

Sr. No.

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

LPA No. 10/2024
CM No. 349/2024
CM No. 350/2024
CM No. 750/2024

Reserved on: 13.03.2024.

Pronounced on: 19.03.2024.

Archana Sharma Age 67 years
W/O Sh. Ashwani Sharma
R/O H. No.55, Adarsh Enclave,
Trikuta Nagar, Jammu.

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

Through :- Mr. R. P. Sharma, Advocate
Mr. Pranav Sharma, Advocate.

V/s

1. Sadhana Sharma,
W/O Ah. Anil Sharma
Secretary/Principal of Jagriti Niketan School,
Kachi Chawni, Jammu.

....Respondent(s)

2. State of J&K (Now UT)
Through Principal Secretary to Government
Education Department, Civil Secretariat,
Srinagar.

3. Secretary,
School Education Department,
Jammu.

Through :- Ms. Shivani Jalali, Advocate for R-1
Mr. Raman Sharma, AAG for R-2&3.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

TASHI RABSTAN,J:

1. The instant appeal has been filed against the interlocutory order dated 03.10.2023 passed by learned Single Judge in OWP No. 909/2009, whereby the learned Single Judge has allowed the delay condonation application as well as the substitution application filed in the writ petition by Mrs. Sadhana Sharma, respondent no.1 herein.

2. Facts giving rise to the filing of the appeal is that OWP No. 909/2009 was filed by the writ petitioner M K Sharma questioning the report dated 25.03.2009 of the Principal Secretary, Education Department before the Writ Court without arraying the appellant herein as party; that the said writ petition was admitted on 03.07.2013 without prejudice to the stand taken by the appellant as regards liability of the writ petition and competence of petitioner to file the writ petition on behalf of Jagriti Niketan Jammu; that vide order dated 22.07.2011, the writ petitioner was directed to file Affidavit and produce material within four weeks indicating that he was authorized by the Society to file the writ petition; that vide CMP No.1671/2011, the requisite affidavit was filed by the writ petitioner and on 11.10.2011, the time was granted for filing response to the said affidavit; that respondent No.3 of the writ petition had filed response to the said affidavit on 24.12.2011; that on 23.02.2022, CM No. 1292/2022 (for bringing LR on record) and CM No. 1293/2022 (Condonation of delay application) were filed by Mrs. Sadhana Sharma; that the objections to the application for bringing on record LR were filed by the appellant on 13.10.2022; that on 03.10.2023, CM No. 1293/2023 and CM No. 1292/2023 were allowed. It is this order of 03.10.2023 which is impugned before us.

3. Learned counsel for the appellant submitted that the impugned order is bad in the eye of law as the writ petition itself is not maintainable as the School for which the writ petition has been filed is without recognition after March 2014 and there is no Managing Committee as on date as the term of Managing Committee of which Mrs. Sadhana Sharma claims to be Secretary has expired and the School stands de-affiliated.

4. On going through the impugned order, it does not come to fore that learned Single Judge, while allowing the application seeking bringing on record the legal representative of the deceased petitioner, has taken into consideration the objections filed by the appellant in the writ petition.

5. We, therefore, without going into merits of the controversy involved, deem it appropriate to set-aside the order dated 03.10.2023 so far as it allows the CM No. 1292/2022, which is an application for bringing on record the legal representatives of the deceased petitioner. We make a request to the learned Single Judge to consider the application for bringing on record the legal representatives of the deceased petitioner afresh by taking note of the objections filed by the appellant in the writ petition and pass appropriate orders.

6. With the aforesaid direction, the appeal is accordingly disposed of along with connected applications.

7. No order as to costs.

Jammu:
19.03.2024
Raj Kumar

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge