

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

Case No. :- SWP No. 855/2018

IA No. 01/2018

Date of pronouncement:- 16.12.2025

Uploaded on:- 22 .12.2025

Sushma Devi

.....Petitioner(s)

Through: Mr. Rahil Raja, Advocate

Vs

State of J&K & Ors.

..... Respondent(s)

Through: Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate
Mr. K Nirmal Kotwal, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT(ORAL)

1. In the instant petition filed under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :-

- I. *Writ, order or direction in the nature of Certiorari, quashing the select list bearing No. Selection/NHM/CMO/D/204-07 dated 28.04.2018 issued by the respondent No. 3 whereby respondent No. 5 was selected in place of the petitioner;*
- II. *Writ order or direction in the nature of Certiorari quashing the order No. 1228 dated 28.04.2018 issued by the respondent No. 3 whereby the objections raised by the respondent No. 5 against the petitioner have been upheld without putting the same to the petitioner;*
- III. *Writ, order or direction in the nature of Mandamus commanding the respondents to select and appoint the petitioner against the post of FMPHW in Block Ghat Sub Centre Seel Tehsil and District Doda;*
- IV. *Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be granted in favour of the petitioners and against the respondents along with cost of the petition."*

2. The background facts as are stated in the petition, on the basis of which, the aforesaid reliefs have been sought are that the petitioner passed her matriculation examination in the year 2005, as also a Diploma in Female Multipurpose Health Worker Course from an Institute recognised by J&K

State Para Medical Council, and that an advertisement notice bearing No. 01 of 2014-15 dated 13.03.2015 came to be issued by respondent 4, wherein inviting applications from eligible candidates for filing of various categories of Para-Medical Posts under National Health Mission in District Doda to be appointed in various existing and newly created Sub-Centres including Sub-Centre Block Ghat and Seel, and that the petitioner being possessed of the eligibility prescribed in the advertisement notice dated 13.03.2015 also applied for selection and appointment for the post in question in Sub-Centre Seel of Block Ghat and that on the date of issuance of the advertisement notice as well as up to the cut-off date fixed therein for filing up of application form, the petitioner continued to be the resident of the village, however, the respondents did not undertake any process of selection immediately thereunder the said advertisement notice till a Corrigendum came to be issued by respondent 4 herein bearing No. NHM/D/62 dated 03.05.2017 published in a newspaper on 05.05.2017, whereunder condition No. 2 in the advertisement notice came to be re-cast by providing that *“the candidate residing the village catered by respective health institution shall be preferred subject to the availability and merit meaning thereby that if a particular health institution is catering one village then the candidates of that very village are to be preferred, but in case a particular health institution is catering two or three villages then the candidates of all those villages to whom the said health institution is catering, are to be preferred for making selection in the said health institution”*, when infact the original Condition No. 2 in the Advertisement Notice provided that *“the preference will be given to the candidates of the medical Block, subject to their availability and merit and in case of non-*

availability of a candidate within the Block, the candidate from the Tehsil will be given preference and if a candidate is not available within the Tehsil, preference shall be given to the candidate of the District”, and that only after issuance of the Corrigendum dated 03.05.2017, the candidates who had applied in pursuance of the advertisement notice No. 01 of 2014-15 dated 13.03.2015 including the petitioner were subjected to a process of selection being a screening and viva-voce test conducted by the respondents w.e.f. 04.09.2017 upto 09.09.2017, whereafter a general merit list of the candidates came to be drawn and issued by respondent 2 on 09.09.2017, wherein the name of the petitioner was shown at serial No. 37 having secured 59.49 points and respondent 5 herein was shown at serial No. 206 having secured 40.88 points, and that based on the said general merit list, a provisional selection list was issued by respondent 4 on 13.11.2017, wherein the petitioner was shown to be figuring at Serial No. 3 selected for the post-in-question in Sub-Centre Seel, whereas the respondent 5 was neither shown to be figuring either in the said selection list or the waiting list dated 13.11.2017 and that the respondent 4, however, issued the final selection list on 28.04.2018, wherein for Sub-Centre Seel, instead of petitioner, respondent 5 was shown to have been selected and appointed in terms of order dated 28.04.2018 issued by respondent 3 on the basis of objections filed against the provisional selection list by respondent 5, in which objections, respondent 5 had contended that the petitioner has been married outside the District and, as such, respondent 5 alone is entitled to be selected and appointed under the preference clause provided in the Corrigendum dated 03.05.2017.

