.

12. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

13. The short controversy that is required to be set at rest in this Petition is with regard to the dispute relating to formulation of the panel for the ReT Teachers for Government Middle School Shistergam falling under the educational zone of Qazigund of District Anantnag, whereby the Petitioner, along with one Javaid Ahmad Shah, who were 10+2 with subjects of Science and Math, respectively.

14. From the perusal of the pleadings on record, it appears that in response to an advertisement notice issued by the Zonal Education Officer, Qazigund on 29th of April, 2013, a panel and, consequently, a select list of the aforesaid two ReT candidates came to be formulated which was notified by the Chief Education Officer, Anantnag and published in daily newspaper Greater Kashmir in its edition dated 3rd of June, 2013. Aggrieved of this tentative seniority list, the Respondent Nos. 8 and 9 herein, namely, Syed Nazia Jan and Syed Anjum Gazala filed a Writ Petition bearing SWP No. 1068/2013, challenging the tentative select list and this Court, vide Judgment dated 29th of May, 2015, disposed of the aforesaid Writ Petition with a direction to the Deputy Commissioner, Anantnag to record a definite finding of fact as to the residence of the Petitioners therein and forward the same directly to the Chief Education Officer, Anantnag requiring him to

take further necessary action pursuant thereto, with a clarification that in the event the claim of the Petitioners therein is falsified, in that event the Chief Education Officer will proceed with the select panel and in case the Petitioners' claim is established, the candidature of the Petitioners as on 11th of May, 2013 be considered to draw up a fresh panel on the basis of merit of the competing candidates as on 14th of May, 2013, the date the earlier panel was stated to have been drawn.

15. It is further revealed from the record that an *intra* Court appeal was filed against the aforesaid Order passed by this Court bearing LPA No. 97/2015, wherein, vide Order dated 9th of July, 2015, it was observed by the Division Bench that "we, for the reasons discussed, do not feel persuaded to take a view different from the one taken by the leaned Single Judge. We, as already stated, expect the Deputy Commissioner to enquire into the matter without taking into account outcome of any previous exercise undertaken at a lower level."

16. In compliance of the Orders passed by this Court in the Writ Petition as well as the LPA, the Deputy Commissioner proceeded in the matter and, vide his Order dated 29th of July, 2015, came to the conclusion that the Petitioners therein/ private Respondents were residents of revenue village and habitation Shistergam and, in no way, were they residents of Sheikhpora because Sheikhpora is not a part of Shistergam, but as a separate revenue village known as Gochan. The Deputy Commissioner, thus, established the claim of the private Respondents herein and the Chief Education Officer, Anantnag was directed to implement the orders passed by this Court.

17. In the light of the aforesaid facts, let us first deal with the contention raised by the learned Counsel appearing for the official Respondents that the ReT Scheme had been abolished by the Government vide Government Order No. 919-Edu of 2018 dated 16th of November, 2018 and, as such, no fresh appointment can be made under the said Scheme, after the issuance of the aforesaid Government Order. This Contention of

the learned Counsel for the official Respondents has already been considered by the Division Bench of this Court in a batch of Writ Petitions with lead case titled '**Rukhsana Jabeen v. State of J&K and Ors.**' (SWP No. 3004/2018), decided on 4th of February, 2023, whereby the Division Bench had discussed the implications of the Government Order (*supra*) on the ReT Scheme already in vogue and the process initiated in compliance thereto.

18. It will be relevant and profitable to reproduce the operative portion of the Judgment passed by the Division Bench, at Paragraph No. 31 hereinbelow:

“31. We have heard both the sides at some length on the impact of the Government order on the pending litigation and we cull out our conclusion as under:

(i) That the impugned Government order will not affect the select panels prepared by the respondents which have been acted upon and formal orders of engagement have been issued;

(ii) That the impugned Government Order will not override or effect the judgments passed or to be passed by this Court holding a candidate/candidates entitled to engagement in the selection process which was/is under challenge before the Court; 26 SWP No.3004/2018 c/w connected matters;

(iii) Where the select panels are approved and the aggrieved party has approached the Court before it could be acted upon, shall also be not affected by the impugned Government order, in that, but for litigation in the Court, the approved panel/panels could have been acted upon and formal letters of engagement in favour of the selected candidates issued prior to the issuance of the impugned Government order; and,

(iv) Notwithstanding issuance of the impugned Government order, the respondents shall abide by the judgments passed by any competent Court of law which have attained finality. However, the writ petitions involving adjudication of disputes in respect of tentative merit lists or tentative select panels shall be liable to be dismissed in view of the impugned Government order, in that, it would not be permissible for a Court of law to direct the respondents to finalize the tentative merit lists or tentative select panels and issue engagement orders in view of closure of the scheme and a clear stipulation contained in paragraph 2nd of the impugned Government order.”

19. In view of the mandate of the aforesaid Judgment passed by the Division Bench, the select panels approved under the ReT Scheme had been saved for further proceedings in the matter, however, the panel, in the case on hand, was yet to be approved, inasmuch as, it was only the tentative panel prepared by the concerned authorities that had been published by the official Respondents and the Chief Education Officer, Anantnag invited objections from the public at large, therefore, this tentative panel cannot be stated to have been approved by the authorities, so as to attract condition No. (iii) of Paragraph No. 31 of the aforesaid Judgment passed by the Division Bench. In this view of the matter, the present Petition filed by the Petitioner, in the considered opinion of this Court, has been rendered as *infructuous* and does not call for going into the merits of the Order impugned passed by the Deputy Commissioner, Anantnag/ Respondent No.3 herein, as it will be a futile exercise.

20. Having regard to the aforesaid discussion and observations made hereinabove, this Writ Petition is, thus, disposed of as having been rendered *infructuous* in view of the abolition of the ReT Scheme by the Government vide Government Order No. 919-Edu of 2018 dated 16th of November, 2018, as also the interpretation of the said Government Order rendered by the Division Bench of this Court in the aforesaid Judgment.

21. Writ Petition is, accordingly, **disposed** of on the above terms, along with the connected CMs.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

January 3rd, 2025

"TAHIR"

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