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**(2021) 05 J&K CK 0007**

**In the Jammu And Kashmir High Court**

**Case No :** Writ Petition (C) No. 688 Of 2021, CM No. 2030 Of 2021, Service Writ Petition No. 36 Of 2008

Adil Afzal Kuchay

APPELLANT

Vs

Union Territory Of Jk And Ors

RESPONDENT

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**Date of Decision :** 06-05-2021

**Acts Referred:**

**Citation :** (2021) 05 J&K CK 0007

**Hon'ble Judges :** Vinod Chatterji Koul, J; Ali Mohammad Magrey, J

**Bench :** Division Bench

**Advocate :** M. S. Latif, Zahid Khan, B. A. Dar

**Final Decision :** Disposed Of

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**Judgement**

1. The case of the petitioner, as set up by him in the instant petition, is that the petitioner, vide order No. 2549/2006 dated 31st of October, 2006, was removed from service for his alleged unauthorized absence. Feeling aggrieved thereby, the petitioner assailed the said order before the Single Bench of this Court by way of Writ petition bearing SWP No.36/2008, wherein the Court, in terms of order dated 23rd of January, 2008, stayed the operation of the aforesaid order of removal of the petitioner dated 31st of October, 2006. Consequently, the petitioner was permitted to resume his duties in DPL, Srinagar in terms of order No.543/2008 dated 4th of March, 2008. Thereafter, the petitioner claims that he lost track of the case before the Court particularly when the counsel for the petitioner suffered heavily in the devastating floods of 2014 that hit the Kashmir Valley and the office of the counsel of the petitioner got completely damaged. The petitioner, however, is stated to have continuously attended his duties post his reinstatement

in service in compliance of the order of the Court and, in between, was even sent on deputation to SKIMS Hospital, Soura, Srinagar. The petitioner

has proceeded to state that on 17th of January, 2020 he was shocked when he came across order bearing No. 41 of 2020 dated 17th of January, 2020

issued by the respondent No. 3, in terms whereof the petitioner has been struck off from the rolls of J&K Police w.e.f. 2009 on the ground that the

Writ petition of the petitioner has been dismissed by the Court for non-appearance of the parties. The petitioner, thereafter, immediately filed a

restoration application before the Court, along with application seeking Condonation of delay in filing the said restoration application, which came to be

numbered as CM No. 1698/2020. Simultaneously, the petitioner also assailed the order No. 41 of 2020 dated 17th of January, 2020 before the Central

Administrative Tribunal, Jammu Bench (hereinafter referred to as "the Tribunal") through OA No. 721/2020 by virtue of which the petitioner

has been struck off from the rolls of the Department. The Tribunal, as stated, in terms of order dated 18th of February, 2021, however, has declined to

pass the interim relief in favour of the petitioner, constraining the petitioner to knock at the portals of this Court through the medium of the instant

petition.

2. Mr M. S. Latif, the learned Senior counsel, representing the petitioner, submitted that the learned Tribunal has failed to appreciate the fact that the

impugned order issued by the respondent No. 3 was bad in law having been issued in absolute violation of the rules of natural justice inasmuch as

before passing the order impugned an opportunity of being heard had to be afforded to the petitioner. It is contended that the right of hearing is not a

mere formality, but is a substantive right by which a party has to be given an effective hearing and that the respondents ought to have given a show

cause notice to the petitioner so that he could have placed his stand before the authority when the petitioner had a long service career and certain

rights had accrued in favour of petitioner. It is further submitted that the learned Tribunal has also failed to take into consideration the fact that the

absence of the petitioner before the Writ Court was neither intentional nor deliberate which is substantiated by the order impugned itself, as such, the

Tribunal ought to have exercised its discretion in favour of the petitioner by passing the relief in his favour. It is pleaded that the learned Tribunal also

failed to appreciate that the petitioner even after dismissal of the Writ petition had been continuing in the Department for more than 12 years as such certain rights had accrued in his favour and that the petitioner could have not been stuck off from the rolls in the manner the order impugned has been passed.

3. Objections stand filed on behalf of the respondents resisting and controverting the averments made by the petitioner in his petition. It is submitted

that the issuance of the order impugned is purely in consonance, compliance and in concurrence to the directions of the learned Writ Court, whereby

the petition of the petitioner bearing SWP No.36/2008 stands dismissed. It is pleaded that the conduct of the petitioner was inimical to the discipline to

which Police force is bound to and that, if such delinquent individuals are not dealt sternly, a very negative effect is going to be felt through the rank

and file of the Police force.