3. The petitioner feeling aggrieved of the selection and appointment of the respondent 5 against the post-in-question has maintained the instant petition, seeking quashing of the selection and appointment list dated 28.04.2018 and has challenged the same on the following grounds:-

- a) *That the impugned select list dated 28.04.2018 whereby the respondent No. 5 has been selected against the post of Female Multi Purpose Health Worker in Sub Centre-Seel of Block Ghat of District Doda pursuant to advertisement notice No. 01 of 2014-15 dated 13.03.2015 is absolutely illegal and arbitrary and deserves to be quashed,*
- b) *That, as already stated in detail hereinabove, a total of 66 candidates had appeared in the interview for selection against 21 posts of FMPHWs available in 21 different Sub-Centres of Block Ghat and out of the said 66 candidates the petitioner was the 8th candidate in the order of merit with an overall merit of 59.54 points whereas the respondent No. 5 was the 46th candidate in the order of merit with an overall merit of 40.88 points. The respondent No. 5, therefore, was way inferior in merit as compared to the petitioner and has been illegally selected in place of the petitioner completely overlooking the merit. The selection of respondent No. 5, as such, is absolutely illegal, arbitrary and in violation of the mandate contained in Articles 14 and 16 of the Constitution.*
- c) *That when the provisional select list was issued by the respondent No. 4, the name of the respondent No. 5 was neither figuring in the select list nor in the waiting list issued along with it, however, at the time of issuance of final select list the name of the petitioner, which was earlier figuring in the provisional select list, has been replaced with the name of the respondent No. 5 based on some objections raised by the respondent No. 5 to the effect that the petitioner has been married outside the district during the pendency of the process of selection and that she being a candidate belonging to same village was entitled to be selected in place of the petitioner by invoking the preference clause. In this regard, it is submitted that although the petitioner got married to one Sh. Harmeet Singh S/o Sh. Pritam Singh R/o Nanak Nagar, Jammu on 21.09.2015, however, petitioner continues to reside at her parental house at Village Arnora, Hamlet Badroon, Tehsil and District Doda despite her marriage and is taking care of her parents in their old age. It may be relevant to state here that parents of the petitioner have four daughters, the eldest two out of whom have since been married and are residing in their matrimonial homes and, thus, it is the petitioner alone who is residing with her parents for taking their care in old age and the husband of the petitioner visits her at her house at Village Amora. The petitioner, however,*

has not even been granted any opportunity of being heard with regard to the aforesaid objections, else the petitioner could have clarified the matter before the respondents. The order impugned bearing No. 1228 dated 28.04.2018 has been issued in gross violation of principles of natural justice and the objections raised by the respondent No. 5 have been upheld without putting the same to the petitioner and the same, therefore cannot sustain.

