

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

Reserved on : 05.07.2022

Pronounced on : 30.01.2023

SWP No. 1737/2013

Rajana Devi

.....Petitioner(s)

Through: Mrs. Surinder Kour, Sr. Advocate with
Ms. Manpreet Kour, Advocate

Vs

State of J&K and others

.....Respondent(s)

Through: Mr. K. D. S. Kotwal, Dy. AG

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGEMENT

Heard.

1. Power, be it legislative, judicial and/or executive, is inherently chaste in its very existence, composition and character-wise, meant for amelioratory end or purpose of the State and its subjects but has an ever attending risk of abuse in course of its use and exercise at the hands of its repository ending up in a produce of perversion. To put it in a simple sentence an end situation of an abuse of power is in justice.

2. The judgement in this case is to replenish a message, patent and potent that the perversity of an action and/or decision by a public authority/official, acting in the domain of public administration, irrespective of tier of the administration, has no hiding from the pendular gaze of the Rule of Law which may for a given case get late but not defaults in catching up with the wrong deed and wrongdoer masquerading in the domain of the public administration.

3. The gullible petitioner herein is a below poverty line belonging young woman having husband with 50% upper limb permanent disability. The petitioner, who was supposed to be engaged as being at number one position in the panel, as an Anganwadi Worker on meager monthly honorarium, got duped of her said entitlement by contrivance on the part of Sarpanch of the village to get his daughter-in-law to be engaged in which three government officials lend their full role and the petitioner has chosen to fight for her right and this writ petition is for seeking justice in her cause.

4. Situation is not worth a cherish and is a reflection on the trust deficit afflicting the selection processes in the field of public employment that even in the year 2021 the Hon'ble Supreme Court of India's judgement has an opening line that it is visiting a familiar conundrum in service jurisprudence. Para 2 of judgement in **2021(4) SCC 638 Sachin Kumar and others Vs Delhi Subordinate Service Selection Board** is reproduced to echo the concern on this aspect:-

“2. Leave granted. This judgment visits a familiar conundrum in service jurisprudence. The constitutional values which undergird Articles 14 and 16 mandate that selection processes conducted by public authorities to make recruitments have to be fair, transparent and accountable. All too often, human fallibility and foibles intrude into the selection processes. Selection involves intense competition and there is no dearth of individuals who try and bend the rules to gain an unfair leap in the race. Irregularities in the process give rise to misgivings over whether the process has denied equal access to all persons. The sanctity of the selection process comes under a cloud. The detection of individual wrongdoing by candidates may result in action being taken to exclude those whose credentials or performance is tainted. But when the entire process is tainted, the authority in charge of conducting it may decide to cancel the selection as a whole. Judicial review is then invoked to challenge the decision to cancel the entire process. The guiding principles have evolved over the past five decades as new challenges emerged and novel attempts to suborn the legitimacy of recruitment processes have come to the fore. The Delhi High Court in the present case upheld the view of the Central Administrative Tribunal (“Tribunal”) that the cancellation of the entire process was invalid but it confined the relief to six candidates who had moved the proceedings before the Tribunal in the first instance. Like other cases of its genre, this batch of appeals calls the court to balance two competing considerations: the need to preserve public confidence in and the sanctity of selection to public posts and the requirement of observing fairness to candidates who invest time and resources in attempting to clear through a selection. Both these considerations have a constitutional foundation going beyond service and administrative law principles. The issue has travelled to the court for resolution and the path ahead requires us to revisit and evolve the law on the subject.”

5. Vide an advertisement no.POR/ICDS/Adv/10/416-27 dated 02.07.2010, the respondent no. 5 – the Programme Officer, ICDS, Social Welfare Department, Rajouri invited applications from the eligible female candidates for engagement as Anganwadi Worker for Anganwadi Centre Ghai Panyas. For this engagement amongst 3 applicants, the petitioner, as being one of them, had submitted her claim for selection. The respondent no. 6 was also one of the candidates in race for the selection. Interviews for the selection had come to take place on 22.09.2010. Anganwadi Centre Ghai Panyas fell in Panchayat Kangri Upper.

6. In the interview assessment, the petitioner came to secure 51.44 points whereas the respondent no. 6 had secured 43.00 points. 3rd applicant had come to suffer disqualification on the basis of residential status as being not the resident of morha Ghai Panyas. Thus, the petitioner was the number one candidate entitled for engagement and the respondent no. 6 was the number two candidate.

7. The petitioner came to be taken by surprise on coming to know that the respondent no. 4 – the Child Development Project Officer (CDPO), ICDS Project Sunderbani had come to order engagement of the respondent no. 6 as an Anganwadi Worker for the Anganwadi Centre Ghai Panyas vide an order no.ICDS/SB/Sel/AWW/417-20/12 dated 06.02.2012 and on the next very day the joining of the respondent no. 6 as Anganwadi Worker had come to take place.

