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**Jammu and Kashmir**  
**State Vigilance Commission**  
Old Assembly Complex, Srinagar.  
JKPCC Building, 5<sup>th</sup> Floor, Railhead Complex, Jammu.

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**Complaint No.1096/2014**

**Mohd. Ashraf Shah**

**V/S**

**Mohd.Shafi, Naib Tehsildar, & Ors.**

The issue relates to grant of Permanent Resident Certificate (PRC) in favour of one Gulzar Ahmad Bhat, who was shown a resident of Zaigund, Sallar, District Anantnag; and who on the basis of PRC, thus issued, had been engaged as Rehbar-e-Taleem (ReT) teacher in Government Middle School, Sallar. This appointment was challenged by the complainant Mohd. Ashraf Shah before the Hon'ble High Court of Jammu & Kashmir vide SWP No.152/2014 on the plea that Gulzar Ahamd Bhat was not resident of village Sallar. The Hon'ble Court while dismissing the petition observed that an error in issuing certificate of residence could not 'per se' be deemed to be a fraudulent act.

Meanwhile, the complainant filed a complaint before the State Vigilance Commission on 21-01-2015, wherein he alleged the commission of fraud by the Revenue officers while issuing said PRC but concealed the fact that matter had already been adjudicated by the Hon'ble High Court. The State Vigilance Commission, after taking cognizance and getting report from the concerned Revenue officers, advised Deputy Commissioner, Anantnag, vide order dated 21-12-2016, to take necessary action as warranted under rules in respect of

the said PRC issued in favour of Gulzar Ahmad Bhat S/O Mohd. Ibrahim Bhat R/O Sallar, showing him resident of village Sallar instead of village Livar; and also recommended to the Director School Education, Kashmir to take necessary action in respect of engagement of Gulzar Ahmad Bhat as ReT teacher vide its order dated 21-12-2016. This order of the Commission came to be challenged before the Hon'ble High Court and the Hon'ble Court quashed the said order for having been passed in violation of principles of natural justice. The relevant part of the judgement dated 12<sup>th</sup> February 2018, is reproduced as under:-

*"-----In view of the fact that the impugned order has been passed in violation of the principles of natural justice in as much as neither any notice nor any opportunity of hearing was afforded to the petitioner and even the petitioner was not impleaded as party in the proceedings before the State Vigilance Commission, the impugned order can not be sustained in the eyes of law. It is accordingly quashed. The respondent No. 12 is directed to implead the petitioner as party respondent in the proceedings before the State Vigilance Commission and the State Vigilance Commission shall afford an opportunity of hearing to all necessary parties including the petitioner and thereafter shall pass a fresh order assigning the reasons within a period of three months from today. In the result, the impugned order dated 30-12-2016 and 17-02-2017 are also quashed."*

Pursuant to the directions of Hon'ble High Court in SWP No.516/2017 dated 12<sup>th</sup> February 2018, the State Vigilance Commission retrieved the complaint from the record pertaining to Mohd. Ashraf Shah, who applied for impleading Gulzar Ahmad Bhat as respondent and for hearing the case afresh. Accordingly, Gulzar Ahmad Bhat, was impleaded as a respondent and further proceedings were conducted. The parties concerned were given adequate opportunities to present their case and final arguments were heard by

the Commission on 16-07-2018. The case was listed for final orders today.

The Learned Counsel for Mohd. Ashraf Shah, complainant, forcefully contended that the issue of PRC in favour of Gulzar Ahmad Bhat, showing his residence as Sallar was a fraudulent act on the part of Revenue officials and the same had been issued for extraneous considerations which in turn led to the appointment of Gulzar Ahmad Bhat, as ReT teacher, thus, depriving his client of his legitimate right of appointment. The Commission put a query to the Learned Counsel for complainant as to why the material fact about the issue having already been adjudicated by the Hon'ble High Court, had not been disclosed in the complaint filed before the Commission, the Counsel replied that the information with regard to the fraud had surfaced only after the judgement which appears to be an untenable argument. He also produced the orders of Deputy Commissioner, Anantnag, who had ordered formal departmental action against the Revenue officers responsible for the issuance of PRC.

Controverting his contention, the Learned Counsel for respondent, Gulzar Ahmad Bhat, put forth following arguments; (i) No mala fide was attributed to the Revenue officials for grant of PRC because the house of beneficiary Gulzar Ahmad Bhat laid on the border line of the two villages Sallar & Livar. It was only by critical demarcation of area by the revenue officials that the residence of Gulzar Ahmad Bhat was found to be in village Livar and not in Sallar. He also adduced the judgement of Hon'ble High Court dated 15-07-2014, whereby, act 'per se' was not considered fraudulent; (ii) That various other family members of Gulzar Ahmad Bhat have been issued PRC showing Sallar as residence and that fact has neither been challenged by the complainant before the competent authority nor has been found erroneous by the Deputy Commissioner Anantnag;

(iii) That the Hon'ble High Court has already decided the matter and the appeal filed by the complainant in the Division Bench has also been dismissed. Therefore, the complaint deserves to be dismissed.

We have considered the arguments of the Learned Counsels for both the parties and other relevant documents connected with the case. It will be pertinent to reproduce a part of the judgement of the Hon'ble High Court dated 15-07-2014.

*" --- Thus as can be seen from the revenue report it was only by critical demarcation by revenue authorities that it came to be concluded that respondent no. 7 was in fact a resident of Revenue Village Liver and not Revenue Village Sallar. Fact of the matter is that respondent no. 7 appears to be residing at or near the boundary line which demarcates the two revenue villages. Be that as it may, an error in issuing a certificate of residence reflecting the private respondent no. 7 as a resident of revenue village Sallar can not be perse deemed to be a fraudulent Act. Notwithstanding the above, the selection and appointment were made in the year 2009. The petitioner maintained silence for all these years till 2014 and has today tried to question and unsettle the selection process completed in the year 2009. The petition on the face of it is clearly barred by latches. For the reasons mentioned above, the petition is dismissed."*

Clearly, the Hon'ble Court has not found the act of grant of PRC by Revenue officials, as fraud. The Counsel for the complainant has not adduced any evidence to support his contention that the conduct of Revenue officials would fall within the meaning of criminal misconduct under Prevention of Corruption Act. Besides, the fact that other family members of Gulzar Ahmad Bhat, namely; Mohd. Ibrahim (father), Dilshada Akther (sister) and Halima (mother) and others had been issued PRC indicating Sallar as the place of residence, only strengthens the view that proximity of house of Gulzar Ahmad Bhat with the boundary of two revenue villages has led to erroneous issuance of PR certificate. The certificates of family members have

been produced before the Commission by the Learned Counsel and are part of the file.

The short question before the Commission is, whether the act of Revenue officials falls within the scope of J&K PC Act in order to invoke the jurisdiction of this Commission under Section 8(1) of the SVC Act 2011. We are of the opinion, for aforesaid reasons, that the Counsel for complainant has not been able to make out a case much less a prima facie case for indulgence of the Commission in the matter. Consequently, the complaint is dismissed and shall be consigned to the record after due completion.

Announced.

Sd/-  
**Member**

Sd/-  
**Chairperson**

Srinagar  
01-08-2018