

(2018) 08 J&K CK 0100

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 772 Of 2015

Ahmadullah Malik @APPELLANT@Hash Union Of India & Ors

Date of Decision : 10-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 08 J&K CK 0100

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Madad Khan, Tahir Majid Shamsi

Final Decision : Dismissed

Judgement

1. In this petition, filed under Article 226 of the Constitution of India read with Section 103 of the State Constitution, the petitioner has sought the issuance of following relief(s) in his favour:

i. By a Writ of Mandamus, commanding the respondents to release the unpaid salary/ arrears from the period 27-08-2009 to 02-10-2012 i.e (3 years and 3 months) including Rs.45.00 Lakhs which the petitioner expenses on the treatment of his deceased young Son.

ii. By a writ of Prohibition, restraining the respondents not to threat the petitioner for dispense with his services at the age/verge of his superannuation/ retirement."

2. The grievance of the petitioner, as projected herein this writ petition, is as regards withholding of the salary for the period w.e.f. 27th of August, 2009 to 2nd of October, 2012. The petitioner claims to be continuing with the respondent Border Security Force, however, on account of ailment of his son, he proceeded on leave from 27th of August, 2009 and returned on 2nd of October, 2012, during which period his son died in SKIMS, Soura. The petitioner has proceeded to state that upon resuming his duties, he was not paid any salary for the aforesaid period. He submitted various representations before the competent authority for the redressal of his grievances, but, fate had it for him, that these

did not yield any positive results, constraining the petitioner to file the instant writ petition.

3. On notice, the respondents have filed their objections, resisting the claim of the petitioner. It is stated that the petitioner remained illegally absent from his duties without leave w.e.f. 27th of August, 2009 to 2nd of October, 2012 and, as a sequel thereto, he was tried by the Summary Security Force Court for a charge under Section 19(a) of the BSF Act. In the said trial, the petitioner was found guilty of the charge levelled against him and was, accordingly, awarded the sentence to suffer rigorous imprisonment for 48 days in force custody. Furthermore, as stated, the unauthorized period of absence of the petitioner w.e.f. 27th of August, 2009 to 2nd of October, 2012, was, vide order No. Estt./850/(39)/Discipline/97/13/7829-33 dated 30th of April, 2013, treated as 'Dies-Non' for all the purposes, as per the provision contained in Rule-25 of CCS (Leave) Rules, 1972 as well as FR-17-A.

4. Heard the learned counsel for the parties, perused the record and considered the matter.

5. At the outset, what requires to be stated is that a bare perusal of the pleadings on record bring it to the fore that the respondents have disclosed the fact of having decided the period of unauthorized absence of the petitioner as 'Dies-Non' in terms of order dated 30th of April, 2013 (supra), which order is not the subject matter of the instant writ petition, therefore, in such eventuality, no direction can be passed in the matter as regards the relief sought for by the petitioner. Unless the validity of the aforesaid order of 'Dies-non' is not assailed by the petitioner, no finding can be returned thereon by this Court.

6. In view of the above, this writ petition for the relief(s) prayed for, after the issuance of order of 'Dies-non' (supra) has become infructuous and, as a corollary, same shall stand dismissed alongwith all connected MP(s). The petitioner, however, shall be at liberty to challenge the proceedings, whereby his period of absence has been treated as 'Dies-non', if so advised.