

(2010) 05 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1364 of 2007 and CMP No. 2432 of 2007

Ab. Hamid Mir and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 2 JKJ 734

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, J.—Mr. Shah appeared and submitted that he has instructions to accept notice on behalf of Respondents. He

further submitted that the objections already filed by him be treated as counter affidavit. His statement is taken on record. Prayer allowed. Learned

Counsel for Petitioner submitted that he does not want to file any rejoinder affidavit. His statement is also taken on record. Prayer allowed. With

the consent of learned Counsel for the parties, matter is taken up for final disposal.

2. Petitioners claim to have been appointed as Class IV employees in the Respondent-department. Further claim of the Petitioners is that some of

the Petitioners who were also working as Daily rated workers have been brought on regular temporary establishment in accordance with the

mandate of rules notified vide SRO 64 of 1994. Petitioners filed three writ petitions viz. SWP Nos. 96/2002, 262/2002 and 96/2002 before the

Court. In the two writ petitions it was prayed that Respondents be directed to pay the withheld salary to the Petitioners for the services which they

have rendered and further prayed that Respondents be directed to allow the Petitioners to continue on the posts they are holding.

3. In SWP No. 96/2002, Petitioners, three in number, prayed for issuance of writ of Mandamus to command the Respondents to continue them as

Helpers (Class IV) employees and pay them the salary including the earned salary which has been withheld for last some months. It was further

prayed that by issuance of writ of Mandamus Respondents be directed to treat the Petitioners as Class IV employees having been brought on

regular temporary establishment as per the provisions of SRO 64 of 1994 for having completed the requisite period of seven years as daily

wagers.

4. These three writ petitions were dismissed as withdrawn along with all connected CMPs at the request of learned Counsel for Petitioners on

05.09.2007. However, liberty was given to Petitioners therein to file a fresh petition as and when need arises. It was observed that interim

direction if any shall also stand vacated.

5. Respondent (Chief Engineer) vide order dated 27.09.2007 ordered for termination of the Petitioners in all the three writ petitions with immediate

effect, same is reproduced as under:

ORDER

Pursuant to orders of Hon'ble High Court, J&K Srinagar passed on SWP No. 96, SWP No. 262/2002 and SWP No. 263/2002 on 5.09.2007,

the services of the Petitioners of all the three writ petitions are hereby terminated with immediate effect.

6. Feeling aggrieved of the order, this writ petition is filed praying therein for issuance of writ of Certiorari to quash the aforementioned order. It is

further prayed that by issuance of writ of Mandamus, Respondents be directed to allow the Petitioners to continue to discharge their duties against

their respective posts. The premise for filing of the writ petition is that Petitioners have been validly appointed against Class IV posts and they are

discharging their duties. It is also pleaded that their salary was not paid for some period of time, that is how earlier writ petitions were filed. It is

further pleaded that when the salary was released, Petitioners withdrew the writ petitions as their grievance were redressed by the Respondent

authorities. It is further pleaded that the impugned order is illegal and is also

void abinito because before passing the same Petitioners have not been heard.

7. Respondents have filed the objections wherein it is specifically pleaded that Petitioner No. 14 has been adjusted in some other department and

is no more borne on the establishment of department in any capacity. It is further pleaded that Petitioner No. 25 has passed away and Petitioner

No. 43 has also left the services of the Respondent department. The case of the Respondent is that Petitioner Nos. 44 to 60 have never worked

as daily wagers in the department and no record is available about their engagement as daily wagers or about the regularization of their services. It

is also pleaded that the monthly wages have been paid to them in compliance with the Hon'ble Court orders issued from time to time in their

favour. It is also pleaded that when it is surfaced that some fake appointments have been made in the Respondent department, a case FIR No.

39/2000 under Sections 409, 420, 467, 468, 471 and 120-B RPC was registered in Police Station Pulwama. It is also pleaded that Police seized

the service books of 279 employees and besides this, three pay Acquaintance Rolls were also seized. It is also pleaded that an enquiry committee

was constituted comprising of Superintending Engineer, Hydraulic Circle, Shopian, Technical Officer to Chief Engineer, Irrigation and Flood

Control Department and Executive Engineer, Irrigation Division, Pulwama and also Chief Accounts Officer in terms of Order dated 28.01.2002. It

is also pleaded that enquiry committee held its meeting on 07.02.2002 at Irrigation Division, Pulwama. It is also the case of the Respondents that in

response to communication No. PID/Estt/94 dated 29.02.2002 the police concerned released, in original, the service books of 101 employees

whereas it retained 178 service books. Service books were released as appointments of such employees were probably found to be genuine. It is

also pleaded that the Incharge Establishment Section expressed his inability to submit all the records in respect of 68 employees including that of

the Petitioners on the ground that same were not handed over to him by the then Establishment Clerk and were not available in the office. It is also

pleaded that Petitioners were time and again asked to produce their original appointment/regularization orders, which they failed to submit. It is

also pleaded that neither Muster Sheets nor regularization orders of the

Petitioners are available in the division and for this reason a stand was taken that the regularization of the services of the Petitioners are based on fake orders so they are neither entitled for continuation of service nor for any salary.

