
(2009) 01 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous Petition Nos. 281 and 282 Of 2007

Nabla Banoo

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 01-01-2009

Acts Referred:

Civil Service Regulations, 1956 — Regulation 167, 240, 249

Citation : (2009) 3 JKJ 119

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : M.A.Shah, M.M.Khan, M.A.Qayoom, Advocates appearing for the Parties

Judgement

1. Writ petitioner Mst. Nabla Banoo had sought issuance of writ of mandamus commanding the respondents to grant family pension including deathcumretirement gratuity in her favour and also commanding the respondent No.4 to issue a legal heir certificate, if required.
2. It is averred in the writ petition that writ petitioner is the widow of Dr. Abdul Hamid Mir Veterinary Assistant Surgeon.
3. It appears that interim direction came to be passed on 2nd of March, 2007 directing the respondents to process the case of the petitioner for family pension.
4. Rafiqaaapplicant came to know about the interim direction and filed CMP No.281/2007 for impleading her as also Gousia Jan as party respondents in the writ petition, on the grounds that Gousia Jan is the adopted daughter of Dr. Abdul Hamid and she has also filed another CMP No.282/2007 for recalling of the interim direction.
5. Petitioner has admitted in para7(c) of the writ petition, that deceased Abdul

Hamid Mir had contracted second marriage with Mst. Rafiqah but has not arrayed her as party to the writ petition.

6. CMPs came up for consideration on 03.04.2007. Writ petitioner and writ respondents were directed to file objections to the CMPs and official respondents were directed to consider the claim of the relevant persons on the touch stone of law with further direction that disbursement shall defer till further order from the Court.

7. Writ petitioner filed objections on 12th of July, 2007 in CMP No.281/2007 but she has not filed objections to CMP No.282/2007. She resisted the CMP No.281/2007 on the ground that Rafiqah Jan and Gousia Jan are not proper parties.

8. Heard.

9. Mr. Qayoom argued that in terms of Regulation 249 (Note 2 to 249L) of Jammu & Kashmir Civil Service Regulations, contained in Chapter XIXA, the only eldest widow is entitled to the pension.

10. Mr. Shah argued that Regulations 167 and 240 are applicable.

11. The moot question is who is entitled to pension?

12. Keeping in view the averments contained in the writ petition read with CMP in hand and the discussion made hereinabove, Mst. Rafiqah is a necessary party. Accordingly, she is arrayed as a party in the array of the respondents as respondent No.6.

13. The question that whether Mst. Gousia Jan is adopted daughter is a disputed question cannot be gone through in this writ petition. She is at liberty to seek appropriate remedy from the competent court of jurisdiction. But the question is whether she is a necessary party to the lis in hand?

14. Keeping in view of the rules and regulations contained in the Jammu & Kashmir Civil Service Regulations and Pension Rules, I am of the considered view that she is not a necessary party to the lis in hand. Accordingly, CMP No.281/2007 in so far as it relates to arraying Gousia Jan as party respondent is dismissed. However, it shall not prejudice her rights in any way.

15. This court vide order dated 3rd of April, 2007 modified the direction passed by this Court on 2nd of March, 2007. CMP No.282/2007 is disposed of in terms of order dated 3rd of April, 2007. Official respondents are

directed to submit compliance report in terms of the direction passed by this Court on 3rd of April, 2007.

16. CMP Nos. 281 and 282 of 2007 are disposed of accordingly.

OWP No.94/2007:

17. Newly arrayed respondent is directed to file reply within one week. List in the week commencing from 24th of December, 2007.