
(2020) 08 J&K CK 0083

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 2816, 2817 Of 2020, Writ Petition (C) No. 1160 Of 2020

Mariya Mushtaq And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Citation : (2020) 08 J&K CK 0083

Hon'ble Judges : Ali Mohammad Magrey, J; Sanjay Dhar, J

Bench : Division Bench

Advocate : Salih Pirzada, Mir Suhail

Final Decision : Disposed Off

Judgement

Ali Mohammad Magrey, J

CM No. 2816/2020;

The instant application has been filed by the applicants, seeking extension of time for affixing the stamp papers and the requisite court fee with the main petition.

On the set of facts and the grounds urged, coupled with submission made, the instant application is allowed and the applicants are permitted to make good the deficiency as and when Registry starts working in the regular form. CM is accordingly disposed of.

WP (C) No. 1160/2020; CM No. 2817/2020;

1. By medium of instant petition, the petitioners are seeking quashment of order dated 24th of July, 2020 passed by the Central Administrative Tribunal, Bench Jammu, in O.A. No. 62/286/2020 (Hereinafter called as "CAT Bench") with further quashment of impugned Advertisement Notice bearing No. 01 of 2020 dated 26.06.2020 qua the posts occupied by the petitioners.

Brief Material Facts of case;

2. The petitioners claim to be working in the respondent department as Class IV employees for the last more than three years against clear vacancies, pursuant to the orders of engagement bearing Nos. DAMA/06/Camp office/2017; DAMA/06/Camp office/2017; DAMA/06/Camp office/2017, all dated 28th of November, 2017 and ADMAK-4 of 2017 dated 20th of October, 2017.

3. While continuing as such in the respondent department, it is stated that the Government of Jammu and Kashmir through General Administration Department, issued a circular bearing No. 30-GAD of 2018 dated 20th of July, 2018, whereby all the Heads of the departments have been directed to seek approval of the Cabinet or concurrence of the Finance Department wherever it was required so that erroneous orders, if any, passed be sent to the Administrative Department for regularization of adhoc employees. It is further stated that the respondent department where the petitioners are discharging their duties acted on the circular (supra) and submitted comprehensive details of the petitioners to the Administrative Department for regularization of their services. Inaction on part of the respondents formed a ground for the petitioners to file two writ petition viz. SWP No. 2903/2018 and SWP No. 729/2019 before this Court and on consideration of the said writ petitions, the Single Bench of this Court in terms of orders dated 24th of December, 2018 and 2nd of April, 2019, directed the respondents to maintain the present status of the petitioners and their legitimately earned wages be also released. It is submitted that the Respondent No. 3 has issued the impugned advertisement notice No. 01 of 2020 dated 26th of June, 2020, whereby, Services Selection Board has invited applications for various posts of Class-IV in various departments. This include the respondent-department where the petitioners are continuing against these vacant posts on the basis of directions of this Court. The post advertised vide item No. 3-Culture Department (Archives, Archaeology & Museum), Division Cadre Kashmir, is stated to be held by the petitioners, therefore, the petitioners had challenged the advertisement notice No. 01 of 2020 dated 26th of June, 2020 before CAT Bench, Jammu and the CAT Bench on consideration of the matter and in terms of order impugned dated 27th of July, 2020, declined to stay the advertisement notice (supra), which order has been challenged by medium of the instant writ petition on varied ground with particular reference that the Tribunal has not undertaken any exercise to visualize the disobedience of the direction of this Court asking the respondents to maintain the status of the petitioners. It is further submitted that the Tribunal has embarked on the grounds beyond the scope of case set by the petitioners and has tried to analyse the matter which is already subjudice before this Court involving the question of continuation and regularization of services in aforementioned two writ petitions.

4. Heard learned counsel for the parties, considered the matter and perused the record available on file.

5. Admittedly, the two writ petitions (SWP No. 2903/2018 and SWP No.

729/2019) stated to be pending on the subject seeking continuation and regularization of services, stand transferred to CAT Bench, Jammu by the learned Single Bench in terms of order passed on 14th of August, 2020 and the OA No. 62/286/2020 is also pending decision before the Tribunal on the subject of challenge to the advertisement notice qua the posts held by the petitioners, on the ground of being contrary to law and the policy of Government seeking regularization.

6. Noticing the orders passed by the learned Single Bench of this Court in two writ petitions (SWP No. 2903/2018 and SWP No. 729/2019), it has become necessary to ask the CAT Bench, Jammu to decide all the three matters together, otherwise the right of the petitioners will be prejudiced without proper hearing of the matter and decision on merits. Without going to the merits of the case qua claim of the petitioners seeking continuation and regularization, We propose to dispose of this writ petition by quashing the order of CAT Bench, Jammu, with further direction to consider all the three matters i.e. SWP No. 2903/2018 and SWP No. 729/2019 (now transferred) and pending OA No. 62/286/2020, together.

7. Mr Mir Suhail, learned AAG available in the Court through virtual mode, submits that the petitioners have no right to seek continuation or regularization against the post(s) born on the service of the department, which requires to be filled up on regular basis as their arrangement is adhoc in nature. We have already observed that We are not deciding the matter regarding entitlement of the petitioners on merits but We have only adopted the line of disposal of the writ petition keeping in view the order passed by the Single Bench of this Court in the two writ petitions (now transferred) as also pending OA on the subject, which requires decision on merits. In the event such course is not adopted, the petitioners will suffer/prejudice without hearing of the matter for final decision.

7. In the above background, We dispose of this writ petition in the following manner;

i. Order impugned dated 24th of July, 2020 passed by the CAT Bench, Jammu in OA No. 62/286/2020, is quashed;

ii. CAT Bench, Jammu shall decide all the three matters i.e. SWP No. 2903/2018 and SWP No. 729/2019 (now transferred) and pending OA NO. 62/286/2020 together on merits after hearing the parties and completion of pleadings, preferably within a period two months from the date copy of order is received;

iii. Till a decision is rendered on merits by the CAT Bench, Jammu, in the matter, the parties shall maintain status quo regarding continuation and filling up of advertised posts held by the petitioners; and

iv. The process initiated by the Service Selection Board against the advertised posts held by the petitioners, shall continue, with liberty to the petitioners to apply and compete the process of selection but the final results whereof shall not be declared until further orders from the CAT Bench.

8. Writ petition alongwith connected CM shall stand disposed of on the above terms.

9. Registry to send this order to CAT Bench, Jammu, copy whereof shall also be provided to learned appearing counsel for the parties through e-mail.