
(2021) 02 J&K CK 0093

In the Jammu And Kashmir High Court

Case No : CM No. 1473, 1207 Of 2020, Latters Patent Appeal No. 42, 48, 49 Of 2020

Union Territory Of J&K And Others

APPELLANT

Vs

Sumeera Jan And Others

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Citation : (2021) 02 J&K CK 0093

Hon'ble Judges : Sanjay Dhar, J;Tashi Rabstan, J

Bench : Division Bench

Advocate : Shah Amir, Jahangir Iqbal Ganai, Humaria Shafi

Final Decision : Disposed Of

Judgement

1. An Appeal under Clause 12 of the Letters Patent, by Union Territory of J&K, seeking to challenge the Order of the Writ Court dated 30th October 2019, passed in WP(C) No. 3158/2019, has delay of 52 days.
2. Learned counsel for the respondents very fairly states that he has no objection in allowing the Condonation of Delay Application provided the matter is heard on merits at an earliest.
3. The application for the reasons, assigned therein is, allowed and the delay of 52 days in filing the LPA is condoned. CM disposed of.
4. Impugned in this Appeal is Order dated 30th October 2019, passed in WP(C) No.3158/2019 & CM No.6317/2019, whereby Director Health Services, Kashmir, Srinagar (appellant no.5 herein) has been directed to issue formal appointment orders in favour of writ petitioners &" respondents herein, on the grounds tailored therein.
5. With a view to appreciate the grounds of challenge, urged by appellants in

Appeal on hand to assail impugned order, passed by the learned writ Court, it is necessary to briefly notice few relevant facts of the case.

6. J&K Services Selection Board (â??Boardâ? for short), vide Advertisement Notice No.06 of 2015 dated 17.08.2015, advertised 45 posts of Junior

Physiotherapists. Writ petitioners-respondents herein, being eligible, applied and participated in selection process. On completion of selection process,

the Board, vide communication No.SSB/Secy/Sel/2017/13175-81 dated 14th December 2017, conveyed recommendation of selected candidates/writ

petitioners to Principal Secretary to Government, Health and Medical Education Department. On receipt thereof, the Government, vide communication

No.HD/NG/297/2017 dated 16th January 2018, conveyed the approval to Director Health Services, Kashmir, Srinagar, to issue formal appointment

orders in favour of selected candidates against post of Junior Physiotherapist in District Cadre Anantnag, Bandipora, Baramulla, Budgam, Kulgam,

Kupwara, Shopian, Ganderbal.

7. It appears that the Government in terms of communication No.HD/NG/297/2017 dated 14.02.2018, kept issuance of formal appointment orders in

favour of petitioners in abeyance. While the matter was pending consideration of the Government, writ petitioners â?" respondents, dissatisfied with

aforesaid communication, preferred a writ petition, being WP(C) no.3158/2019, in which learned Writ Court passed Order dated 30th October, 2019.

8. Aggrieved by the Writ Court order dated 30th October, 2019, appellants have come up with instant Appeal, challenging it on various grounds,

including that the relief granted by the Writ Court tantamount to granting principal relief. It is urged that impugned order is not an interlocutory order

but a final order, which is not permissible even under the settled position of law and, therefore, impugned order is liable to be set-aside. It is also

contended that learned Writ Court before passing impugned order could have issued notice to the appellants and provided them an opportunity to

project their stand by filing the Reply/Objections. It is further contended that by way of interim order, final relief cannot be granted.

9. Having heard learned counsel for the parties and perused the record, we are of the view that the Order of the learned Writ Court, impugned in this

Appeal, does not meet the ends of justice.

10. It is well settled law that by virtue of interim order, final relief cannot be

granted. This Court has, at a number of occasions, observed that the final relief sought for should not be granted at an interim stage. A similar view has been taken by this Court while rendering a judgment dated 05.09.2016 in LPASW No. 115/2016, titled Satish Kumar Razdan v. State of J&K and another, after making reliance upon the law laid down by the Apex Court in State of U.P. v. Ram Sukhi Devi (2005) 9 SCC 733, Nedungadi Bank Ltd v. Ashmita D. Mehta and others, (2007) 5 SCC 738, and Shiv Shanker v. Board of Directors, U.P.S. R. T. C, 1995 Supp (2) SCC 726. The Supreme Court held that final relief sought for should not be granted at an interim stage. The Supreme Court also said that it had deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case had been made out, without being concerned about the balance of convenience and host of other considerations.

11. We have gone through writ petition (Annexure II to the Appeal). Relief solicited therein is worth to be reproduced hereunder:

a. By issuance of an appropriate writ order or direction in the nature of Certiorari, the impugned communication bearing No.HD/NG/ 297/ 2017 dated 14.02.2018, be quashed.

b. By issuance of an appropriate writ, order or direction in the nature of Mandamus, the respondents be directed to issue formal appointment order in favour of the petitioners as against the post of Junior Physiotherapist.

12. We have also noticed the page 69 & 70 of paper book (i.e. ad interim application) which shows that respondents-writ petitioners seek the grant of interim relief by directing maintaining of status quo with respect to the position of writ petitioners-respondents.

13. In the above backdrop, we, without venturing into the merits of the case, deem it proper to allow the Appeal and set-aside the Order dated 30th

October 2019, passed in WP(C) No. 3158/2019, with a request to the learned Writ Court to decide the writ petition(s)/CM(s) expeditiously after

hearing the parties and pass the orders as may be warranted in the facts and circumstances of the case. Ordered accordingly.

As a corollary thereof, contempt proceedings, if any, initiated on the edifice of above interim order dated 30th October 2019, are dropped and

contempt petition(s) closed.

Appellants â?" writ-respondents shall file their Reply/Objections within ten days from today before the learned Writ Court in opposition to writ petition(s).

14. Disposed of.