

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

Reserved on: 02.03.2024

Pronounced on: 15.03.2024

OWP No.58/2018

GHULAM HASSAN WANI

...PETITIONER(S)

Through: - Mr. Sajad Sarwar, Advocate.

Vs.

STATE OF J&K & OTHERS

...RESPONDENT(S)

Through: - Mr. Jahangir Dar, GA.

CORAM:HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The family of the petitioner comprising of six souls was registered as a migrant family provisionally for three months vide Government Order No.241 of 2004 dated 07.10.2004 after authentication of migration of the petitioner by CID. The petitioner continued to reside along with members of his family in Hotel Heaven Room No.212 at Buchwara Dalgate Srinagar but the relief to which the petitioner and his family members was entitled to as migrants on the analogy of other political migrants was not paid to them. When number of representations submitted by the petitioner to the respondents for redressal of his grievances did not yield any positive results, the petitioner filed a writ petition bearing OWP No.1626/2012 which was disposed of by the Court vide order dated 30.11.2012 by directing the respondents No.3 and 4 therein to accord consideration to the case of the petitioner within a period of two months from the date, copy of the order was made

available to the officers concerned. Thereafter the petitioner filed a contempt petition bearing No.88/2013 for non-compliance of the directions issued by the Court as mentioned above. The contempt petition was disposed of by the Court vide order dated 23.08.2016 with the observation that the respondents have passed a speaking order dated 19.01.2013 and it would be open to the petitioner to challenge the same.

2) The petitioner claims that he was never informed about the order of rejection dated 19.01.2013. It is the said order issued by the respondent No.3 which has been impugned by the petitioner in the present petition and further prayer has been made by the petitioner for directing the respondents to treat the petitioner and his family members as political migrants in terms of Government policy and orders bearing No. Rev (MR) 59 of 1996 dated 25.03.1996 & Rev (MR)/02/2000-III dated 24.03.2011. The petitioner has also prayed for directing the respondents to register the petitioner and his family as political migrants permanently and to change his provisional migrant status.

3) The respondents have filed the response stating therein that there was a blanket ban on fresh registration of migrants, therefore, in order to accord consideration to pending requests of registration of families as Kashmiri migrants, the Administrative Department vide communication dated 29.04.2016 laid down procedure for disposing of these requests or registration by virtue of which it was decided that only those cases shall be considered for registration as migrant where any family or any member of the family had severe threat to their or his/her lives/life,

which is duly substantiated by the verification and recommendation of the District Magistrate. After the receipt of communication from both the quarters, the case of the petitioner was placed before the Screening Committee which met on 29.01.2018 and out of total 205 pending cases, 57 cases including that of the petitioner were approved. The petitioner was approved as migrant on regular basis prospectively vide order dated 02.06.2018. The order dated 02.06.2018 and also the affidavit wherein the petitioner has undertaken to withdraw his case from the High Court, have been placed on record by the respondents along with their response.

4) Learned counsel for the petitioner has submitted that the petitioner was entitled to the benefits available to other migrants right from the date when his family was registered as migrant provisionally and the order dated 29.01.2018 could not have been issued with prospective effect. He has placed reliance upon the judgment of this Court in **Sabir Hussain vs. State of J&K & Ors.** 2007 (1) JKJ 309.

5) Mr. Jahangir Ahmad Dar, learned GA, submitted that the petitioner was required to the assail order dated 02.06.2018 by virtue of which family of the petitioner was held to be entitled to the benefits prospectively and not retrospectively. He further submitted that the petitioner has undertaken to withdraw his case as is evident from the affidavit duly sworn by him, as such the petitioner cannot continue the present writ petition.

6) Learned counsel for the petitioner met the contention of the learned GA by submitting that the aforesaid affidavit is not binding upon the petitioner and the petitioner is entitled to the benefits retrospectively.

7) Heard and perused the record.

8) The perusal of the record reveals that the respondents filed objections on 23.03.2023 but till date the petitioner has not chosen to assail the orders dated 29.01.2018 and 02.06.2018, by virtue of which the petitioner was held entitled to the migrant benefits with prospective effect. The judgment relied upon by learned counsel for the petitioner is not applicable in the present facts and circumstances of the case because in the said case, the petitioner therein had specifically prayed for grant of benefits with retrospective effect, which is not the case in the present petition.

9) In view of above, this Court does not deem it proper to examine the claim of the petitioner in the present petition for grant of migrant's benefits retrospectively and, accordingly, the present petition is **disposed** of leaving the petitioner free to avail appropriate remedy as available under law.

(Rajesh Oswal)
Judge

SRINAGAR

15.03.2024

"Bhat Altaf-Secy"

Whether the judgment is reportable: Yes/No