4. We heard the learned counsel for the parties; perused the pleadings on record; and have considered the matter.

5. Admitted position as emerge is that the petitioner, in the year 2006, was removed from the services of the respondent Department on the allegation

of unauthorized absence from duty, which action was challenged by the petitioner through the medium of Writ petition bearing SWP No.36/2008,

wherein the Court kept in abeyance the order of removal of the petitioner and, resultantly, the petitioner was allowed to continued discharging his

duties in the Department. The fate of the petitioner, thus was dependent on the final decision to be rendered by the Court in the said Writ petition,

however, the Writ petition aforesaid got dismissed for want of prosecution, on the basis of which the respondent Department issued order No. No. 41

of 2020 dated 17th of January, 2020, whereby the petitioner stands struck off from the rolls of the respondent Department w.e.f. from the date the

aforesaid petition was dismissed. That apart, it has, vide order dated 17th of January, 2020, also been ordered that the SP (Hqrs.), Srinagar will hold a

formal Departmental enquiry into the matter in order to ascertain as to whether the lapse is inadvertent or deliberate which led the State exchequer to

a huge loss as the delinquent official is drawing his salary and other monetary benefits uninterruptedly without being entitled for the same. Further,

recovery of salary drawn by the delinquent official/ petitioner since the date of

the dismissal of the Writ petition has been kept subject to outcome of the full-fledged Departmental Enquiry. This order was put to challenge by the petitioner before the learned Tribunal which has declined to grant any interim relief in favour of the petitioner.

6. The question that arises herein this case before us is that whether the respondent Department could have issued the final order dated 17th of January, 2020 with regard to the case of the petitioner on dismissal of his Writ petition for want of non-prosecution. Having gone through the pleadings on record and after hearing the counsel for the parties, coupled with the appreciation of the overall facts and circumstances of the case, we feel that this course of action adopted by the respondent Department in issuing the final order on the basis of dismissal of the Writ petition of the petitioner for want of prosecution without any discussion on the merits thereof is not only harsh, but also in violation of the principles of natural justice. The case was supposed to be decided on merits after hearing both the parties and appreciating the overall attending facts and circumstances, however, same got dismissed for want of prosecution. It goes without saying that the said Writ petition, thereafter, stands restored to its original number in terms of order dated 22nd of April, 2021 and the same is also clubbed herewith this petition for decision. In such circumstances and in order to meet the ends of justice, the respondent Department was obliged under law to apprise the petitioner about the dismissal of his Writ petition and the course of action that the Department was contemplating to take against him prior to issuance of the final order dated 17th of January, 2020. The respondent Department, however, without seeking any response or issuing any prior show cause notice to the petitioner, have straightway proceeded to pass the order dated 17th of January, 2020, whereby the petitioner has been struck off from the rolls of the Department. This has definitely resulted in infringement of the rights of the petitioner, that too without hearing him. The principles of natural justice, which are imbibed from the Constitution itself and adherence whereof in any administrative action involving civil consequences is recognized by all civilized States as of supreme importance, have been given a complete go-by. These principles of natural justice have been formulated and enshrined so as to ensure that no one is condemned unheard and notice is the first limb of these principles. Besides, it is fully documented that

even God had not passed the sentence upon Adam before he was called upon to make his defence.

7. At the cost of repetition, it needs to be mentioned here that an opportunity of being heard is the sine-qua-non of every order/decision involving

termination of a Government servant, besides reasons justifying so have to be clearly spelt in the order/ decision itself. In the instant case, the

respondents have issued the final order dated 17th of January, 2020, which amounts to major punishment of dismissal from service, without seeking

any reply/ response from the petitioner, as a consequence whereof, the petitioner has been condemned unheard. Justice is not only law and its

administration, but is, in most cases, above law and is done to safeguard the individual from whatever he or she seeks protection from. Our country

aims at the goal of achieving the welfare state where everyone is/has to be, as far as possible, looked after. The learned Tribunal, while declining the

interim relief in favour of the petitioner, has clearly not appreciated the aforesaid aspects of the matter which were of great importance and a vital

bearing on the entire controversy involved in the matter.

8. In the light of the foregoing analysis, we allow the instant petition on the following terms:

i. The order of the learned Tribunal dated 18th of February, 2021 passed in OA No. 721/2020 is hereby set aside;

ii. The OA aforesaid filed by the petitioner before the learned Tribunal is allowed and the order No. 41 of 2020 dated 17th of January, 2020 issued by the respondent No.3 is quashed; and

iii. The respondents are directed to allow the petitioner to continue discharging his duties in the Department in tune with the interim order

dated 23rd of January, 2008 passed by the Single Bench in SWP No. 36/2008, which shall, however, be subject to final decision in the said

Writ petition.

9. Writ petition disposed of on the aforementioned terms, along with all connected CMs. SWP No. 36/2008:

10. In view of the decision rendered in WP(C) No.688/2021 hereinabove, this Writ petition, given the nature of relief sought for and the mandate of

the Administrative Tribunals Act, 1985, shall stand transferred to the Central Administrative Tribunal, Jammu Bench for its decision in accordance

with law. Registry to transmit the record of this petition to the Central Administrative Tribunal, Jammu Bench, retaining a soft copy thereof. The

parties are directed to appear before the Registrar, Central Administrative Tribunal, Jammu Bench, on 12th of July, 2021 for further proceedings.

11. Registry to place a copy of this order on each connected file, besides sending a copy thereof to the Registrar of the Central Administrative

Tribunal, Jammu Bench, for information and necessary follow up action.