

# Tanveera Begum vs State Of Jk & Ors. on 12 July, 2018

**Author: Ali Mohammad Magrey**

**Bench: Ali Mohammad Magrey**

HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

SWP No.1552/2016 c/w  
SWP No.1576/2016

Date of Order: 12th of July, 2018.

i.	Zahida Akhter	Vs.	State of JK & Ors.
ii.	Tanveera Begum	Vs.	State of JK & Ors.

Coram:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

Appearance:

For the Petitioner(s):	Ms Saima Mehboob, Advocate in SWP No.1552/2016. Mr I. Sofi, Advocate in SWP No.1576/2016.
For the Respondent(s):	Mr Asif Ahmad Bhat, AAG for R-1 to 4.

Mr I. Sofi, Advocate for R-5 in SWP No.1552/2016 Ms Saima Mehboob, Advocate for R-5 in SWP No.1576/2016.

i) Whether approved for reporting in Law Journals etc.:	Yes/No
ii) Whether approved for publication in Press:	Yes/No

01. Since common question of facts as well as law is the subject matter of both these two writ petitions, being SWP Nos. 1552/2016 & 1576/2016, therefore, both shall be determined and decided by a common order.

02. The crux of the petition of the petitioner in SWP No.1552/2016 is that the petitioner, upon competing in the selection process initiated by the official respondents vide advertisement notice dated 10th of December, 2015, got selected and appointed in terms of order bearing No. CDPO/ICDS/Kup/271-74 dated 11th of August, 2016, issued by the Child Development Project Officer, ICDS, Kupwara. Thereafter, feeling aggrieved of the appointment/ selection of the petitioner, the respondent No.5 (petitioner in SWP No.1576/2016) filed a complaint against the said engagement/ selection. On the basis of this complaint, duly endorsed by the Deputy Commissioner, Kupwara, the engagement of petitioner was kept in abeyance by the Child Development Project Officer, ICDS, Kupwara. It is this order which, as stated, constrained the petitioner to file the instant writ petition for the grant of following reliefs in her favour:

"(i). A writ in the nature of certiorari be issued against the respondents and in favour of the petitioner quashing the impugned Order No. CDPO/ICDS/Kup/16/349-52 dated 24th of September, 2016 (Annexure-J), issued by the CDPO, ICDS, Kupwara (Res-4) of keeping in abeyance the appointment order of petitioner.

(ii.) A writ in the nature of mandamus commanding the Respondents to allow the petitioner to perform her duties as Anganwadi Worker on her place of posting occupied before the issuance of the impugned order.

(iii.) A writ in the nature of mandamus be issued commanding the respondents to release the salary of the petitioner."

Likewise, the petitioner in SWP No.1576/2016 has craved the indulgence of this Court in granting her the following reliefs:

"It is accordingly prayed as under that by an appropriate writ, direction or order including one in the nature of writ of certiorari/ mandamus, the impugned selection and appointment of the respondent No.5 including Order of appointment bearing No. CDPO/ICDS/KUP/271- 74 dated 11.8.2016 issued by respondent No.4 in favour of respondent No.5 for the post of Anganwadi Worker for Anganwari Center Gojri/Goori Mohalla Radbugh be declared illegal and be quashed and the respondents be directed to consider and engage the petitioner as anganwadi worker of the said Centre. The respondents be also restrained to allow the respondent No.5 to work on the aforesaid post/ vacancy as Anganwadi worker. Further appropriate action be taken as warranted under law against the respondent No.5 for falsely projecting herself to be resident of Gojri/Goori Mohalla and for filing false affidavit and creating false evidence to have wrong gain out of it and wrong loss to petitioner."

03. Ms Saima Mehboob, the learned counsel for the petitioner in SWP No.1552/2016, submits that the order impugned, whereby the engagement of the petitioner has been kept in abeyance, is unsustainable in the eyes of law as, while issuing the said order, no opportunity of being heard has been afforded to the petitioner by the authority.