8. The petitioner came up with the present writ petition instituted on 05.08.2013 to call in question the engagement of the respondent no. 6 as Anganwadi Worker at the cost of the entitlement of the petitioner. Before coming forward with the filing of the writ petition, the petitioner had undertaken RTI mode of information seeking to collect the relevant documents to expose and show the wrong doing at the end of the official respondents concerned in connivance with the respondent no. 7, who is the father-in-law of the respondent no. 6, and the village Sarpanch.

9. The personal background bearing which the petitioner has come to file the present writ petition is that she belongs to the Below Poverty Line (BPL) status and is a middle pass in terms of her education. The petitioner's husband has a 50% right-hand permanent disability.

10. The engagement of the respondent no. 6 as an Anganwadi Worker at the cost of the petitioner is sourced to an alleged affidavit dated 24.11.2011 attributed to the petitioner and taken cognizance of by a three member Selection Committee comprising of the Child Development Project Officer Sunderbani, the District Social Welfare Officer Rajouri and the Programme officer ICDS Project Rajouri. A selection panel no. POR/ICDS/807-08/2012 dated 06.02.2012 was prepared by reference to the said three member Selection Committee to which the Child Development Project Officer Sunderbani as Member Secretary and the Programme Officer ICDS Project Rajouri appended their signatures on 06.02.2012 whereas the 3rd member i.e. the District Social Welfare Officer Rajouri appended his signature on 01.03.2012. It is in this panel document that the three member Selection Committee has referred to the fact of alleged production of an affidavit of the petitioner to the effect that the petitioner will not work as an Anganwadi Worker. On the basis of placement of the alleged affidavit, the way was paved for the respondent no. 6 to get engagement order no.ICDS/SB/Sel/AWW/417-20/12 dated 07.02.2012 issued by the

respondent no. 4 – the Child Development Project Officer, ICDS Project Sunderbani, on the very next day of declaration of panel on 06.02.2012.

11. The petitioner has called the engagement of the respondent no. 6 as a foul-play at the end of the official respondents concerned engineered by the respondent no. 7 for the purpose of bringing the undue and undeserving engagement of his daughter-in-law i.e. the respondent no. 6 as an Anganwadi Worker for the Anganwadi Centre Ghai Panyas.

12. There is no escape from the fact that for the Selection Committee, the only reason for the engagement of the respondent no. 6, at the cost of and in place of the petitioner as an Anganwadi Worker was the alleged affidavit of the petitioner and in case if the petitioner would not have allegedly volunteered abandonment of her claim then it is she who would have been engaged as an Anganwadi Worker for the Anganwadi Centre Ghai Panyas.

13. Before proceeding further to examine the legitimacy of the course of action at the end of the official respondents in affording the engagement as an Anganwadi Worker in favour of the respondent no. 6, it would be in the fitness of facts to take full notice of the alleged affidavit which proved to be the game-changer for the official respondents vis-à-vis the petitioner and the respondent no. 6. Said affidavit is annexed with the writ petition as Annexure-J and the same

came to be acquired by the petitioner through the mode of RTI. Text of the said affidavit is reproduced as below:-

"AFFIDAVIT"

I, Rajni Devi W/o Dhanvir Singh, Caste –Basith Rajpur, R/o Village –Kangri, Age – 24 years Tehsil Sunder Bani, District Rajouri (J&K) do hereby solemnly affirm and declare as under:-

1. That I am permanent resident of village – Kangri, Mohra-Ghai Upynas Ward No. 8 Tehsil, Sunder Bani District Rajouri (J&K).
2. That I am permanent residence of Jammu & Kashmir State by birth.
3. That I am not interested for the post of Angan Wari Worker, my junior/second panel candidate selected in my place. I will have no objection in this regards.
4. That if second any candidate appointed in the post of Anganwari Worker in my place at Ward no. 8, Ghai Upyanas, Upper Panchayat Halqa – Kangri, Angan Wari Centre I will have no objection.
5. That I shall abide by the rules and regulation by the concerned authority.
6. That further I also hereby give this affidavit, and undertaking that if any complicacy arises later then I am held responsible for the same.
7. That I solemnly declare that paragraphs 1 to 6 of this affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed or kept back.

**sd/-
Deponent**

Verification:-

Verified on 24th day of November 2011 at Sunderbani that the averments made vide this affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed there from.

**sd/-
Deponent**

Identified by :-

Sh. Raj Kumar S/o Sh. Paras Ram
R/o Kangari, Teh. Sunderbani”

This purported affidavit of the petitioner bears verification of 24.11.2011 and attestation by and before the Tehsildar Executive Magistrate 1st Class, Sunderbani of the same date and incidentally it is the respondent no. 7 – Raj Kumar, who had identified the petitioner

before the said Tehsildar Executive Magistrate 1st Class, Sunderbani for the purpose of attestation of the said affidavit.

14. The official respondents 1 to 5 have filed their reply to lend their justification to the engagement of the respondent no. 6 purely on the basis of the alleged affidavit of the petitioner. The respondent no. 6 has also sought to exploit the very same affidavit in her reply submitted in her own name whereas the respondent no. 7, the father-in-law of the respondent no. 6, came forward with his own reply again exploiting the very said affidavit of the petitioner.

