

(2019) 04 J&K CK 0072

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1142 Of 2017

Abdul Rashid Bhat

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 126, 126(2), 126(2)(b)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 149, 152, 307, 336, 427
Jammu And Kashmir Government Employees (Conduct) Rules, 1971 — Rule 14, 20

Citation : (2019) 04 J&K CK 0072

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Mian Tufail, B.A. Dar

Final Decision : Dismissed

Judgement

1. In the instant petition, petitioner seeks the following reliefs:-

" I. By issuance of a writ of certiorari or any other appropriate writ, order or direction, the impugned order No. DG F&ES-569 of 2018 dated 18.10.2016 issued by respondent

II. By issuance of a writ of mandamus or any other appropriate writ, order or direction, the respondents be directed to take back the petitioner in service on the post of Leading Fireman, Fire and Emergency Services Central Store, Srinagar and to give him all the consequential benefits as envisaged by law."

Brief facts:-

2. Petitioner, while working as Leading Fireman in the Fire and Emergency Services Department, came to be dismissed from service by respondent No. 2 in terms of order No. DG F&ES 569 of 2016 dated 18.10.2016, in exercise of the powers purportedly vested in him under clause (b) of sub-section (2) of Section 126 of the Constitution of J&K. The said order was challenged by the petitioner

before the Hon'ble Court through the medium of SWP No. 2212/2016.

3. It is stated that on 28.12.2016, when the writ petition came up for consideration before the Hon'ble Court, it was disposed of with the consensus of learned counsel for the parties, with the direction that in case the petitioner files an appeal within a period of one week before the appellate authority, the appellate authority shall decide the appeal by a speaking order within a period of six weeks.

4. It is stated that pursuant to the order of the Hon'ble Court dated 28.12.2016, the petitioner filed an appeal against the order of his dismissal dated 18.10.2016, before the respondent No. 1, who referred the matter to the Law Department for its opinion and the Law Department in turn returned the file back to respondent No. 1 with the opinion that "..... the order passed would thus be open to challenge only before the Court of competent jurisdiction. The department is advised to pass speaking order in compliance to the Judgment of the Hon'ble High Court as per aforesaid legal position.

5. It is stated that in view of opinion tendered by the Law Department, the appeal filed by the petitioner came to be rejected by respondent No. 1, vide Government order No. 585-Home of 2017 dated 29.05.2017, on the ground that there is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the competent authority while exercising powers under Section 126 of the Constitution of J&K.

6. It is stated that after dismissal of the appeal filed by the petitioner, he is approaching the Hon'ble Court through the medium of instant writ petition for seeking quashment of the impugned order dated 18.10.2016. It is stated that before narrating the grounds of challenge certain facts are relevant for the proper adjudication of the case are narrated as under:-

i. That while the petitioner was on duty with Deputy Director, F&ES, Central Store, Batamaloo, an FIR No. 119/2016 was registered by Police Station, Sumbal on 26.07.2016, whereunder certain allegations were levelled besides others, against the petitioner as well.

ii. That as stated above, the petitioner was on duty on 26.07.2016, when the alleged occurrence had taken place. His name was however, mentioned in the FIR No. 199/2016, on extraneous and malafide considerations. It is stated that the allegations levelled against the petitioner in the FIR are totally false and baseless.

iii. That the petitioner annexed a copy of communication bearing No. SDM/S/2016/1220 dated 02.08.2016, addressed by Sub Divisional Magistrate, Sumbal to District Magistrate, Bandipora, which also shows that during the unprecedented situation in the valley during the month of July, 2016, the situation in his sub-division remained by and large normal, with few incidents of stone pelting in Hajin, Saderkoot and Shilvath and one small incident of stone

pelting in Sumbal. The letter further reveals that the incident had taken place in Sumbal because of opening of few shops near the Sumbal Hospital and the incident occurred because of some internal rivalry/problems between the shopkeepers.

iv. That the petitioner attended his duties in the month of August, 2016 as well, regularly and punctually is also clear from the attendance register of the said month. It is stated that the petitioner annexed a copy of letter No. EStt/DGF&SE/B-14/342/2016/7849 dated 19.12.2016, addressed by Administrative Officer, Fire and Emergency Services, J&K, Jammu to the petitioner, informing him that he has remained present on duty during the month of July and August, 2016 regularly as per the attendance register maintained in Central Stores, Fire and Emergency Services, Srinagar.

v. That the petitioner also annexed a news report published by Daily Greater Kashmir in its issue of 16.11.2016, indicating that the petitioner was dismissed from service despite the clean chit given to him by the Civil Administration.