04. Per Contra, Mr I. Sofi, the learned counsel for the petitioner in SWP No.1576, submits that since the appointed candidate, i.e. the petitioner in SWP No.1552/2016, was not a resident of the sanctioned/advertised hamlet where the Anganwadi Centre is located, as such, her client (i.e., the petitioner in SWP No.1576/2016), lodged a complaint before the competent authority against the said engagement/ appointment. The learned counsel further submits that upon registering the said complaint, the Deputy Commissioner, Kupwara, ordered an enquiry in the matter and, during the pendency of the said enquiry, the engagement of the petitioner in SWP No.1552/2016 was kept in abeyance in terms of order dated 24th of September, 2016, therefore, there is nothing illegal in the decision so taken by the official respondents.

05. The stand of the official respondents in the matter is that the complaint filed by the petitioner in SWP No.1576/2016 against the engagement/ appointment of petitioner in SWP No.1552/2016 was got verified and considered by the 'Spot Verification Committee' constituted vide No. CDPO/ICDS/Kup/16/333-37 dated 20th of September, 2016, for verification of the residential status of the candidates and the Committee, after conducting spot verification, submitted the factual report in this regard which revealed that both the candidates (that are the respective petitioners in SWP Nos.1552/2016 and 1576/2016) are the residents of the same hamlet, i.e. where the Anganwadi Centre in question is existing. The objections of the petitioner in SWP No. 1576/2016 were considered by the authority on the touchstone of the rules governing the field and, after due consideration, same were found to be meritless and, accordingly, rejected.

06. Heard the learned counsel for the parties, perused the record and considered the matter.

07. After hearing the contentions as raised by the counsel for the parties in both the writ petitions, what comes to the fore is that disputed questions of facts have been agitated by the rival parties regarding the residential status of the selected/ appointed candidate, i.e. the petitioner in SWP No.1552/2016. In such view of the matter, this Court, on disputed questions of facts, is not inclined to go into a fact-finding mission so as to ascertain the veracity of the rival claims and render a finding as to whether the petitioner in SWP No.1552/2016 is or is not a resident of the concerned hamlet in respect of which the selection/ appointment has been made. However, without going into the merits of the case and on the basis of the details submitted by the rival parties, it shall be appropriate to refer the matter to the Deputy Commissioner, Kupwara, who is the competent authority, to adjudicate upon the disputed issues raised by the rival parties.

08. In view of the above factual position emerging in the matter, both these writ petitions are disposed of in the following manner:

I. The Deputy Commissioner, Kupwara, shall conduct an enquiry into the matter with reference to entitlement of the reliefs sought for in both these petitions and find out as to whether the petitioner in SWP No.1552/2018, namely, Zahida Akhter D/o Abdul Rashid Najar R/o Redbugh, Goori Mohalla, Kupwara, Kashmir, selected/ appointed as Anganwadi Worker for Anganwadi Centre Goori Mohalla, Redbugh, is or is not a resident of the said hamlet where the Anganwadi Center in question is sanctioned/located. II. The enquiry, so ordered, be conducted by the Deputy Commissioner, Kupwara, or, if he/she deems fit, have it conducted by any other subordinate Officer not below the rank of Assistant Commissioner, on merits and appropriate orders passed in respect thereto expeditiously, preferably within a period of two months from today.

III. Before proceeding with the enquiry, as directed hereinabove, the concerned authority has to and shall, necessarily, issue notice to the petitioners in both the writ petitions, give them appropriate opportunity of hearing on all aspects of the matter and take their views while conducting the enquiry. IV. In the event, after conclusion of the enquiry, it is found that the petitioner in SWP No.1552/2016, namely, Zahida

Akhter D/o Abdul Rashid Najar R/o Redbugh, Kupwara, Kashmir, is a resident of the hamlet where the Anganwadi Centre in question is sanctioned/ located, the order whereby her engagement/ appointment has been kept in abeyance, shall be reviewed/cancelled. Similarly, in case, if it comes to the fore, on the basis of the findings of the enquiry, that the said Zahida Akhter is not the resident of the hamlet where the Anganwadi Centre in question is sanctioned/ located, the official respondents shall proceed further in the matter by considering the case of the petitioner in SWP No. 1576/2016, namely, Tanveera Begum W/o Manzoor Ahmad Lone R/o Gojri Mohalla, Radbugh, Kupwara, for her appointment/ engagement as Anganwadi Worker for Anganwadi Centre, Goori Mohalla, Redbugh.

09. Writ petitions disposed of as above alongwith all connected MP(s).

10. Registry to place a copy of this order on each file.

(Ali Mohammad Magrey) Judge SRINAGAR July 12th, 2018 "TAHIR"