- d) That the residence of the petitioner at her parental house despite her marriage has also been endorsed by the members of the Village Panchayat through Panchayatnama dated 16.01.2016 wherein it has been clearly mentioned that the petitioner is residing with her parents to take care of them in their old age (father of the petitioner is 64 years of age and mother of the petitioner is 63 years of age. It has also been mentioned in the said Panchayatnama that the father of the petitioner has even given land measuring 01 kanal 07 marlas falling under Khasra No. 684 situated at Village Arnora, Tehsil and District Doda to the petitioner, out of which 05 marlas is covered by residential house and 01 kanal 02 marlas is vacant. The said Panchayatnama was written in the presence of Village Numberdar, Halqa Arnora Shaie, Ward Member, Chowkidar and Sarpanch. The respondents, however, have not associated the petitioner while dealing with the objections raised by respondent No. 5 against the selection of petitioner. The approach adopted by the respondents demonstrates arbitrariness of the highest order and the same has resulted in a severe violation of the rights guaranteed to the petitioner under Articles 14 and 16 of the Constitution.*
- e) That another very important aspect of the matter is that the advertisement notice in question was issued as far back as on 13.03.2015, however, the selection process could not actually commence until 03.05.2017, when a corrigendum to the advertisement notice was issued by the respondents. It has taken almost three years for the respondents to conclude the process of selection. The cut-off date for determining eligibility is the last date fixed for receipt of application form. Law in this regard is well settled and judgments on the point are legion. Assuming for the sake of arguments, though vehemently denying, that the objections raised by the respondent No. 5 are valid yet the eligibility of candidates is to be seen as on the last date fixed for receipt of application forms. The respondents cannot be expected to keep the selection process pending for years together and then to proceed to dislodge the applicant candidates based on developments and changes that taken place during the long pendency attributable to themselves. The respondents have demonstrated total disregard to the settled position of law and total non-application of mind in the matter and have thereby severely prejudiced the petitioner in her legal as well as fundamental rights.*
- f) That since both the petitioner as well as the respondent No. 5 are residents of the same village, as such, there is no question*

of granting any preference to the respondent No. 5 and it is only the inter-se merit of the two which will be determine their entitlement to selection. The selection of respondent No. 5 by grant of preference based on residence is absolutely illegal and arbitrary in as much as a decision as to the actual residence of the petitioner has been taken behind her back. As a matter of fact, no finding as to the non-residence of the petitioner in the village/district concerned has been recorded by the respondent No. 3 and the mere fact that the petitioner has been married to a resident of another district is being read against the petitioner without an actual enquiry as to the residence of the petitioner. Consequently, the respondent No. 5, who is lagging far behind in merit to the petitioner and is placed 38 places below the petitioner in the order of merit amongst the candidates interviewed for Block Ghat, has been selected by compromising the merit. The approach adopted by the respondents is absolutely illegal and arbitrary and has violated with impunity the rights guaranteed to the petitioner under Articles 14 and 16 of the Constitution.”

4. **Objections** to the petition have been filed by respondents.
5. **In the objections filed by respondents 1 to 4**, it is been stated that an enquiry by a Committee was got conducted by the District Development Commissioner in the matter after issuance of the provisional selection list upon receipt of objections to the said provisional selection list, which Committee after conducting said enquiry, verified that the petitioner have had got married on 23.09.2015 to one Sh. Harmeet Singh of Nanak Nagar, Jammu and that the said fact had been concealed by the petitioner and since the petitioner was provisionally selected against the post, the said provisional selection came to be modified upon the report of the enquiry committee for the petitioner had concealed the fact of her marriage outside the District and that the petitioner was not found a resident of the District/Village upon authentication of the Ration Card of her father, namely, Sh. Hemraj, wherein the petitioner did not figure as a member of the family after her marriage and that though the advertisement notice for the post-in-question was published in the year 2015, the process of

selection thereof could not be undertaken on account of pendency of a petition before this Court being SWP No. 1881/2015 titled as, “***Nisah Iqbal and others Vs. State of J&K and others***”, which petition came to be disposed of on 28.11.2016, whereafter, the process of selection was again resumed and that during the said process of selection, the Corrigendum dated 03.05.2017 came to be issued, re-casting the preference clause provided in the advertisement notice at para 2 and that the respondent 5 came to be selected and consequently appointed in terms of the aforesaid enquiry conducted as also in view of the National Health Mission Norms.

6. ***In the objections filed by respondent 5***, the petition is being opposed besides on the aforesaid similar contentions raised by the official respondents, also on the premise that the petitioner was after her marriage never residing in the village in question, but had been residing at Nanak Nagar, Jammu and was not either eligible or entitled to be selected and appointed against the post in question and that the Panchayatnama relied upon by the petitioner as a proof of her residence in the village in question cannot vest her with the right of residence of the village, but in fact the said Panchayanama was manipulated by the petitioner in connivance with the members of the Panchayat and that though the conditions of the initial advertisement followed by the Corrigendum provided for submission of residential and marital status in clear terms, yet the petitioner concealed the same and did not furnish the same truly and correctly and that even the revenue record pertaining to the village inasmuch as the voter list of the village did not incorporate the name of the petitioner as the resident of the village after her marriage.

