

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

WP(C) 1742/2022

c/w

WP(C) No. 1748/202

Reserved on: 15.03.2023

Pronounced on: 28.03.2023

Dr. Khair-Un-Nisa and others  
Shalini Sharma and others

.....Appellant/Petitioner(s)

Through :- Mr. Z.A.Shah Sr. Advocate with  
Mr. Syed Musaib Advocate.  
Mr. F.A.Natnoo Advocate

v/s

UT of Jammu and Kashmir and others

.....Respondent(s)

Through :- Mr. D.C.Raina Advocate General with  
Mr. Sajad Ashraf G.A.  
Mr. A.R.Malik Sr. AAG  
Mr. Mohsin Qadri Sr. AAG  
Mr. Illayas Laway G.A.  
Mr. T.M. Shamsi DSGI  
Mr. Yashraj Singh Bundela Advocate.  
Mr. Suraj Singh G.A.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

**JUDGMENT**

**Sanjeev Kumar- J**

**WP(C) No. 1742/2022**

1. The petitioners, ninety six (96) in number, are either Chairpersons/Members of the Child Welfare Committees ['CWCs'] or Members of Juvenile Justice Boards ['JJBs'] appointed under the different

provisions of Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 [‘the Act of 2013’] and the Rules framed thereunder. The Chairpersons and Members of CWCs and JJBs were appointed initially for a period of three years. The term of JJBs Members expired on 12.01.2021 and so far as Chairpersons/Members of CWCs are concerned, their term came to be an end on 06.02.2021. However, in terms of Government Order No. 13-SW of 2021 dated 27.01.2021, the term of existing members of JJBs and CWCs was extended for a further period of one year or till fresh selection was made as per the prescribed procedure whichever was earlier. The process of selection for appointment of the Members of JJBs and the Chairpersons/Members of CWCs was initiated vide Advertisement Notification No.01 SC (MV) dated 01.08.2022 and Notification No. 02 SC (MV) of 2022 dated 01.08.2022 respectively. All the petitioners herein are aggrieved of and have called in question both the Advertisement Notifications (supra) on multiple grounds. The petitioners have prayed for, *inter alia*, the following reliefs:

(a) A writ of certiorari to quash and set aside the Advertisement Notification No.01 SC (MV) dated 01.08.2022 and Notification No. 02 SC (MV) of 2022 dated 01.08.2022; and,

(b) A writ of mandamus directing the respondents to allow the petitioners to discharge their duties as Chairpersons/Members of CWCs and the Members of JJBs in terms of Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Rules, 2014.

2. From a reading of the entire petition, it becomes crystal clear that the cause of action to approach this Court accrued to the petitioners

primarily on expiry of their initially term of appointment and, more particularly, when the respondents vide Government order dated 27.01.2021 (supra), while extending the term of appointment of the petitioners by one year, also made it clear that the process of selection to constitute JJBs and CWCs under the Juvenile Justice (Care and Welfare) Act, 2015 [‘the Act of 2015’] and Juvenile Justice (Care and Welfare) Model Rules, 2016 [‘the Model Rules of 2016’] shall be undertaken. The petitioners knew fully well that, after expiry of extension of one year or with the fresh selection to the JJBs and CWCs made under the Act of 2015, they were to give way, unless they were selected in the fresh selection process. The petitioners, however, approached this Court by way of instant petition only when the process of selection was set in motion by the respondents by issuing impugned Notifications aforesaid. Not only the petitioners threw challenge to the Advertisement Notifications, but they also sought extension of their tenure by three years more by placing strong reliance on Rule 4 of the Jammu and Kashmir Juvenile Justice (Care and Protection of Children ) Rules, 2014 [‘the Rules of 2014’]. For facility of reference, Rules 4 and 24 of the Rules of 2014 is reproduced hereunder:

***“4. Tenure of the members of the Board;***

- (1) The term of office of the members of the Board shall be three years.*
- (2) A social worker members of the Board shall be eligible for re-appointment up to three consecutive terms based on performance appraisal to be made by Selection-cum- Oversight Committee based on recommendations of the District Child Protection Unit.*
- (3) For the objective performance appraisal of social worker members of the Board, the Government shall develop a standard performance appraisal system.*
- (4) A social worker member may resign, by giving one month’s notice in writing.*

(5) *Any casual vacancy in the Board may be filled by appointment of another person out of the panel prepared by the Selection cum Oversight Committee as per merit.*

