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In the J&K Accountability Commission,
Hon'ble Justice R. P. Sethi (Rtd.),
Chairperson.

Complaint No.: S-4/2005

Date of Institution
19-09-2005

Date of Report
15-12-2005

Haji Gh. Rasool Para
S/o. Haji Ab. Khaliq Para,
R/o. Larkpora, Tengmerg,
Teh. & Distt. Baramulla,
Kashmir.

Vs.

Gh. Nabi Bodah,
Director, Social Welfare,
Kashmir.

Complainant

Respondent

Final Report

Accusing the respondent public functionary of being guilty of showing favouritism in favour of one Kounser Akhter D/o. Sh. Gh. Ahmad Beigh R/o. Beerwah, the complainant has filed this complaint for taking action against the respondent and recommending for disengagement of the services of the said Mst. Kounser Akhter.

The allegations made in the complaint disclose that Mst. Kounser Akhter was appointed as Anganwari worker despite there being serious allegations against her. When such serious allegations were brought to the notice of the higher authorities, the services of the said lady were terminated by the respondent. Aggrieved by her order of appointment, Mst. Kulsoom Bano filed a writ petition in the Hon'ble High Court. Mst. Kounser Akhter also is stated to have challenged her order of termination in the Court of Chief Judicial Magistrate, Budgam. In his written

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statement, the respondent justified the termination of Mst. Kounser Akhter on the ground that she had married a person who had already a spouse living. The conduct of both the husband and the wife was stated to be against the service rules. When the complainant had challenged the order of appointment of Mst. Kounser Akhter, the respondent submitted in the High Court of J&K at Srinagar that the services of the said lady had been terminated. On the basis of the statement made in the High Court, the Writ Petition No. 631/04 filed by the daughter of the complainant was disposed of as having become infructuous vide Order dated 18-03-05.

To favour the said Mst. Kounser Akhter, the respondent reappointed the said lady without any direction or seeking permission from any Court of law. By his actions, the respondent prevented the High Court from disposing of Writ Petition No. 631/04 on merits. The reappointment of said lady is alleged to be motivated by extraneous considerations.

In his reply the respondent has admitted to be a public functionary. He has conceded that in view of the allegations made before the Minister, the services of Kounser Akhter were terminated on 27-11-04 on the ground that she had contracted marriage with one Abdul Majid Sheikh, a Rehbar Taleem Teacher who had his earlier wife and children living. The marriage of Kounser Akhter with Abdul Majid is stated to be in violation of Rule 22 Sub-Rule A of 1971 CC Rules. He has also admitted that when the said lady challenged the termination order in the Court of Chief Judicial Magistrate, Budgam, the respondent submitted his written statement pointing out that her services had been terminated. He has also conceded that Kounser Akhter was re-engaged in the Department after her husband had been reinstated. He has denied the allegations regarding favouritism and tried to justify his action. He has admitted the disposal of the Writ Petition of complainant's daughter in the light of his statement but has claimed that Kounser Akhter was re-appointed as per judgment of the High Court on her making a representation. The justification for re-engagement is that upon reinstatement of her husband namely Abdul Majid, the said lady acquired a new right in her favour for being re-appointed.

X It is submitted that the present complaint which is without any substance is required to be dismissed. He has also denied the allegation of the complainant of his demanding a sum of Rs. 30,000/- and has threatened to file a defamation case against him. X

Despite filing the statement of defence, the respondent chose not to appear before the Commission with the result that he was set *ex parte* on 15-11-05.

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I have heard the Complainant and perused the record.

The J&K Accountability Commission Act (hereinafter referred to as the Act) was enacted to provide for the establishment of this Commission to enquire into grievances and allegations against public functionaries and for matters connected therewith. Allegations are defined in Section 2(3) and grievance in Section 2(9) of the Act. Any person guilty of corruption, favouritism, nepotism or lack of integrity actuated in discharge of his functions by personal interest or improper or corrupt motive or who has abused or misused his position to obtain any gain or favour to himself or to any other person or has failed to act in accordance with the norms of integrity, can be dealt with for the commission of allegations. Similarly, if on account of mal-administration, negligence or undue hardship a person sustains injustice or hardship, the public functionary can be proceeded against and appropriate relief granted to the aggrieved.

// In this case the complainant approached the Deputy Director ICDS making a complaint against the appointment of Mst. Kounser Akhter as an Anganwari worker. The said lady was accused of marrying a person who had his wife alive. The Child Development Project Officer in his report dated 19-06-04 submitted to the Deputy Director stated, "it indicates that the contract for another marriage have been executed in contravention of Sub-rule (2) of Rule 22 of Govt. Employees Conduct Rules, 1971". As the respondent failed to take any action in the matter, he was reminded by J&K State Commission for Women to initiate action. Minister of State for Social Welfare J&K also directed the initiation of action against Mst. Kounser Akhter. After avoiding for sufficient long time the respondent vide Order No. 762-DSW/04 dated 27-11-04 disengaged the services of Mst. Kounser Akhter. When Kulsoom Bano, the daughter of the complainant filed a Writ Petition No. 631/04 in the High Court a statement was made on behalf of the respondent that the services of the respondent had been terminated, which resulted in the disposal of the Writ Petition without consideration of merits.

In the suit filed by Kounser Akhter in a Civil Court at Budgam, it was stated on behalf of the respondent that, "no cause of action has accused to the plaintiff as the plaintiff has violated. The Standing Orders and the CS Rules and Classification, Control and Appeal Rules also". The Court did not grant any relief to Mst. Kounser Akhter.

// Despite taking a positive stand the respondent reappointed Mst. Kounser Akhter against the same post from which she was terminated. The only justification submitted is that because the suspension of her husband was revoked, she became entitled to the re-employment. The action of the respondent is apparently illegal and contrary to the earlier

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stand taken by him. The respondent has failed to justify his action. The re-appointment of Mst. Kounser Akhter without intimation to the Court or seeking its permission establishes the allegations of favouritism made against the respondent. The respondent is, therefore held guilty of showing favouritism in re-appointing Mst. Kounser Akhter as Anganwari worker and misleading the Courts by taking contradictory stands. The appointment of Mst. Kounser Akhter as Anganwari worker at Kandoora is held illegal and liable to be quashed. The Director, Social Welfare shall take immediate steps for disengaging the services of Mst. Kounser Akhter, D/o. Sh. Gh. Ahmad Beigh R/o. Beerwah.

The Secretary to Govt., Social Welfare Department being the Competent Authority is directed to initiate disciplinary action against the respondent for awarding of a punishment as specified in the J&K Classification, Control and Appeal Rules. Compliance report of the action taken shall be submitted to this Commission within a period of 90 days as prescribed under Section 21 of the Act. Matter shall again be listed before the Commission on 20-03-06.

The copy of this report shall be furnished to Complainant, the respondent and the competent authority for information and necessary action, to be intimated at the Srinagar office of the Commission.

A copy of this report shall also be published in the next issue of the Govt. Gazette.

As the report has been pronounced at Jammu, the file shall immediately be sent to the Srinagar wing of the Commission for taking immediate action and compliance of the directions.

Jammu:
15-12-2005