7. The impugned dismissal order dated 18.10.2016, has remained in force and petitioner is challenging the same on the grounds detailed out in the petition with the following particular reference:-

(a) That the impugned order dated 18.10.2016, has been issued by respondent No. 2 on baseless and unfounded grounds. It is stated that the petitioner was on duty on 26.07.2016, but his name was mentioned in FIR No. 119/2016 on malafide and extraneous considerations. He was not, however, arrested by the Police in the said FIR because the Police knew that he was innocent and had not indulged in any activity, for which he should be arrested and detained. However, the police got the order of detention dated 02.08.2016, issued against the petitioner from the District Magistrate, Bandipora, which was challenged by the petitioner before the Hon'ble Court through the medium of HCP No. 199/2016. The order impugned dated 18.10.2016, having proceeded on wrong premises and the respondent No. 2 having issued the order mechanically, as such, is liable to be set aside.

(b) That before passing the order dated 18.10.2016, the respondent No. 2 has not issued any notice to the petitioner for explaining his position or showing cause against the proposed punishment. It is stated that the petitioner's involvement in FIR No. 119/2016, was subjudice on

18.10.2016 before the Hon'ble Court in HCP No. 199/2016 and the Court had not returned any verdict one way or the other and the respondents having been put on notice and they having also filed their reply, therefore, it was imperative for the respondent No. 2 to wait for the outcome of the Habeas Corpus Petition and see as to whether the petition would be allowed or disallowed by the Hon'ble Court.

(c) That the petitioner has not committed violation of Rule 14 and 20 of the J&K

Government Employees (Conduct) Rules, 1971 in any manner whatsoever. It is true that on some false and frivolous allegations, FIR No. 119/2016, was registered against the petitioner and others in Police Station, Sumbal, challan of which has been presented in the Court of law. It was not therefore, open to the respondent No. 2 to issue the impugned order dated 18.10.2016, against the petitioner, without waiting for the outcome of the Police case pending in the Court of law.

(d) That the respondent No. 2 has no power or authority to dispense with the holding of an enquiry against the petitioner. An order of dispensing with the holding of any enquiry can be passed only by the Governor. However, even if it is assumed that the respondent No. 2 could exercise the power conferred under clause (b) of Sub-section (2) of Section 126 of the Constitution of J&K State and dismiss the petitioner from service without holding such enquiry, but before doing so, he had to record a finding that it was not reasonably practicable to hold such an enquiry. The respondent No. 2 has nowhere stated in the order dated 18.10.2016, that the holding of an enquiry against the petitioner was not reasonably practicable.

(e) That when and how a power conferred under clause (b) of sub-section (2) of Section 126 of the Constitution of J&K can be exercised by an authority has been authoritatively pronounced by the Hon'ble Court in various Judgments, which are based on the law laid down by the Hon'ble

Supreme Court in case titled Union of India Vs. Tusli Ram Patel. It is stated that the respondent No. 2 has not however, followed the law laid down by the Hon'ble Supreme Court and the Hon'ble Court with reference to clause (b) of Sub-Section (2) of Section 126 of the Constitution of J&K, before passing the impugned order.

(f) That while relying on Tulsi Ram Patel's case (AIR 1985 SC 1416), the Hon'ble Court in case titled Ghulam Mohi-ud-Din Mir Versus State of J&K and others has clearly and categorically stated that before dispensing with the enquiry, the authority has to comply with the two requirements contemplated by clause (b) of Sub-Section (2) of Section 126 of the Constitution of J&K and if the authority has neither recorded the satisfaction nor has he recorded the reasons for such satisfaction, the decision to dispense with the enquiry will not be tenable. It is stated that the impugned order has been issued in flagrant violation of law.

8. On notice respondents have filed objections, wherein it is stated that the petitioner was working in the Fire and Emergency Services Department as Leading Fireman, at Fire and Emergency Services Central Store, Srinagar. On 18.10.2016, the office of answering respondent received a copy of dossier and other related documents in respect of the petitioner from Additional Director General of Police CID, J&K vide his office letter No. CID/BR/GE/2016/2000 dated 22.09.2016, through Principal Secretary to Government Home Department J&K Civil Secretariat (respondent No. 1) for further necessary action.

9. It is stated that the petitioner has been found involved in anti-national

activities which include, taking active part in causing disturbance and disorder to the public peace, intimidation to general public/shopkeepers to observe shutdown amid calls given by separatists and instigating the Youths to indulge in stone pelting. It is stated that on 26.07.2016, the petitioner was found leading a mob in Sumbal Bazar near Sub District Hospital, Sumbal, which pelted stones upon the Security Forces/Police and raised anti-national slogans, for which case FIR No. 119/2016 under Section 307, 147, 149, 336, 152, 427 RPC stands registered against the petitioner and others in Police Station, Sumbal Sonawari of District Bandipora.

10. It is stated that in view of involvement of petitioner in anti-national activities and subsequent involvement in criminal case of heinous offence, and in exercise of powers conferred under clause (b) of Sub Section (2) of Section 126 of the Constitution of J&K, the petitioner has been dismissed from services vide order No. DGF&ES/569 of 2016 dated 18.10.2016.

