

(2021) 02 J&K CK 0027
In the Jammu And Kashmir High Court
Case No : Application (swp) No.47 Of 2016

Pushpa Devi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 05-02-2021

Acts Referred:

Citation : (2021) 02 J&K CK 0027

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : R. K. S. Thakur, Vishal Sharma

Final Decision : Allowed

Judgement

The present application has been filed for recalling the order dated 10.12.2015 passed in SWP No. 413/2014 and MP No. 3113/2014 by virtue of

which the petition was dismissed as not pressed on the basis of statement made by the learned counsel for the petitioner who was superseded. It is

stated that after the filing of the writ petition, the counsel for the petitioner told the petitioner as well as her brother that the basis of her claim was

very weak and there were least chances of getting the relief and accordingly the petitioner got her brief back from her counsel in the month of March,

2015. Thereafter, the petitioner engaged the present counsel in the said petition, who filed the vakalatnama on her behalf on 31.03.2015. In support of

this assertion, the petitioner has placed on record the photocopy of the vakalatnama as well as original receipt issued by the Registry of this Court on

31.03.2015. It is further stated in the petition that on 11.03.2016, the clerk of the present counsel verified and checked from the computer section

about the next date of hearing. However, he came to know that the case has

been disposed of on 10.12.2015 and on from verification it transpired that the case was listed on 10.12.2015 and the counsel for the petitioner who filed the writ petition had made a statement that the writ petition be dismissed as not pressed. It is also stated in the petition that when the matter was listed on 10.12.2015 before the Court, the name of newly engaged counsel was not reflected in the cause list and it was also because of that reason new counsel of the petitioner could not appear before the Court on the said date when the earlier counsel made the submission for dismissal of the petition as not pressed. The application is duly supported by the affidavit and the documentary evidence placed on record clearly substantiates the assertion made by the petitioner.

Mr. Vishal Sharma learned ASGI has submitted that he will not file objections and the matter may be considered on merit.

Mr. R. K. S. Thakur, learned counsel appearing for the applicant has reiterated the averments made in the petition.

From the record, it is evident that Mr. O. P. Thakur Advocate (now Senior Advocate) had filed power of attorney on 31.03.2015 and this is also

substantiated from the cause list of 10.12.2015 that the case of the petitioner was listed at Serial No. 8 but the name of Mr. O. P. Thakur has not been

reflected in the cause list. The petitioner has been able to justify her absence of herself as well as her new counsel on the date when the case was

listed on 10.12.2015 and there is nothing on record to disbelieve the petitioner that she had taken her brief back from her earlier counsel. The filing of

power of attorney by Mr. O. P. Thakur on 31.03.2015 gives credence to the assertion of the petitioner so this Court is of the considered view that the

petitioner cannot be penalized for a submission made by the counsel who had superseded by the newly counsel.

In view of the above, this application deserves to be allowed and is, accordingly, allowed. Order dated 10.02.2015 passed by the Court in SWP No.

413/2014 and MP No. 3113/2014 is recalled and the petition is restored to its original. Registry is directed to reflect the name of Mr. R. K. S. Thakur,

Advocate and Mr. Vishal Sharma, ASGI in the cause list and list the writ petition on 01.03.2021.