

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP (C) No. 1748/2022
CM No. 4867/2022

Shalini Sharma and others

..... Petitioner(s)

Through: Mr. Hakim Sohail, Advocate.

Vs

Union Territory of J and K and others

..... Respondents(s)

Through: Mr. Suraj Singh, GA.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
06.09.2022

CM No. 4867/2022

1. By virtue of the instant petition, the Petitioners seek a direction upon the respondents to undertake their performance appraisal for the purpose of their re-appointment as Chairpersons/Members of the Child Welfare Committees (CWCs) and members of Juvenile Justice Boards in terms of the J&K Juvenile Justice (Care and Protection of Children) Act, 2013 and the rules framed thereunder viz. J&K Juvenile Justice (Care and Protection of Children) Rules, 2014.

2. The factual matrix of the case as projected by the petitioners in the instant petition is that the petitioners are working as Chairpersons/Members of the Child Welfare Committees (CWCs) and members of Juvenile Justice Boards pursuant to their respective appointments in the year 2018 under the Act of 2013 and the Rules of 2014. The petitioners further state that their initial

term of 3 years expired on 12.01.2021 with respect to the members of the Juvenile Justice Board and on 06.02.2021 with respect to the Chairpersons/Members of the Child Welfare Committee. After the expiry of their respective terms, the Respondents instead of undertaking the exercise of performance appraisal for the purpose of their re-appointment in terms of Rules of 2014 in general and Rules 4 and 24 in particular, granted an extension for a period of one year vide Government Order No's. 13-SW-21 dated 27.01.2021 and Order No. 29-MD of 2021 dated 25.03.2021. Upon expiry of the said period of one year, two more extensions were granted to the petitioners vide orders dated 18.01.2022 and 24.06.2022 respectively which extension has expired on 24.08.2022.

3. The petitioners, in the instant writ petition, further contend that the respondents instead of undertaking the exercise of performance appraisal for the purpose of their re-appointment in terms of the rules supra, initiated the process of fresh selection for the posts being manned by the petitioners and for that purpose advertisement notice No's. 01 SC (MV) of 2022 dated 01.08.2022 and 02 SC (MV) of 2022 dated 01.08.2022 were issued by the respondents. The said advertisement notices came to be challenged by the petitioners before the Srinagar wing of this Court in WP(C) No. 1742/2022, wherein this Court vide order dated 12.08.2022 restrained the respondents from proceeding ahead with the process of selection pursuant to the advertisement notices supra, impugned therein.

4. The challenge to the advertisement notices supra was thrown on the ground that in terms of Rules 4 and 24 of the Rules of 2014, the petitioners are eligible for re-appointment up to three consecutive terms of three years each based on the performance appraisal to be made by the selection-cum-oversight committee based on recommendations of the District Child Protection Unit and the Respondents by issuing the fresh advertisement notices under the J&K Juvenile Justice (Care and Protection of Children) Rules, 2021 that too without undertaking the exercise of performance appraisal have denied the vested right of re-appointment to the Petitioners, which right stands protected by the Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019.

5. The petitioners in the instant petition contend that the respondents were duty bound to consider the cases of the petitioners for re-appointment in terms of the Rules of 2014 and more so after the advertisement notices supra were virtually stayed by this Court in the aforementioned petition, there was no impediment for the respondents to consider the case of the petitioners for re-appointment in terms of the aforementioned Rules of 2014.

6. On 23.08.2022 this Court while issuing notice directed Mr. Suraj Singh, learned counsel for the respondents to seek instructions and file response to the instant petition and the petition was directed to be listed today. Response stands filed by the respondents wherein they have mainly defended the advertisement notices challenged by

the petitioners in WP(c) No. 1742/2022, on the ground that with the coming into force the J&K Juvenile Justice (Care and Protection of Children) Rules, 2021, the Rules of 2014 stand repealed, therefore, the petitioners cannot claim re-appointment in terms of the Rules of 2014. However, the respondents have not stated as to why the claim of the petitioners has not been considered by them, more so after the advertisement notice had been virtually stayed by this Court, thus there being no impediment for the respondents to consider the said claim of the petitioners.

7. The Petitioners, on the strength of the aforementioned grounds, have sought an interim relief viz-a-viz their continuation on the posts they are presently holding, the grant of which has been opposed by the learned counsel for the respondents.

8. As has been mentioned above, the advertisement notices issued by the Respondents for making fresh selections against the posts being held by the Petitioners have been stayed by this Court vide order dated 12.08.2022 passed in WP(c) No. 1742/2022, and the issue viz-a-viz effect of the coming into force the Rules of 2021 over the rights accrued to the Petitioners in terms of the old rules is under consideration in the aforementioned writ petition.

9. The appointment of the petitioners and their extension till 24.08.2022 as also their continuation till date has not been denied by the learned counsel for the respondents. It has also not been denied that the respondents have not considered the claim of the petitioners for re-appointment in terms of the rules prevalent at the

time of their initial engagement.

10. Another aspect of the matter that seems to have been ignored by the respondents, which, however, cannot be lost sight of by this Court and a judicial notice is required to be taken in the said aspect, is that the non-consideration of the claim of the petitioners for re-appointment more so in light of the order dated 12.08.2022 passed by this Court staying the process of selection would render the institution set up under the Juvenile Justice (Care and Protection of Children) Act dysfunctional which cannot be allowed for it would jeopardize the very object of the Act i.e. providing of care and protection to children in conflict with law and children in need of care and protection. Pendency of the writ petitions and pending adjudication of the issue regarding the right of re-engagement of the petitioners, the interests of the children in conflict with law and children in need of care and protection cannot be allowed to be jeopardized and need to be protected.

11. Having regard to the nature of controversy involved coupled with the submissions made by the appearing counsels for the parties as well as keeping into account the fallout of refusal of the interim relief at this stage over the object of the Act coupled with the nature of duties performed by the Chairpersons/members, a prima facie case for grant of interim relief is made out. Accordingly, the respondents are directed to maintain status quo with respect to the present position and working of the petitioners, till the issues are finally resolved by the Court in WP(c) No. 1742/2022.

12. Keeping in view the nature of the controversy involved, grounds taken and reliefs sought, it would be appropriate to club both the petitions together for consideration and disposal. Registry to seek appropriate orders from Hon'ble the Chief Justice in this regard.

(Javed Iqbal Wani)
Judge

Jammu
06.09.2022
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