Heard counsel for the parties and perused the record produced by the counsel for the official respondents.

7. It is an admitted fact that the advertisement notice dated 13.03.2015 in explicit terms prescribed the requisite qualification for the post-in-question as matric with diploma in FMPHW from SMF or any other recognised institute with the maximum age up to 45 years. It is also an admitted fact that the advertisement notice provided for a desirable attribute for the post-in-question for a candidate to be the resident of District Doda and excellent in written and oral communication, besides incorporating various terms and conditions including the one regarding preference which came to be re-cast pursuant to the corrigendum dated 03.05.2017 and stands referred in the preceeding paras.
8. Record reveals that it is not being denied by the petitioner that she got married on 21.09.2015 to one Sh. Harmeet Singh of Nanak Nagar, Jammu, however, what has been contended by her is that after her marriage she resided with her parents in order to look after them in the Village and, as such, continued to be the resident of the Village and, therefore, came to be selected provisionally by the respondents against the post in question, however, except for the Panchayatnama relied upon by the petitioner in support of her this contention, no other documentary proof has been placed on record before this Court, as against the documentary proof placed on record both by the official as well as private respondents consisting of the Ration Card of the father of petitioner, wherein the petitioner has not been shown to be the member of the family of her father after her marriage, and in the voter list of the Village wherein the petitioner has not been shown to be a family member of her father, therefore, in the absence of any credible

proof in rebuttal to such documentary proofs of the respondents being official in nature, the petitioner's claim to be the resident of the village in question cannot said to be sufficient. Besides the enquiry report of the concerned Tehsildar conducted pursuant to the directions of the Deputy Commissioner upon receipt of objections from various candidates qua the selection in question, including the selection of petitioner herein, which enquiry report admittedly has not been challenged by the petitioner, the only inescapable conclusion that can be drawn is that the candidature of petitioner in the provisional selection list was rightly rejected, and respondent No. 5 rightly selected and preferred in terms of the preference clause contained in the advertisement notice dated 13.03.2015 read with the corrigendum dated 03.05.2017.

9. It is also significant to note here that the petitioner has attributed the delay in the process of selection to the official respondents in an attempt to justify the challenge laid thereto in the instant petition, however, as is noticed in the preceding paragraphs, the said delay is stated to have occurred on account of the pendency of the aforementioned SWP before this Court, which came to be decided on 28.11.2016, and even if it is assumed that the delay in the process of selection was not caused by the pendency of the aforesaid petition, yet, in the absence of any specific allegations of mala fides supported by credible and cogent foundational facts, the official respondents cannot be said to have caused the delay in concluding the selection process for extraneous considerations.

10. It is also significant to note here that the record produced by learned counsel for the official respondents, apart from containing the ration card of the petitioner's father, also includes the statements of the Numberdar and

the Chowkidar of the Village, endorsing that the petitioner was married outside the District. The said record also contains a copy of the Aadhaar Card of the petitioner, bearing Aadhaar No. 6235-3380-6243, issued on 15.09.2013, wherein the petitioner's address is shown as that of her husband, namely Sh. Harmeet Singh, as resident of House No. 167/168, Sector 13, near Tubewell, Guru Nanak Nagar, VTC Gandhi Nagar, Post Office Gandhi Nagar, PO Gandhi Nagar, Sub District Jammu, District Jammu, State of Jammu and Kashmir Pin Code 180004 and Mobile No. 84292044376.

11. Viewed thus, for what has been observed, considered and analysed hereinabove, the instant petition fails and is accordingly ***dismissed*** alongwith all connected applications.
12. The record produced by the counsel for the official respondents is returned back in the open Court.

(Javed Iqbal Wani)
Judge

Jammu
16.12.2025
Diksha

Whether the order is speaking: Yes
Whether the order is reportable: Yes/No