
(2011) 03 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 348 of 2006

Bilal Ahmad Parray

APPELLANT

Vs

State of JK and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Citation : (2011) 2 JKJ 562

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—Respondents have failed to file counter and their right stands closed. Proxy counsel produced record in the open court.

2. Upon perusal of the record, it appears that vide order No. 2797 of 2005 dated 19.12.2005, Sh. Muneer Ahmad Khan, IPS, the then Sr.

Superintendent of Police, Srinagar, removed the Petitioner from the service. The order on the face of it is abuse of the authority and process of law.

3. Impugned order discloses that Petitioner has remained un-authorisedly absent from 28.11.2004 and thereafter resumed the duties on

13.05.2005 after obtaining proper permission from the concerned authority. Departmental enquiry in the matter was ordered and Deputy

Superintendent of Police, DAR DPL was appointed as Enquiry Officer. There is nothing on the file suggesting the fact that whether departmental

enquiry was conducted or not but impugned order discloses that Dy. Superintendent of Police, DAR DPL, Srinagar, made a recommendation to

SSP to the effect that period of absence be treated as dies-non on the analogy of no work no pay. SSP has not agreed with the recommendations.

It is apt to reproduce the impugned order herein:

Order No. 2797 of 2005

Dated 19.12.2005

01) Whereas, Constable Bilal Ahmad No. 2644/S S/O Abdul Rehman Parrey-R/O Prangpalla Kangan District Sgr., while his posting in DPL

Srinagar absented himself un-authorisedly on 28.11.2004.

02) Whereas, the said Constable resumed his duties on 13.05.2005 after obtaining proper permission vide DPO order No. 578 of 2005 dated 10.05.2005.

03) Whereas, the said Constable resumed his duties after a long absence of 216 days.

04) Whereas, a departmental enquiry was conducted against the said Constable by DYSP DAR DPL Srinagar in presuance to DPO order No.

578 of 2005 dated 10.05.05.

05) Whereas, the enquiry officer in his findings submitted that the said constable has not co-operated with him, which prompted him to take

expertee decision into the matter and recommended that the period of absence of the aforesaid constable be treated as diesnon on the anology of

no work no pay.

06) Whereas, the service records of the constable reveals that he is habitual absentee and a period of 65 days has been treated as diesnon in his

favour in the year in the year 2005.

07) Whereas, the conduct of the official enlights that he is not interested to work the police department keenly.

08) Whereas, behaviour of the said official is un desired and his retention-will adversely affect the discipline of the force.

4. Having regard to the aforesaid enumerated facts, it is hereby ordered as under:

i) The Constable Bilal Ahmad No. 2644/S is removed from service with immediate effect,

ii) The period of absence from 28.11.2004 to 13.05.2005 (in all 216 days) re treated as diesnon on the anology of no work no pay.

5. SSP concerned has straightway removed the Petitioner without conducting any further enquiry and it is also not forthcoming from the record

under what circumstances the impugned order came to be passed. SSP should have ordered fresh enquiry or at least heard the Petitioner after

providing sufficient opportunity as per the Police Manual. Even show cause notice is not served upon the Petitioner in terms of Regulation 359 of J

& K Police Manual. Order impugned came to be passed in breach of the Regulations contained in the Police Manual and in breach of principles of

natural justice and without following the mandate of Regulation 359 of J & K Police Manual. It appears that SSP concerned is not well versed with

the regulations contained in the Police Manual.

6. In the given circumstances, the writ petition is allowed, impugned order is quashed with costs to the tune of Rs. 10,000/- recoverable from the

said SSP and payable to the Petitioner. However, the Respondents are at liberty to conduct fresh enquiry, if advised.

7. Record produced in the open court is returned back to Mr. M. A. Thakur, GA.

Disposed of along with all connected CM Ps.