11. It is stated that the petitioner after his dismissal had approached the Hon'ble Court through the medium of writ petition No. 2112/2016, and challenged the validity of the dismissal order dated 18.10.2016. The said writ petition came to be disposed of by the Hon'ble High Court vide order dated 28.12.2016. The operative portion of the order is reproduced as under:-

" In view of the submissions of learned counsel for the parties and in the facts of the case, the writ petition is disposed of with the directions that in case the petitioner files an appeal within a period of one week before the appellate authority, the appellate authority shall decide the appeal by a speaking order within a period of six weeks from the date of receipt of such appeal."

12. It is stated that in light of the Judgment dated 28.12.2016, the petitioner filed an appeal before the Principal Secretary to Government Home Department, J&K, Civil Secretariat and after consideration of the same, a speaking order No. 585-Home of 2017 dated 29.05.2017, has been issued by the Government whereunder it has been ordered that there is no provisions for departmental appeal or other departmental remedy against the satisfaction reached by the competent authority, while exercising power under Section 126 of the Constitution of Jammu and Kashmir and, accordingly, the appeal of the petitioner has been rejected.

13. It is stated that the activities of the petitioner as a Government employee of a disciplined force were found highly prejudicial to the maintenance of public order and the answering respondent after going through the dossiers and other related documents forwarded by the concerned Police Agency (CID) and after applying its mind decided to issue an order of dismissal to the petitioner against his harmful activities as a Government employee, which were threat to the Security and Sovereignty of the State and prejudicial to the peaceful atmosphere of the area.

14. Heard learned counsel for the parties, perused the records and considered

the matter.

15. Exercising power under Section 126 (2) (b) of the Constitution of Jammu and Kashmir in dispensing with the enquiry contemplated under Section 126 (2) of the Constitution, the petitioner Abdul Rashid Bhat, Leading Fireman in the Fire and Emergency Services, Department, was dismissed from service vide order No. DG F&ES 569 of 2016 dated 18.10.2016.

16. Relying on Judgment delivered in Tarsem Singh vs. State of Punjab and others reported as (2006) 13 SCC 581, learned counsel for the petitioner seeks quashment of order, as the same has been issued without recording reasons by the respondent No. 2, forming basis of not reasonably being practicable to hold such enquiry. Learned counsel for the petitioner, while strengthening his argument submits that in terms of provisions of Section 126 (2) (b) of the Constitution of Jammu and Kashmir, enquiry before directing dismissal or reduction in rank of a Government servant can be dispensed with, on satisfaction of the competent authority that it was not reasonably practicable to hold such enquiry. The satisfaction contemplated by the provision must, however, be real, resting on some or the other material, and not on mere ipse dixit of the Competent Authority. It is submitted that the Investigating Agency had recorded the statements of witnesses during investigation of the case registered against the petitioner under Sections 307, 147, 149, 336, 152, 427 RPC, which is not denied by the respondents. The plea, therefore, stands impliedly admitted. Thus, proceeding on the premise that if the Investigating Agency of the State Government could record the statement of witnesses against the petitioner, indicating his involvement in heinous offences, it could not have faced any difficulty in recording the statement of the witnesses during enquiry into petitioner's misconduct that led to his dismissal. The submission of learned counsel for the petitioner has no substance, as the competent authority has relied upon the material submitted before it by the Additional Director General of Police (CID), J&K, which report is based on the report of the Field Agencies. The material of the CID, which formed the basis for dispensing with the enquiry is available on the file, produced by Mr. B. A. Dar, learned Sr. AAG, therefore, the contention of learned counsel for the petitioner that there was no material available with the competent authority, forming basis for dispensing with the enquiry has no substance. Court is satisfied that the competent authority has recorded the reasons having reference to anti-national activities of the petitioner, as also charged atmosphere, which cannot allow the authorities to conduct enquiry, as the same would involve threat perception of witnesses.

17. In the facts circumstances, the Judgment referred to and relied upon by learned counsel for the petitioner is not applicable, as same being on different set of facts, having reference to recording of reasons by the competent authority without supporting documents. Learned counsel for the petitioner has also while reiterating his submission for the relief claimed, referred to and relied upon the Judgment of this Court delivered by Single Bench, reported in 1995 SLJ 212,

perusal of the Judgment reveals that the Court has observed that in appropriate cases Court can investigate whether the constitutional pre-requisite in dispensing with the enquiry has been complied with or not and whether the reasons for which the enquiry has been dispensed with could reasonably form the basis of satisfaction of that authority.

18. In the present case, the Court is satisfied that the respondents have adhered to the constitutional pre-requisites in dispensing with the enquiry and have recorded the reasons. Enquiry has been dispensed with having reference to activities of the petitioner being anti-national and threat to the witnesses, the Judgment, therefore, is distinguishable.

19. In view of above, the writ petition being without merit, shall stand dismissed.

20. Record produced by Mr. B. A. Dar, learned Sr. AAG is returned to him in the open Court.