(6) *The panel prepared by the Selection cum Oversight Committee at the time of selection of members shall be valid for two years.”*

.....  
**“24. Tenure of the Chairperson and Members of the Committee. - (1)**  
*The Chairperson and Members of the Committee shall hold office for a period of three years.*

(2) *With a view to ensure continuity on completion of the tenure of the Chairperson and Members of the Committee, the Government shall, before the expiry of their respective terms, appoint new Chairperson and members as per recommendation of the Selection-cum-Oversight Committee.*

(3) *The Chairperson and members of the Committee shall be eligible for re-appointment up to three consecutive terms or till they attain the age of 65 years, whichever is earlier.*

(4) *The Chairperson and members may resign at any time by giving one month's notice in writing.*

(5) *Extension of tenure of the Chairperson and Members of the Committee may be recommended by the Selection-cum-Oversight Committee on the basis of their performance appraisal by the District Child Protection Unit.*

(6) *For objective performance appraisal of the Chairpersons and Members of the Committee, the Government shall develop a standard performance appraisal system.*

(7) *Any casual vacancy in the committee may be filled by appointment of another person out of the panel prepared by the Selection-cum-Oversight Committee as per merit.*

(8) *The panel prepared by the Selection-cum-Oversight Committee at the time of selection of the Chairperson and Members shall be valid for two years.”*

3. The petitioners, thus, based their entire claim for continuation on Sub-Rule 2 of Rule 4 and Rule 24 of the Rules of 2014. The writ

petition was filed on 10.08.2022 and was accompanied by an application for interim stay of the Advertisement Notifications (supra). Although, the petitioners in the writ petition made a specific prayer for allowing them to discharge their duties as Chairpersons/Members of CWCs and members of JJBs, yet, they only prayed for interim stay of the Advertisement Notifications (supra), perhaps, on the understanding that, with the stay of the selection process, their continuation in office would be automatically ensured. Be that as it may, the learned Single Judge before, whom the writ petition was listed, considered the grievance of the petitioners and vide an ad-interim *ex parte* order dated 12.08.2022 stayed the process of selection initiated by the respondents in terms of the impugned Advertisement Notifications.

4. On being put on notice, respondents No. 1 to 4 caused their appearance through Mr. Sheikh Ahmad Feroz DyAG and filed their objections on 29.08.2022. A clear stand was taken by the respondents that the appointment of the petitioners was only for a period of three years which in the exigency of situation was extended by one year and, therefore, the petitioners had no right to continue beyond the term of their extension. It was contended that appointment of the petitioners were made in terms of 2013 Act which had ceased to be in force pursuant to the promulgation of the Jammu and Kashmir Reorganization Act, 2019. It was submitted that appointment to the post of Chairperson/Member of CWCs and Member of JJBs was governed by the Act of 2015 and the Model Rules framed thereunder.

5. During pendency of this petition, the National Commission for Protection of Child's Right through its Member Secretary, on request, came to be impleaded as party respondent vide order dated 22.09.2022.

6. While the aforesaid writ petition was pending adjudication, another writ petition i.e WP (C ) No. 1748/2022 came to be filed by the petitioners in WP (C) No. 1742/2022 along with four others in Jammu wing of this Court in which the petitioners prayed for, *inter alia*, the following reliefs.

(a). A writ in the nature of mandamus directing respondents to undertake performance appraisal of the petitioners for the purpose of re-appointment as Chairpersons / Members of the Child Welfare Committees (CWCs) and Members of Juvenile Justice Boards in terms of the Act of 2013;

(b). A writ in the nature of prohibition restraining the respondents from taking any action disadvantageous to the interests of the petitioners and further allow the petitioners to continue and also to release their monthly honorarium regularly.

7. By reading both the aforesaid writ petitions in juxtaposition, it can be clearly seen that the averments made in both the petitions are entirely identical. Even by careful reading of contents of subsequent writ petition filed in Jammu wing of this Court, it is difficult to discern the provocation to file the said writ petition. The only change that we noticed in the subsequent writ petition is that the petitioners in the said writ petition are seeking extension of their term upon their performance appraisal as is required under Sub-rule 2 of Rule 4 and Sub-rule 3 of Rule 24 of Rules of 2014. The reliance upon the aforesaid Rules is also placed in the earlier writ petition.

8. It is pertinent to mention here that in terms of order dated 30.11.2022 passed in PIL 9/2013, both the petitions aforesaid were clubbed with the said PIL.

