

(Reserved)

Central Administrative Tribunal

Jammu Bench, Jammu

O.A. No.61/38/2021

Dated: this the 05th day of March, 2021

(Through Video Conferencing)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Hon'ble Mr. Anand Mathur, Member (A)

Tsetan Dolker d/o Tsing Dorjai r/o Theatkang Pa Takmachik, Khalsti,
Leh

..Applicant

Advocate:- (Mr. Rahul Pant Sr. Advocate with Mr. S.S. Somaria)

Versus

1. Union Territory of Jammu and Kashmir, through
Commissioner/Secretary to Government, High Education
Department, Government of Jammu and Kashmir, Civil
Secretariat, Jammu
2. Zahoor Ahmed Bhat s/o Gh. Mohi-ud-Din Bhat r/o Gulshanpora
Dassi Bagtorer Gurez, Kashmir

..Respondents

Advocate:- (Mr. Rajesh Thappa, DAG)

(ORDER)

(Delivered by Hon'ble Mr. Anand Mathur, Member - A)

1. Salient features of the case of applicant Tsetan Dolker, as per, the O.A. are that:

- i. Vide provisional select list dated 15.07.2019, she was provisionally selected as Assistant Professor (Botany);
- ii. Respondent No. 2 filed a writ petition in the Hon'ble High Court challenging the provisional selection of applicant and the order was stayed vide order dated 02.08.2019;
- iii. After considering the objections of respondent No. 2, on recommendation of PSC, applicant was appointed vide appointment order dated 25.10.2019 and she joined P.G. College for Women, Gandhinagar, Jammu. The recommendation of PSC and appointment order dated 25.10.2019 has not been challenged by the respondent No. 2 till date;
- iv. Vide order Dated 17.12.2019 she was transferred to and joined the University of Ladakh and which order dated 17.12.2019 was stayed by the Hon'ble High Court vide order dated 31.12.2019 in contempt application filed by respondent No. 2;
- v. Keeping in view the order dated 31.12.2019 and 02.08.2019 passed by Hon'ble High Court in WP (C) No. 2637/2019 titled Zahoor Ahmad Bhat v/s State, Official respondents issued impugned order dated 21.01.2020 keeping the appointment order of applicant dated 25.10.2019 in abeyance till final outcome of the writ petition;

2. Applicant also seeks the following interim relief:-

"(i) Stay the operation of the Government order bearing No. 57-JK(HE) of 2020 dated 21.01.2020 whereby the appointment of the applicant

against the post of Assistant Professor (Botany) under ST Category in pursuance of Government Order No. 615-HE of 2019 dated 25.10.2019 has been kept in abeyance.

- (ii) Direct the respondent no. 1 to consider the case of the applicant for release of salary from the date of her joining on 25.10.2019 in the Government P.G. College for Women, Gandhi Nagar Jammu till the date she has been discharging her duties as Assistant Professor in Botany in the University of Ladakh;
- (iii) Any other interim relief, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant and against the respondents along with cost of the application."

3. We have heard and considered the arguments of learned counsel for applicant and learned DAG for respondent No. 1 and gone through the material on record. Today, no body appeared on behalf of respondent No. 2 and he is set ex parte.

4. In the present case, relying upon two orders of the Hon'ble High Court of J&K dated 02.08.2019 and 31.12.2019 passed in WP (C) No. 2637/2019 and Contempt application titled Zahoor Ahmad Bhat v/s State, respondent No.1 has kept the appointment order of the applicant dated 25.10.2019 in abeyance till the final outcome of the aforementioned petition.

5. The present O.A. is to be allowed for the reasons that (i) order dated 31.12.2019 has been set aside by the Hon'ble Division Bench of the Hon'ble High Court vide order dated 15.09.2020 in LPA No. 81/2020 titled Tsetan Dolker v/s Zahoor Ahmad Bhat; and (ii) vide order dated 01.03.2021, the petition No. WP (C) No. 2637/2019 titled Zahoor Ahmad Bhat v/s State transferred to this Tribunal and re-numbered as T.A. No. 62/2364/2020 has been dismissed and interim relief order inclusive of interim order dated 02.08.2019 has been vacated.
6. Both the orders which were made the basis for passing the impugned order are non-existence at present. Therefore, the impugned order has no legs to stand upon. Hence impugned order dated No. 57 JK(HE) of 2020 dated 21.01.2020 is quashed and set aside. Respondent No. 1 is directed to release the salary, if due to the applicant under rules. O.A. is accordingly allowed. No costs.

(Anand Mathur)
Member – A

(Rakesh Sagar Jain)
Member - J

Arun