



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 3586/2021
(SWP No. 2659/2012)

Thursday, this the 29th day of July, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Najma Bano, Age 39 years
D/o Late Sheikh Mohammad Hussain
R/o Pashkum
Tehsil and District Kargil
Presently at Eidgah Srinagar

...Applicant

(Mr. Nisar Ahmad, Advocate)

Versus

1. State of Jammu and Kashmir
Through Commissioner Secretary to Govt.
Rural Development Department
Civil Secretariat
Jammu
2. Deputy Commissioner,
Kargil
3. Executive Engineer
Rural Engineering Wing
Kargil
4. Project Director/Chief Executive Officer,
DRDA Kargil
5. Additional Deputy Commissioner
Kargil
6. Assistant Commissioner
Development Kargil

...Respondents

(Mr. Raghu Mehta, Senior CGSC)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant was appointed as Junior Assistant on 16.10.2001 by the Executive Engineer of the Rural Engineering Division, Kargil. Through an order dated 22.01.2003, the District Development Commissioner, Kargil, directed that the Executive Engineer is not competent to appoint anyone and whoever was appointed, shall be discontinued from service. Aggrieved by that, the applicant filed SWP No. 1505/2003 before the Hon'ble High Court of Jammu & Kashmir. The SWP was allowed on 15.05.2008, only on the ground that the order of appointment issued by the Executive Engineer was not withdrawn. It is stated that the applicant has been reinstated into the service.

2. The applicant filed SWP No.2659/2012 before the Hon'ble High Court, with a prayer to direct the respondents to release the benefits for the period between 2003 and 2008, when she was kept out of service. It is stated that once the order dated 22.01.2003 is set aside, she is entitled to all the benefits.



3. The SWP has since been transferred to the Tribunal in view of the reorganisation of the State of Jammu & Kashmir and renumbered as TA No. 3586/2021.

4. Today, we heard Mr. Nisar Ahmad, learned counsel for applicant and Mr. Raghu Mehta, learned Senior CGSC.

5. The applicant felt aggrieved by the order dated 22.01.2003, through which she was discontinued from service. In SWP No.1505/2003, the Hon'ble High Court has passed an order, the operative portion of which reads:

"I do not find any force in the plea of the respondents raised by them in the reply as the petitioner has duly joined in compliance to the order issued by the Executive Engineer and she was allowed to work for about 1 1/2 year. Respondents did not take any step to withdraw the order. In the circumstances, the petition is allowed. The order impugned shall not be given effect in respect of the petitioner."

6. Except that a direction was issued for not enforcing the impugned order against the applicant, no further relief was granted. If the applicant was of the view that she was to be paid the salary for the period from the date of the impugned order, i.e. 22.01.2003, a prayer ought to have been made. The principle of constructive *res judicata* gets attracted and the applicant cannot institute separate set of proceedings as



regards a prayer, which could have been made, or dealt with in the earlier proceedings.

7. We do not find any merit in the T.A. and according, it is dismissed. There shall be no order as to costs.

(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

July 29, 2021
/sunil/jyoti/daya/