

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

Case No. LPASW 134/2018

Reserved on : 17.09.2025
Pronounced on : 25.03.2026
Uploaded on : 25.03.2026

Whether the operative part or full
judgment is pronounced

**Fatima Bano, D/O Gh. Mohammad Sheikh,
R/O Nadimarg, Konthpora, Kulgam**

....Petitioner/Appellant

Through:- Mr. S. R. Hussain, Advocate

V/s

**1.State of Jammu and Kashmir Through
Commissioner/Secretary to Government, Social Welfare
Department, Civil Secretariat, Jammu/Srinagar
2. Director, Social Welfare Department, Kashmir/Srinagar
3. CDPO, ICDS Project, Humshalibugh, Qaimoh, Kulgam
4. Shagufta Shaheen, D/O Ghulam Hassan Shah, R/O
Hangal Butch, Nadimarg District Kulgam, Kashmir**

.....Respondent(s)

Through:- Mr. Waseem Gul, GA
Mr. Rizwan-ul-Zaman, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

PER: SINDHU SHARMA-J

1. This Letters Patent Appeal (for short, “LPA”) has been preferred by the appellant against the judgment and order

dated 12.05.2016 passed by the learned Single Judge in writ petition bearing SWP No. 2059/2009, titled “*Shagufia Shaheen vs. State of J&K & Ors.*”

2. The brief facts giving rise to the present appeal are that, in response to an advertisement notice dated 17.02.2005 issued by the Social Welfare Department, applications were invited for engagement of Anganwadi Workers on honorarium basis for various centres, including Anganwadi Centre, Hangal Buch (Nadimarg). Respondent No. 4, namely Ms. Shagufta Shaheen, was selected and engaged as Anganwadi Worker at Anganwadi Centre, Nadimarg, during the first phase of expansion in October 2005. An order to this effect was issued on 03.10.2005, subject to certain terms and conditions.

3. It is stated that in a militancy-related incident in the year 2003, the inhabitants of village Nadimarg, belonging to the minority community, had to migrate to safer places. Consequently, the Anganwadi Centre at Nadimarg was shifted to Kokergund, and a new incumbent came to be engaged in place of respondent No. 4.

4. Aggrieved by the shifting of the Anganwadi Centre, respondent No. 4 approached this Court by filing SWP No. 625/2008, seeking a direction to allow her to discharge her duties as Anganwadi Worker at Anganwadi Centre,

Nadimarg (Hangal Buch), to pay her honorarium from the date of engagement, and to restrain the respondents from disengaging her or shifting the Anganwadi Centre to another village.

5. During the pendency of the aforesaid writ petition, the official respondents issued another advertisement notice dated 18.12.2009 under Phase-II relocation programme for various centres, including Panchayat Halqa Kathpora, Nadimarg. Respondent No. 4 did not apply pursuant to the said notice. The present appellant, Ms. Fatima Bano, being a resident of Kathpora and otherwise meritorious, applied and was selected under the said advertisement.

6. Respondent No. 4, feeling aggrieved, filed SWP No. 2059/2009 challenging the advertisement notice dated 18.12.2009, inter alia, on the ground that she had already been appointed as Anganwadi Worker at Nadimarg vide order dated 03.10.2005 and was continuing on the said post, and that the subsequent advertisement was arbitrary and intended to displace her.

7. The appellant as well as the official respondents filed objections before the learned Single Judge. It was contended that the advertisement dated 18.12.2009 had been issued under the Phase-II relocation programme for Panchayat Halqa Kathpora, Nadimarg, whereas respondent No. 4 was

not a resident of the said Panchayat Halqa and, therefore, was ineligible to apply. It was further submitted that respondent No. 4 had already surrendered her claim under Phase-I engagement after the migration of population from Nadimarg, which fact was also evident from the affidavit sworn by her.

8. In support of her stand, the appellant placed reliance upon the communication dated 29.06.2016 issued by Tehsildar, Yaripora, in response to an RTI application, clarifying that Anganwadi Centre, Kathpora, falls under Revenue Village Kathpora and Panchayat Halqa Kathpora, whereas Hangal Buch falls under Revenue Village Hangal Buch and Panchayat Halqa Hangal Buch, thereby establishing that respondent No. 4 belonged to a different Panchayat Halqa.

9. The learned Single Judge, vide judgment dated 12.05.2016, allowed the writ petition (SWP No. 2059/2009 c SWP No. 625/2008) and held that respondent No. 4 had been duly appointed on 03.10.2005 against the available vacancy at Anganwadi Centre, Nadimarg, and continued on the said post. It was observed that there was no record or official communication to show that her appointment had ever been cancelled, rescinded, or that the Centre itself had been closed.

