
(1997) 07 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Petition No. 1348 of 1989

Abdul Hamid Fazili

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Civil Services Regulations, 1956 — Article 128
Constitution of India, 1950 — Article 14, 31
Constitution of Jammu and Kashmir, 1956 — Section 126

Citation : (1997) KashLJ 499 : (1998) SriLJ 86

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : S.Manzoor, A.M.Fazili, Advocates appearing for the Parties

Judgement

1. Petitioner, Professor of Pharmacology in Government Medical College, Srinagar proceeded on one year's leave without allowances which was, sanctioned in his favour vide Government Order No. 625HME of 1985 dated 2081985. He availed of this leave from 991985 but failed to report on duty on the expiry of leave on 991986 and over stayed for two more years in Libya where he had taken up a foreign assignment. He subsequently returned and joined at Srinagar on 2271988. He was allowed to do so by the Principal Government Medical College, Srinagar by an order dated 191988 read with Government order No. 972HME of 1988 dated 15111988. At this stage, he again applied for special leave without allowances upto 30th July, 1989 and without waiting for its sanction proceeded to Libya. While he was there State respondent put him on show cause notice on 1551989 changing him with failure resume duties and for staying away unauthorisedly. He was asked to reply within twenty

one day and was informed that his services will be terminated otherwise. He asserts that he replied to this notice and explained the circumstances

in which he had sought extension of his special leave. According to him he was asked by the Principal to work under his junior one Dr. Vimla Dhar

which had embarrassed him and turned him to Libya again. He also claims that he had informed the Competent Authority that he was willing to

resume his duties if he was granted reasonable time to pack up at Libya. But while all this was on, State respondent passed order No. 666HME of

1989 dated 22/8/1989 terminating his services for unauthorised absence.

2. Petitioner has filed this petition to assail the action primarily on the ground that he was removed from service in disregard of the safeguards and

guarantees provided under Section 126 of the State Constitution read with 33 of the J and K Civil Services (Classification, Control and Appeal)

Rules of 1956. In this regard, it is submitted that he was neither served any charge sheet nor given any statement of allegations, not to speak of

holding any enquiry against him or affording him a reasonable opportunity of being heard. It is also contended by him that since his request for

extension in his special leave upto 30/7/1989 was all though under the consideration of the Government, he bonafide believed that his leave was

sanctioned. As the respondents had failed to communicate the outcome of his leave request and had not rejected it by any formal order, he was

made to believe that all was well and that is why he failed to resume the duty. Petitioner supports all this by drawing analogy from identical cases

where Doctors who had taken foreign assignments were allowed to rejoin. He also places reliance on a number of judgments of his court including

1990 KLJ 1992 SLJ 143 wherein the orders of termination of writ petitioners were quashed in similar circumstances.

3. Petitioner has filed this petition somewhere in 1989 wherein respondents were put on notice around same time. At one stage, Mr. Mansotra

Government Advocate represented them but later they seem to have gone unrepresented. They have not filed any reply to resist the petition. No

one appeared for them today also. The averments made by the writ petitioner resultantly go un rebutted and would have to be accepted on their

face value.

4. It all comes to whether or not petitioner was removed from service by

satisfying the constitutional guarantees contained in Section 126(2) of the State Constitution and the statutory requirements of Rule 33 of the Classification, Control and Appeal Rules, 1956.

5. It is elementary that a member of the State Service or a person holding the post under the State was removable from service only on being informed of the charges against him and after an enquiry for which procedure was provided in Rule 33, in tune with the Principles of natural justice.

If he is approved in disregard of this, the action would straight way be violative of the Constitutional mandate and the Rules.

6. It is nobody's case that any charge was served on the petitioner for his alleged unauthorised absence in the present case. He was admittedly put

on notice to which he replied. But that is all about it and there is nothing to show that any further action was taken by them to serve upon him any

statement of allegations or to convey him some definite charges for being unauthorisedly absent, not to speak of any enquiry into such charges. It all

seems to have been done on paper without confronting him with the charge and proceeding against him in accordance with the procedure

established by law.

7. it is true that unauthorised absence of an employee could result in loss of his employment under Article 128 of the Civil Service Regulations, but

that would not be a justification for giving a go by to the constitutional guarantees and the procedure established by law. After all an employee

acquires and possesses certain rights visavis the post held by him and he could be deprived of these only in accordance with the procedure

established by law. If he is removed otherwise, the action becomes arbitrary and would violate guarantees contained in Article 14 and 16 of the

Constitution.

8. Applying all this to present case, it comes out that the State respondent had only put petitioner on notice asking him to resume his duty.

Petitioner replied to this notice and allegedly explained his position. It also emerges that his request for extension in leave was under consideration

of the competent Authority. That being so, he could be well justified in believing that the Authority had impliedly consented to his over stay. Or else

his application should have been rejected along with the explanation tendered by him. But that was not to be and it becomes difficult to sustain the

action.

9. Viewed thus and taking in regard the State Respondent had failed to reply the writ petition and the resist the petitioners' case, I am felt with no

option but to hold that the Government Order No. 666HME of 1989 dated 2281989 terminating the services for petitioner was passed arbitrarily

in disregard of the procedure established by law and principles of natural justice. The order is accordingly quashed.