

(1992) 03 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 301/1990

Balwant Rai

APPELLANT

Vs

State of J&K and Ors.

RESPONDENT

Date of Decision : 31-03-1992

Acts Referred:

Constitution of India, 1950 — Article 108B, 226

Citation : AIR 1993 J&K 20 : (1993) JKLR 449 : (1992) KashLJ 340 : (1993) SriLJ 113

Hon'ble Judges : M.L.Kaul, J

Bench : Single Bench

Advocate : V.R.Wazir, S.K.Anand, Advocates appearing for the Parties

Judgement

1. This petition Under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir, had come up for a

hearing with regard to the quashing of the Government Order No. 128GR (Edu.) of 1990 dated 30.1.1990, by virtue of which the petitioner

Balwant Raj, Lecturer, who was awaiting the orders of his posting in pursuance of Government Order No. 273 (Edu) of 1989, dated 27.2.1989

was ordered to be posted in the Higher Secondary School, Nowshera Rajouri against the available vacancy and the period of his suspension was

treated as on leave of what so ever kind due to him.

2. The material facts of this petition are not in controversy. The petitioner was a Lecturer in the Education Department and was prosecuted for an

offence U/S 5 (2) of the P. C. Act read with Section 161 RFC. In view of the pendency of the prosecution against him, he was placed under

suspension on 13.11.1986. On the trial of the case be was acquitted by the learned Special Judge, Anti Corruption, Jammu, on file No. 8 A/C by

a judgment announced by him on 30.5.1989. Against this judgment and order of the trial court, the prosecution before this Court preferred an

appeal and the same was dismissed on 27.10.1989 and, the order of the trial court was upheld. After his acquittal was confirmed by the High

Court, the petitioner on his representation was reinstated by the respondent vide Government order No. 273EDU of 1989 dated 27.12.1989 and,

while passing the said order of reinstatement, the respondent No : 2 i.e. Secretary to Government, Education Department, J&K, Jammu, ordered

that his period of suspension would be decided later on and also the petitioner was debarred from conducting Board Examination in future.

3. According to the petitioner the respondent No: 2 in pursuance of the said order dated 27.12.1989, made an adverse entry in the service record

of the petitioner without any show cause notice having been served upon him. The said entry had adversely affected his career and as per the

service rules, no adverse entry could be made in the service record of an employee without a prior notice being served upon him, so as to enable

him to furnish his explanation, before such an entry was recorded in his service record, The petitioner approached the respondents with a request

that he was falsely implicated in a criminal case, as a result of which, he was suspended without any fault of his and, therefore, prayed for his being

treated as duty w. e. f. 13.11.1986 to 27.12.1989 i.e. the period for which he remained under suspension due to his involvement in a false case.

Instead, the respondents passed order 128GR (Edu) of 1990 dated 30.1.1990, ordering thereby his period of suspension as on leave of

whatsoever kind was due to him. On receipt of such an order, the petitioner again approached the respondents and made a representation on

Annexure P/4 attached with the petition and the same was not considered by the respondents and as the Order No. 128GR (Edu) of 1990 dated

30.1.1990 was unjustified and against the terms of Article 108 (B) of the J&K Civil Service Regulations, therefore, he has come up by way of this

petition for quashment of that order any prayed that his period of suspension from 13.11.1986 to 27.12.1989 be treated as on duty and any

adverse/bad entry made in the service record of the petitioner be ordered to be deleted.

4. A counter was filed by the respondents and, while admitting most of the averments made in the petition, it was resisted on the ground that all the

instances of an employee in his service career are to be recorded in his service record, without any prior show cause notice to be given to him. It is

contended that the representation of the petitioner was considered and, after due consideration of his representation, the order No: 121GR of

1990 dated 30.1.1991 was kept intact.

Heard learned counsel for the parties, also bestowed my thoughtful consideration over the record on the file.

5. Mr. V.R. Wazir appearing on behalf of the petitioner has vehemently argued that once the petitioner was acquitted of the charge of corruption,

regarding which criminal prosecution was launched against him before a competent Court of law, the Government had no authority except to treat

the period of suspension of the petitioner as on duty and pay him the full emoluments during the period of his suspension and, in not doing so, the

order dated 30.1.1990 as referred to above passed by the Government was unjustified. This argument of the learned counsel for the petitioner was

controverted by Mr. Anand representing the respondents on the ground that under Article 108 (B) of the Jammu and Kashmir Civil Service

Regulations, where a Government servant has been suspended and is reinstated subsequently, it is for the Government to decide whether or not the

said period shall be treated as a period spent on duty.

At the outset, I can say that Mr. Anand while propagating his argument has failed to read clause (1) of Article 108(B) of the J&K Civil Service

Regulations with Clause (ii) of the said Article in connection, which reads, as under:

5B (i) When a Government servant who has been dismissed, removed, compulsorily retired before attaining the age of superannuating, or

suspended is reinstated the authority competent to order the reinstatement shall consider and make a specific order:

(a) Regarding the pay and allowance to be paid to such Government servant for the period of his absence from duty; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(ii) Where the authority mentioned in sub rule (i) is of opinion that the Government servant has been fully exonerated or in the case of suspension,

that it was wholly unjustified the Government servant shall be given the full pay and allowances to which he would have been entitled had he not

been dismissed, removed, compulsorily retired before attaining the age of superannuating or suspended, as the case may be. The period of

absence from duty shall be treated as period spent on duty.

7. On the simple interpretation of Clause 108B(i)(b) of the said Article of Jammu and Kashmir Civil Service Regulation, it appears, to have

manifestly been envisaged that the Competent Authority while reinstating an employee and determining that whether or not the said period of his

suspension shall be treated as a period spent on duty, has to provide the reasons as to why his period of suspension shall be treated as a period

spent on duty.

