

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

CJ Court

Case: WP(C) No. 592 of 2021

Union Territory of J&K and ors.

...Petitioner(s)/Appellant(s)

Through: Sh. Aseem Sawhney, AAG

v/s

Arshad Bhat and another

.... Respondent(s)

Through: Sh. Abhinav Sharma, Sr. Advocate
with Sh. Abhimanyu Sharma,
Advocate for caveator/R-1

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

01. Heard Sh. Aseem Sawhney, learned AAG for the petitioners and Sh. Abhinav Sharma, senior counsel assisted by Sh. Abhimanyu Sharma, learned counsel for the respondent No. 1.

02. In view of the appearance of Sh. Abhinav Sharma, the caveat is discharged.

03. Dr. Arshad Bhat, respondent No. 1 was working as Consultant Radiology, SMGS, Jammu. He was transferred on 30.12.2019 by way of deputation at GMC, Doda. This transfer order was challenged by him by filing writ petition WP(C) No. 436/2020 which was duly entertained and an interim order was passed on 13.02.2020 staying the transfer order and his relieving order till next date of listing if not implemented till the said date. The aforesaid writ petition was transferred to the Central Administrative Tribunal (CAT).

04. The respondent No. 1 filed an application for the implementation of the above interim order of the High Court before the CAT and against the order passed on the said application, he preferred WP(C) No. 1187/2020. In the said writ petition, an interim order was passed on 20.07.2020 staying the order of Tribunal dated 09.07.2020 and directing the Financial Commissioner, Health and Medical Education Department to ensure that the petitioner performs his duties in SMGS Hospital, Jammu. Subsequently, this writ petition was got dismissed as withdrawn with the result, the above interim order ceased to exist.

05. The respondent No. 1 filed some other applications before the CAT *inter alia* seeking implementation of the interim order of the High Court 13.02.2020 as also of the CAT. In dealing with the said applications, there was a difference of opinion between two Members of the CAT. One was of the view that respondent No. 1 has been relieved on 01.01.2020 and therefore, there is no requirement of the implementation of the interim order of the High Court. The other Member took a different view. So the matter was referred to the third Member. The third Member of the CAT after narrating the facts and noting the arguments, vide order dated 17.02.2021, observed that the withdrawal of the subsequent writ petition on 15.10.2020 does not obliterate the effect of the interim order passed therein on 20.07.2020, which is patently an illegal observation contrary to settled law. The said Member thereafter proceeded to record a finding that the petitioners have failed to establish that the respondent No. 1 was actually relieved on 01.01.2020, accordingly, directed for the implementation of the order of the High Court dated 13.02.2020 agreeing with the opinion as expressed by the Judicial Member.

06. Later, as probably the order of the High Court was not implemented, the Tribunal vide order dated 08.03.2021 has directed not to release the salary of

the Financial Commissioner, Health and Medical Education Department, Government of Jammu and Kashmir till next date of listing i.e. 05.04.2021.

07. Aggrieved by the above order dated 08.03.2021 and the order dated 17.02.2021 passed by the CAT, the petitioners have preferred this writ petition.

08. Many things have been argued on behalf of the parties but the crux of the matter is that the adjudication of the validity of the transfer order impugned in the first writ petition before the High Court which was transferred to the CAT remains and unnecessary time is being spent only in dealing with the miscellaneous applications which practice has been deprecated by the Supreme Court.

09. In the circumstances, we are of the view that the entire controversy would have come to at rest, if the Tribunal would have taken a little precaution to decide the main case rather than dealing with the miscellaneous applications time and again.

10. As far as the submission that the respondent No. 1 is not being paid his salary, we do not find that any order has been passed by the Tribunal on any application of the respondent No. 1 asking for the payment of the salary. The stoppage of salary of the Financial Commissioner in such circumstances, more particularly, when no proceedings have been initiated for contempt of any order and the order is not in any contempt petition, we find that such a direction is *prima facie* not warranted in law.

11. In view of the aforesaid facts and circumstances, we direct Sh. Abhimanyu Sharma, learned counsel for respondent No. 1 to file counter affidavit in this petition within a period of one month. Two weeks thereafter, are allowed to the petitioners to file rejoinder affidavit.

12. List for admission/final disposal on 25.05.2021.

13. In the meantime, it will be open for the respondent No. 1 to press for his application for the payment of the salary before the CAT which will be considered most expeditiously in accordance with law if the writ petition is not decided for any reason and remains pending. We expect that the CAT would do its best to decide the main petition on merits most promptly, if possible on the next date itself which is fixed in the case, as we are told by the parties that they have exchanged their pleadings therein.

14. It is expected that the Tribunal in deciding the main petition would not be influenced and swayed away by any observation or finding recorded by us in this order or any other order passed earlier by the High Court or any interim order of the Tribunal itself.

15. Until further orders of this Court, the direction for the stoppage of the salary of the Financial Commissioner, Health and Medical Education Department, Government of Jammu and Kashmir shall remain in abeyance.

(SINDHU SHARMA)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Jammu
25.03.2021
Rakesh