10. The learned Single Judge further held that no material was produced either by the official respondents or by the appellant to establish that any valid appointment order had been issued in favour of the appellant pursuant to advertisement notice dated 18.12.2009. It was also noted that the plea regarding shifting of the Anganwadi Centre, as raised by the appellant, was not substantiated by any official record. In such circumstances, the learned Single Judge concluded that issuance of another advertisement notice for the same Anganwadi Centre was unjustified and arbitrary. Accordingly, the advertisement notice dated 18.12.2009 was quashed, and prayers (i) and (ii) made in SWP No. 625/2008 were allowed, thereby granting protection to respondent No. 4 to continue as Anganwadi Worker and to receive honorarium.

11. Aggrieved by the judgment dated 12.05.2016, the appellant has preferred the present appeal on the ground that the learned Single Judge failed to appreciate that respondent No. 4 was not a resident of Panchayat Halqa Kathpora and hence, had no right to claim the post advertised under Phase-II. It is contended that the affidavit filed by respondent No. 4 clearly demonstrates that she had surrendered her post after the migration of population, and therefore, she had no subsisting right to claim continuation.

12. It is further submitted that the RTI communication dated 29.06.2016 issued by Tehsildar, Yaripora, establishes beyond doubt that Hangal Buch and Kathpora are distinct revenue villages falling under different Panchayat Halqas. Therefore, respondent No. 4 could not have laid claim to the post meant for residents of Kathpora. The appellant further submits that the learned Single Judge overlooked the fact that she, being a resident of Kathpora and otherwise meritorious, had been duly selected under the Phase-II programme, while respondent No. 4 had not even applied pursuant to the advertisement notice dated 18.12.2009.

13. It is thus, contended that the findings recorded by the learned Single Judge are contrary to the pleadings and documentary evidence on record, resulting in serious prejudice to the appellant. The appellant accordingly, seeks setting aside of the judgment and order dated 12.05.2016 passed by the learned Single Judge.

14. Heard learned counsel for the parties and perused the material on record.

15. The principal questions that arise for consideration in this appeal are:

- (i) Whether respondent No. 4 continued to have a subsisting right over the post of Anganwadi Worker after the migration of inhabitants and consequent relocation of the Centre; and

(ii) Whether the subsequent advertisement dated 18.12.2009 for Panchayat Halqa *Kathpora* was validly issued and whether respondent No. 4, not being a resident of that Halqa, could lay claim to the said post.

16. It is an admitted position that respondent No. 4 was engaged as an Anganwadi Worker at Anganwadi Centre, *Nadimarg (Hangal Buch)*, vide order dated 03.10.2005 under Phase-I expansion. It is equally undisputed that due to the unfortunate migration of minority community inhabitants in 2003, the Centre was rendered non-functional and subsequently relocated.

17. The respondent No. 4 has sworn an affidavit by acknowledging that she had surrendered her claim after migration, as well as the RTI communication dated 29.06.2016 issued by the Tehsildar, Yaripora, unequivocally establishes that *Hangal Buch* and *Kathpora* are two distinct Revenue Villages falling under different Panchayat Halqas.

18. The advertisement dated 18.12.2009 was issued specifically for *Panchayat Halqa Kathpora, Nadimarg*, and eligibility for engagement as Anganwadi Worker was confined to residents of that Halqa. Respondent No. 4, being a resident of *Hangal Buch*, was therefore ineligible to apply under the said advertisement. The appellant, *Ms. Fatima Bano*, being a resident of *Kathpora* and otherwise meritorious, was validly considered and selected.

19. The learned Single Judge appears to have proceeded on the assumption that respondent No. 4's appointment order dated 03.10.2005 continued to subsist in the absence of a formal cancellation order. However, the principle of subsistence of right cannot be applied in abstraction when the very basis of engagement the functioning of the original Centre stood displaced due to relocation and restructuring under a distinct administrative unit.

20. In the instant case, respondent No. 4 neither applied pursuant to the fresh advertisement nor established that the post advertised under Phase-II was identical to her earlier position, and as such, can have no grievance against issuance of fresh advertisement notice. Consequently, her claim to continuation is unsustainable.

21. In view of the foregoing discussion, this Court finds that respondent No. 4's engagement under Phase-I at *Hangal Buch* stood displaced upon relocation of the Centre due to migration of the local populace. The advertisement dated 18.12.2009 under Phase-II relocation programme for *Panchayat Halqa Kathpora* was a valid and independent exercise confined to residents of that Halqa and the learned Single Judge erred in quashing the said advertisement and in holding that respondent No. 4 continued to hold the post in absence of any valid legal basis.

22. Accordingly, the appeal succeeds and is allowed. The judgment and order dated 12.05.2016 passed by the learned Single Judge in *SWP No. 2059/2009* is set aside. It is declared that the appointment of the appellant, *Ms. Fatima Bano*, pursuant to advertisement notice dated 18.12.2009 for *Panchayat Halqa Kathpora, Nadimarg*, is valid and lawful. Respondent No. 4 shall have no subsisting claim over the said post.

23. The instant appeal is, accordingly, disposed of in the aforesaid terms.

**(Shahzad Azeem)
Judge**

**(Sindhu Sharma)
Judge**

**SRINAGAR
25.03.2026
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