9. After hearing learned counsel for the parties and having read both the writ petitions between the lines, we clearly find that in the first writ petition filed in Srinagar the petitioners had missed to pray for and persuade the learned Single Judge to protect their continuation in service. The focus of the petitioners in the first petition filed in Srinagar wing of this Court was only to somehow persuade the Court to stop the process of selection undertaken by the respondents by issuing the impugned Notifications. The petitioners were well aware that their first term of appointment had since expired and even the extension of one year granted too had expired when the writ petition was filed. It is in this background and keeping the fact situation in mind, the petitioners specifically prayed for a direction to the respondents to allow them to discharge their duties as Chairpersons/Members of CWCs and Members of JJBS in terms of the Rules of 2014 framed under the Act of 2013. We are, therefore, at a loss to understand as to what prompted the petitioners to file another writ petition, that too, in the Jammu wing of this Court when the first petition on the subject matter was pending adjudication in Srinagar wing of this Court. Obviously, filing of second writ petition was motivated by the consideration that, though the petitioners had succeeded in persuading the Court in Srinagar wing to stay the selection process initiated by the respondents in terms of the impugned Advertisement Notifications, but had either missed to pray for or failed to persuade the

Court to pass an order of status quo, so that their service status could also have been protected. Perhaps the petitioners could have filed an application in the pending case and made an effort to persuade the learned Single Judge to consider granting another interim order of stay to protect their service status in the first petition pending in Srinagar wing of this Court. But as the things will speak for themselves, the petitioners rushed to the Jammu wing to file the second petition though their earlier petitioner was pending in Srinagar wing. It is not in dispute that the Srinagar Wing of this Court was fully functional and Bench with relevant roster was available in Srinagar but had shifted to Jammu in the meanwhile. Obviously, the Jammu wing of this Court was moved to have the second petition listed before the same Bench which had entertained the first petition and passed the interim directions staying the process of selection undertaken by the respondents in terms of the impugned Notifications.

10. It is nothing but a clear case of forum shopping/Bench Hunting, pure and simple and blatant abuse of process of law. In the first place, the second petition on the same cause of action and the same subject matter was not maintainable. The timing of filing of the second petition is also relevant. The first petition was filed on 10.08.2022 in Srinagar wing of this Court and the interim order was passed on 12.08.2022. The second petition was filed in Jammu wing on 22.08.2022 i.e. after 10 days of the grant of interim relief in the earlier petition. The petitioners have not been able to point out any new development that had taken place between 10.08.2022/ 12.08.2022 to 22.08.2022. The petitioners, by their sheer



conduct of indulging in forum shopping, have lost their right to invoke the equitable jurisdiction of this Court. The petitioners have tried to hoodwink this Court by filing second petition on the same cause of action, that too, in the wing other than the one in which the first petition on the same subject matter was pending. An attempt was made to get an additional interim order in different form which the petitioners had failed to obtain in the first petition. The reason for rushing to the Jammu wing to file the second petition was nothing short of forum shopping and, therefore, cannot be countenanced by this Court on any count.

11. The forum shopping is essentially a practice of choosing the Court in which to bring an action from among those Courts that could properly exercise jurisdiction based on a determination of which Court is likely to provide a most favourable outcome. Similarly, 'Bench hunting' refers to petitioners managing to get their cases heard by a particular judge or Court to ensure a favourable order. Recently, Apex Court has come heavily on such unscrupulous elements who are always on a hunt to find a Court or forum of their choice [Refer **Kamini Jaiswal v. Union of India; (2018) 1 SCC 156**]. Such conduct of party is not permitted under law. The principle is based on the maxim that one who seeks equity must do equity. The extraordinary writ jurisdiction conferred upon the Constitutional Court is predominantly an equitable discretionary jurisdiction and the Constitutional Court can refuse to entertain a petition and grant relief prayed for only on the ground that the petitioner has not approached the Court with both the hands clean, notwithstanding the merits of such petition.


12. Unscrupulous litigants cannot be allowed to even think of indulging in forum shopping to get favourable decisions. It is depreciable conduct in the field of law.