15. Thus, it is the alleged affidavit of the petitioner which purportedly determined the reversal of the engagement exercise for the anganwadi worker of the Anganwadi Centre Ghai Panyas and it is in the light of this that this Court has to address the adjudication of this writ petition to adjudge the very legitimacy of the engagement of the respondent no. 6.

16. This Court has no iota of doubt that the petitioner became the victim of foul-play at the end of the respondent no. 7 to which active and passive facilitation was lend by the three member Selection Committee comprising of the officials of the time who served as the Child Development Project Officer ICDS Project Sunderbani, the District Social Welfare Officer Rajouri and the Programme Officer, ICDS Project Rajouri. The basis for this Court to confirm its observation is that the selection panel was prepared on 06.02.2012 in

terms of the panel notice no. POR/ICDS/807-08/2012 dated 06.02.2012, as referred above, and before that it was not in any manner possible for the petitioner, who is a middle pass BPL category woman, to know beforehand in November, 2011 that it is she who was going to be number one candidate whereas the respondent no. 6 and the other applicant were to be behind her. Thus, the coming into picture of an affidavit dated 24.11.2011 allegedly attributed to the petitioner, even if the signatures of the petitioner on the said affidavit are genuine, cannot be said to be an act of the petitioner being conscious of the contents of the affidavit, its import and the effect and the purpose for which it was to be used.

17. The aforementioned panel no. POR/ICDS/807-08/2012 dated 06.02.2012 bears headline as “MERIT LIST OF CANDIDATES WHO HAVE APPLIED FOR THE POST ANGANWADI WORKER IN RESPECT OF ICDS PROJECT SUNDERBANI IN RESPONSE TO THE ADVERTISEMENT NOTICE NO: POR/ICDS/ADV/10/383 DATED 18.06.2010.” Thus what was known only to the three member selection committee in terms of the final position of the candidates was already known to the respondent no. 7 who activated his machination to play deception upon the petitioner as is evident from the very text of the affidavit itself in which the petitioner in November, 2011 is assuming herself to be the number one candidate and tendering her abandonment in favour of the second candidate, which incidentally in

terms of the merit list prepared on 06.02.2012 came to be the respondent no. 6. It is in this context that the act of the respondent no. 7 in identifying the petitioner with respect to the attestation of the alleged affidavit of the petitioner before the Tesildar Executive Magistrate 1st Class, Sunderbani carries significance and is a pointer to the fact that the respondent no. 7 was enjoying very active feed-back of information from the end of the said three member Selection Committee of the officers aforementioned for the purpose of somehow managing the ouster of the petitioner from the game for facilitating the engagement of the respondent no. 6 as Anganwadi Worker for Anganwadi Centre Ghai Panyas.

18. The aforesaid connivance at the end of the members of the Selection Committee and the respondent no. 7 was contrived and corrupt in nature and intent so as to deprive the petitioner of her merit based entitlement and bestow wrongful gain in favour of the respondent no. 6, who as being anganwadi worker came to earn honorarium on the basis of her engagement fraudulently acquired. This Court cannot lend any legitimacy to this fraud and as such the engagement of the respondent no. 6 has to be held and is held to be null and void *ab initio*, and as such, is set aside.

19. **1980 SC 319 State of Punjab Vs Gurdial Singh** has put its finger on the pulse with respect to abuse of power by deep seated meaning bearing observation which is worth reproducing:-

9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat...that all power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power, vitiates the acquisition or other official act."

20. Though the immediate consequence of setting aside of engagement of the respondent no. 6 as anganwadi worker for Anganwadi Centre Ghai Panyas ought to follow with the recovery of the entire amount of honorarium paid all along with effect from the date of engagement of the respondent no. 6 as such, but that would be amounting to punish a person who herself was not privy to the fraud which was orchestrated by the respondent no. 7 and the three member Selection Committee comprising of the officials of the time. Thus, this Court cannot dispense with the call of the situation to bring under scanner the role of the officers of the time along with that of the respondent no. 7 in enacting the fraud and for this directs the Anti-Corruption Bureau Rajouri to undertake an enquiry in the matter for the purpose of ascertaining the culpability, departmental or criminal, if any,

on the part of the official respondents who then constituted the Selection Committee and on the part of the respondent no. 7. In case, if any, *prima facie*, factual basis is found to be there for booking the erring officials and the respondent no. 7, then to take or propose requisite legal course of action against the erring officials/persons involved.

21. The petitioner is held entitled to be engaged as an Anganwadi Worker for Anganwadi Centre Ghai Panyas, Panchayat Kangri Upper, Block Sunderbani and for this requisite order of engagement of the petitioner be issued either by the Director Social Welfare Department, Jammu, or by directing the concerned competent official to issue the same within a period of two months from the date of passing of this judgement. The engagement of the petitioner as Anganwadi Worker shall be deemed to be with retrospective effect on notional basis.

Disposed of accordingly.

(Rahul Bharti)
Judge

Jammu
30.01.2023
Muneesh

Whether the order is reportable: Yes

Whether the order is speaking: Yes