

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM No. 6881/2022
In SWP No. 1736/2013

Mafooza Bano

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

Through: Mr. Umar Mir, Advocate.

Vs.

State of JK and Ors.

...Respondent(s)

Through: Mr. Sheikh Feroz, Dy. AG.

CORAM:

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

ORDER
02.12.2022

Through the medium of instant application, the petitioner seeks stay of order dated 10.07.2018 passed by CDPO, ICDS, Wavoora, whereunder private respondent namely Rubeena Begum has been allowed to perform her duties as helper in Anganwari Center, Ahangar Mohalla, Putshai as per the Court directions passed in SWP No. 1736/2013.

The facts emerging from the application would reveal that the applicant herein filed SWP No. 1736/2013 before this Court challenging the order of her disengagement dated 13.07.2013 and re-engagement of the private respondent namely Rubeena Begum. This Court while considering the writ petition at its threshold passed an interim order on 13.09.2013 while staying the impugned disengagement order issued against the petitioner also directed the continuation of the petitioner as Anganwari helper till further orders disposing of the application for interim relief.

It is revealed that the writ petition of the petitioner applicant herein got dismissed in default on 11.04.2018 and subsequently restored on 29.06.2022 to its original number and during the intervening period, the

respondents/non-applicants seem to have issued order dated 10.07.2018, stay of which is being sought in the instant application, whereunder the private respondent/non-applicant above named has been allowed to perform duties as Anganwari helper.

As emerged from the record it is not in dispute that this Court while considering the writ petition of the petitioner passed the interim order (supra) staying the disengagement order of the petitioner-applicant herein inasmuch as also directed her continuation as Anganwari helper till further orders. The said order in essence has been a final order, in that, the application for interim relief in terms of the said order stands disposed of. The said order having assumed finality upon disposal of the application for interim relief as also in view of the fact that the same has not been either thrown challenge to or else set aside in any proceedings.

It is also not in dispute that writ petition of the petitioner got dismissed on the aforesaid date and it is also an admitted fact that the said writ petition got restored on 29.06.2022 to its original number and as a corollary of the restoration of writ petition to its original number all orders passed would automatically get revived and restored to the original position. The respondents/non-applicants seemingly have over looked this fundamental aspect and misdirected themselves while issuing order dated 10.07.2018 providing wrongly therein that the said order is issued pursuant to directions passed by the Court.

The said order patently has been issued on misappreciation of facts and in breach of the order dated 13.09.2013 passed by this Court. The fallout of the issuance of the order dated 10.07.2018 by the non-applicant respondents would be rendering the petition of the petitioner infructuous

leaving nothing to be adjudicated upon by the Court upon restoration of the petition of the petitioner.

In the aforesaid background, there seems to be substance in the instant application carving out a case for indulgence as also an interim relief in favour of the applicant.

Mr. Sheikh Feroz, Dy. AG, enters appearance and accepts notice on behalf of official respondents.

Issue notice to respondent no. 6 returnable within two weeks' upon steps within one week.

In the meanwhile, subject to objection and till next date, the operation of impugned order dated 10.07.2018 shall stay, which shall mean that the petitioner shall continue to work as Anganwari helper under and in terms of order passed by this Court on 13.09.2013.

List along with main.

Modification, alteration, vacation on motion.

At this stage, Mr. Sheikh Feroz, Dy. AG, appearing counsel for the official respondents/non-applicants would submit that the petitioner applicant is continuing and has not been replaced. His statement is taken on record.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
02.12.2022
Junaid