13. In the case of **Jagmohan Bahl and another vs State (NCT of Delhi) and another, (2015) 3 SCC (Criminal) 521**, the Hon'ble Supreme Court reiterated the principle that unscrupulous litigants are not to be allowed even to remotely entertain the idea that they can engage in forum-shopping, deprecable conduct in the field of law. Reliance was placed by the Hon'ble Supreme Court of its earlier decision rendered in the case of **M/S. Chetak Construction Ltd vs Om Prakash & Ors, (1998) 4 SCC 577**. What is held by the Hon'ble Supreme Court in para (16) of the judgment reads thus:

*“16. Indeed, no lawyer or litigant can be permitted to brow beat the court or malign the presiding officers with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities of justice would become a casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot, be allowed to "terrorize" or "intimidate" judges with a view to "secure" orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. We certainly, cannot approve of any attempt on the part of any litigant to go "forum shopping". A litigant cannot be permitted `choice' of the `forum' and every attempt at "forum shopping" must be crushed with a heavy hand”.*

**[Emphasis supplied]**

14. It is, thus, trite that it is an abuse of process of the Court and contrary to justice and public policy for a party to re-agitate the same issue which has either been tried earlier or is pending adjudication before other Court or forum. The re-agitation of the issue may or may not be barred by the principle of “*res judicata*” but the same may, in the given circumstances, tantamount to an abuse of process of Court. Similarly, the second proceedings filed for a collateral purpose or for laying a spurious claim may also, in the given set of facts, amount to abuse of process of Court. A Constitution Bench of the Hon’ble Supreme Court in **Devilal Modi vs Sales Tax Officer, Ratlam, AIR 1965 Supreme Court 1150** has explained the principle in the following terms:

  
*“But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226 of the Constitution, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of *res judicata* is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by the appellate authorities; and the other principle is that, no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice”*

15. The aforesaid observations have been made by the Hon’ble Supreme Court in the context of successive petition filed when the earlier proceedings challenging the same subject matter have already attained finality. In the instant case, we are, however, confronted with a situation where one writ petition on a cause of action is pending adjudication in which the Court has already shown indulgence and

granted interim stay, the second petition is filed in another wing of this Court based on the same cause of action only with an attempt to persuade the Court to issue another interim order of stay which the party had failed to obtain in the first petition. Similar situation came to be confronted by the Supreme Court in the case of **Jai Singh vs Union of India, (1997) 1 SCC 1**. The Supreme Court strongly deprecated the practice of pursuing parallel remedies in respect of same subject matter.

16. In the instant case, the petitioners even tried to hoodwink the Court and justify the filing of subsequent petition in another wing by rearranging the sequence of names of petitioners just to give an impression as if they, in the subsequent petition, were different from the one who had filed the earlier petition in Srinagar Wing of this Court. Viewed from any angle, the conduct exhibited by the petitioners is highly deprecable and cannot be approved. Such litigants are not entitled to invoke the extraordinary writ jurisdiction. Both the writ petitions are, therefore, liable to be dismissed on this ground alone without even going to the merits of the controversy.

17. There is, however, another significant aspect which this Court cannot lose sight of. The petitioners before this Court are hundred (100) and as per the record produced by the respondents, eighty five (85) of them have already been selected by the selection committee on the basis of their qualification, experience and personal interaction/interview. It is true that sixty two (62) petitioners had already responded to the Advertisement Notification before they filed WP(C) No. 1742/2022 and rest of them submitted their applications pursuant to the directions passed

by this Court on 14.11.2022 in the connected public interest litigation. Be that as it may, all the 100 petitioners have participated in the selection process, out of which, 85 have already made it to the selection. Although looking to the conduct exhibited by the petitioners in this litigation, we could have directed their ouster from their office, notwithstanding their selection made by the selection committee pursuant to the impugned Notifications, yet, we have decided to take a lenient view in the matter with a hope that the petitioners would take a lesson from here and would never think of indulging in forum shopping or misleading the Court to derive any permanent or temporary unfair advantage.

18. Without commenting much, we dismiss both the petitions, but not without imposing exemplary costs of Rs.1.00 lac, to be deposited by the petitioners in the Registry of this Court within four weeks from today. The dismissal of these petitions shall pave way for the selection committee to finalize the selection. We hope and trust that the Competent Authority shall act in the matter without any further delay and constitute the CWCs and JJBs in accordance with the 2015 Act and the Rules framed thereunder.

**(PUNEET GUPTA)**  
**JUDGE**

**(SANJEEV KUMAR)**  
**JUDGE**

28 .03.2023  
SANJEEV

Whether judgment is reportable: Yes