8. Heard learned Counsel for the parties. Considered the matter.

9. Learned Counsel for the parties argued in tune with their respective pleadings.

10. Learned Counsel for Petitioners submitted that Petitioners have been appointed in pursuance to a lawful selection process. Learned Counsel

further submitted that Petitioners were continued in service but their salary was withheld and they were constrained to approach this Court by filing

forementioned three writ petitions. Learned Counsel further submitted that the grievances of the Petitioners were redressed and their salary was

released and they accordingly sought permission to withdraw the writ petitions which permission was granted by the Court. Learned Counsel also

referred to and relied upon *Basudeo Tiwary Vs. Sido Kanhu University and Others*, wherein the Hon'ble Supreme Court ruled that where it is

alleged that the appointment is made against the rules/Act, then an enquiry is required to be conducted and authority has to arrive at a conclusion

and thereafter decision can be taken. Unless an enquiry is conducted in which the affected parties are heard, the order passed against the

employees cannot be said to be legal order. Learned Counsel also referred to and relied upon *Inderpreet Singh Kahlon and Others Vs. State of*

Punjab and Others, wherein Hon'ble Supreme Court has held that when it is alleged that the appointment is void, the foundational facts are to be

established and then alone order of termination can be passed. Learned Counsel for Petitioners submitted that, it is on this basis, order impugned is

illegal and deserves to be quashed.

11. Mr. Shah, learned Counsel for Respondents, while referring to the pleadings made in the objections, submitted that the appointment orders of

the Petitioners are fake and they have no right in law to file this petition and pray for issuance of writ of Certiorari and Mandamus. Learned

Counsel also submitted that Petitioners failed to produce the original documents which would mean that they have entered into department on the

strength of fake orders and their appointment is fraudulent. Learned counsel further submitted that an enquiry committee has been constituted to

look into the matter but final decision has not been taken by the said enquiry committee.

12. An appointment to the Government services has to be made in accordance with procedure established by law which procedure has to satisfy

the principles underlying Articles 14 and 16 of the Constitution of India. Every public post is to be filled up by considering all eligible candidates, on

the basis of their merit and suitability, in accordance with the mandate of Rules governing such services. If on proper enquiry, it is proved that a

person has gained entry into Government service on the strength of fake order such a person does not get clothed with any right in law. A person

who enters into Government service on the strength of fake/fraudulent order is not entitled to get even the salary notwithstanding this fact he might

have rendered service for some period of time. It is settled principles of law that fraud vitiates everything and even order of the Court is vitiated on

the ground of fraud. A person who, as already stated has entered into service through fraudulent means will not be entitled to any service benefits

as that will tantamount to placing premium on the fraud committed by him.

13. In the present case the termination order has been passed not on the ground that Petitioners have entered into services on fake or fraudulent

appointment/regularization order but termination order refers only to the dismissal of three writ petitions. Nothing is said in the impugned order as

to what were the reliefs sought for in the writ petitions and what were the interim orders passed by the Court before passing of the termination

order. No notice of hearing has been issued to the Petitioners, the impugned order suffers from lack of application of mind and is also rendered

void because of non-compliance with principles of natural justice. The impugned order is thus rendered illegal.

14. The stand taken by the Respondents in the objections, however, reveal that a criminal case has been registered on the allegations of fake

appointments having been made. An enquiry committee has also been constituted by the Respondents, before terminating the services of the

Petitioners, the authority (Chief Engineer) was under an obligation to consider the case of Petitioners individually on its own merits and after hearing

the individual Petitioners he could pass the order. Neither the cases of Petitioners have been individually considered nor notice has been issued to

any one of them.

15. The stand taken by the Respondents in their objections is that the service books of 101 Petitioners were returned by the Police on the premise

that they were probably found to be genuine appointees. It is not said as to who are those 101 employees. May be some of the Petitioners would

fall in the category of those 101 candidates. The Respondent (Chief Engineer), in fact, has clubbed unequals and equals which is not mandate of

Articles of 14 and 16 of the Constitution. It is only on an enquiry it could be said that all the Petitioners have entered into service on the basis of

fake orders. The enquiry having not been held to arrive at a conclusion, the impugned order is rendered illegal on this count also. The enquiry

committee constituted in 2002 has not submitted any report till date.

For the above stated reasons, this petition is disposed of as under:

By issuance of writ of Certiorari, impugned Order No. PS/3680-82/07 dated 27.09.2007 is quashed. By issuance of writ of Mandamus,

Respondents are directed to initiate enquiry against the Petitioners in accordance with mandate of law and follow the settled norms. While

conducting such enquiry, Respondents will provide an opportunity of hearing to the Petitioners. It is further provided that Respondents to initiate

and conclude the enquiry within a period of one month from the date copy of this order is served upon them. In case on the conclusion of the

enquiry, it is found that Petitioners have entered into services on the strength of fake orders, then they will not be entitled to any service benefit

which includes salary as well. It is further provided that Petitioners will appear before the Chief Engineer on 10.05.2010 who will either conduct

the enquiry himself or will appoint an enquiry officer. Petitioners will render their assistance to the enquiry officer for conducting the enquiry. In

case, despite Petitioners rendering assistance to the enquiry officer, enquiry is not completed within one month from today, Petitioners will be

entitled to get salary after one month from today, till such time enquiry is concluded, and same will be at the risk and peril of concerned authority

who will be personally liable to reimburse the State for the loss caused.

Disposed of along with all CMP(s).