The competent authority is not at liberty to interpret this provision of law according to his convenience and as it suits him. Article 108 (B) of Civil

Services Regulations Specifically stipulates that where a Government servant has been fully exonerated of the charge or, in the case of suspension,

it was found that it was unjustified, the Government servant is entitled to full pay and allowances to which he would have been entitled, had he not

been dismissed, removed or compulsorily retired before attaining the age of superannuating or suspended, as the case may be. The period of

absence from duty shall be treated as period spent on duty.

8. In the case on hand, the accused/petitioner has been exonerated of the charge and was acquitted after a full dressed trial before the learned

Special Judge, Anti Corruption, Jammu, who acquitted the petitioner after he found that no case was made out against him and the same on an

acquittal appeal preferred by the State was upheld by the High Court. The word exonerated as contemplated under Clause (ii) of Article 108 (B)

Jammu & Kashmir Civil Service Regulations is synonymous with the word ""acquittal"" and the same connotes that the person charged of blame has

been freed from such a charge. Once such acquittal is on account of lack of evidence or on account of any defect in the procedure in the trial, or

on some other count, but so long as such acquittal or exoneration stands the presumption of innocent of the accused, should be given the full effect

and he should be deemed to have been exonerated of the blame flowing from any of the acts or omissions which formed the subject matter of the

charges. So that, it emanates that once a Government servant has been fully exonerated of criminal charge and he has been reinstated, the period

of absence from duty shall be treated as period spent on duty. While holding that view, I am fortified in a ruling reported in All India Service

Reports; 1975 page 28; entitled: M. K. Balapachar vs. the State of Mysore, wherein it has been held by a Division Bench of Karnataka High

Court:

That the expression ""acquittal of the blame"" in rule of the Karnataka Civil Service Rules, 1958, means acquitted of the offence with which a

persons charged. Once he is acquitted, whether such acquittal is on account of Jack of evidence, or on account of any defect in the procedure in

the trial, or on account of the Court extending the benefit of doubt, so long as such acquittal stands, the presumption of innocence of the accused,

should be given full effect and he must also be regarded as being acquitted of the blame flowing from any of the acts or omissions which formed the

subject matter of the charges. Hence the reason given by the Government for not paying the petitioner his full emoluments during the period of his

suspension is clearly unsustainable.

Accordingly, it has been held in a case reported in KLJ; 1989 Page 66, as under:

Right to draw emoluments is guaranteed to the petitioner because the post which he holds carries the pay, He cannot be deprived of that pay as

that deprivation would amount to denying him right to property which is volatile of Article 10 of the Constitution India. Petitioner's right to get the

pay for the period for which he was out of service is taken away in violation of his service rights and fundamental rights. Therefore, order treating

the petitioner's period of termination as on leave of whatever kind is due, is ultra virus of service rules and constitutional provisions as it visits the

petitioner with serious civil consequences and deprives him of his property. Therefore, the order to that extent cannot be sustained.

9. In the instant case, the petitioner has made a representation before the respondents that once he had been acquitted from the charge leveled

against him, he was entitled to receive all the emoluments for the period he remained under suspension and it was requested therein that the

impugned order be expunged and the period of suspension treated as spent on duty, as he could not be penalized for no fault of his. The

Government did not take this representation into consideration and, instead, the order impugned was kept intact, which has resulted in grave

injustice to the petitioner, for the order impugned is arbitrary and passed without adhering to the Rules. No show cause notice was given to the petitioner to file his objections, nor was he heard before such an order was passed, whereby his period of suspension was treated on leave of whatever kind was to him. The order passed by the respondents is violative of principles of natural justice and is also violative of the provisions of J&K. Civil Services (Classification, Control and Appeal) Rules' 1956. The order impugned has imposed a punishment on the petitioner without any enquiry having been conducted against him, especially in the circumstances, when he was fully exonerated of the charge, after a trial by a competent court of law. This order of acquittal was upheld by the High Court as well, even then: the State did not reinstate him immediately and, once he was reinstated, a stigma was cast upon his service career by making an adverse entry in his service record that the period of suspension was treated as on leave of whatsoever kind was due to him. Once the petitioner was exonerated, there was a legal presumption in his favor that he was innocent and the State should have given him the full benefit of having regarded him as having been acquitted of the blame flowing from any of the acts or omissions, which formed the subject matter of the charge. The respondents instead of doing so, have cast a stigma upon his service career by treating his period of suspension as on leave of whatsoever kind was due to him without any justification, for he was found innocent and not indicted with the criminal offence, for which a trial took place and was acquitted, Once the acquittal appeal was dismissed by the High Court and the order of acquittal passed by the trial court was upheld by the Appellate court, the Government had no option except to reinstate him without imposing any condition on him and in terms of Article 108(B) of the Jammu and Kashmir Civil Service Regulations, the petitioner's period of suspension was to be treated as period spent on duty. There was no option for the State except to treat him on duty, for the period he remained under suspension, for he was found to be innocent by a Court on a trial of the criminal charge U/S 5 (2) of the Prevention of Corruption Act, against him. The respondents have unnecessarily harassed him and have passed the order impugned capriciously without any bonafide ground or justification and the same merits to be quashed. As such, the order impugned No. 128GR (Edu) of 1990 dated 30.1.1990 is hereby quashed

and any adverse remark made in the service record of the petitioner, shall be treated to have been deleted, Therefore, by issuance of a writ of mandamus, the respondents are directed to treat the period of suspension of the petitioner as on duty and any adverse entry made in his service record shall be treated as deleted.