
(2019) 03 J&K CK 0094

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 861 Of 2018, IA 01 Of 2018

Dinesh Sawhney

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Jammu And Kashmir Civil Services (Classification, Control And Appeal) Rules, 1956 — Rule 31

Citation : (2019) 03 J&K CK 0094

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Monika Kohli, Vipin Gandotr

Final Decision : Disposed Off

Judgement

1. Petitioner, who is working as Block Manager, in SFC Estate Wing, Jammu has assailed SFC order No.123 of 2018 dated 12.04.2018 by which he was relieved from his present place of posting. The order impugned has been challenged on the ground that it was illegal, arbitrary and the petitioner has been attached in the office of Divisional Manager SFC Ext. Division, Baderwah in violation of the transfer policy. His further prayer is that the respondents be directed not to disturb the petitioner from his present place of posting i.e. as Block Manager in SFC Estates Wing, Jammu and allow him to perform the duty till the matter is finally decided.

2. Brief facts as stated in the petition which arise for consideration are that, the petitioner is working as Block Manager in SFC Estates Wing, Jammu and he being a representative of the Union came to the office of respondent No.3 i.e., the then Managing Director with other members of the Union met respondent No.3 regarding illegal promotion granted to the other employees and gave a representation to the respondents to revoke the promotions of the persons whose inquiry cases are pending before the Crime Branch and Vigilance Office. On this, the petitioner allegedly was abused by respondent No.3 and his

representation was torn and unparliamentarily language was used and he was threatened that a false and frivolous case will be filed against him to spoil his reputation in the office as well as in the society. On the very next day, an order SFC No.123 of 2018 dated 12.04.2018 was issued by respondent No.3 by which the petitioner was suspended and also attached in the office of Divisional Manager SFC Ext. Division Bhaderwah, an FIR was also registered against the petitioner.

3. Learned counsel for the petitioner states that and the petitioner seeks to quash the aforesaid order on the ground that the said order is arbitrary and illegal as the same has been passed for extraneous consideration to victimize and harass the petitioner, as the petitioner being a member and representative of the Union had made a representation to the respondent concerned. It is further submitted that the order nowhere reveals about an inquiry to be conducted, contemplated or pending and the order is stigmatic and punitive and the petitioner was straight way punished by attaching him to a place which is far away i.e., Bhaderwah. It is also submitted that since the order does not mention any inquiry to be conducted, therefore, the petitioner is permanently suspended and attached, and all this has been done for mala fide reasons and only to harass the petitioner.

4. Petitioner has placed reliance on Rule 31 of the Jammu And Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, which provides for placing of a Government Servant under suspension as also the judgment of the Apex Court in case titled Ajay Kumar Choudhary vs. Union of India & anr. reported as 2015 AIR (SC) 2389 in which it is held that the currency of a suspension order should not extend beyond three months if within this period, memorandum of Charges/Charge-sheet is not served on the delinquent officer. If the Memorandum of Charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. Further period of suspension is specially preceding the formulation of charge/charges is essentially transitory or temporary in nature, and must perforce be of short duration.

5. Further reliance has been placed by learned counsel on the judgment of Hon'ble Division Bench in case titled B. L. Mangi vs. State of J&K & ors. reported as 1987 KLJ 36 in which the Hon'ble Court has held that though suspension is not a punishment but if prolonged for quite a long period, it certainly amounts to punishment and on judgment of this Court in case titled Mohammad Shafi Dar vs. State of J&K & ors. reported as 1999 KLJ 771.

6. Per contra, Mr. Gandotra, learned counsel appearing on behalf of respondent Nos.2 & 3, has filed the objections and has stated that the petitioner did not approach respondent No.3 on 11.04.2018 as on that date, respondent No.3 was pre-occupied in the Departmental Promotion Committee in the office Chamber as was also busy in the meeting of the Administrative Committee of Forest Department. It was on 12.04.2018, the petitioner approached respondent No.3 in the office Chamber where two officers of the Corporation (Divisional Manager

SFC Ext. Division, Jammu and Division Manager SFC Workshop Division, Jammu) were already present. The petitioner started arguing with respondent No.3 regarding his promotion and when informed that he did not possess the technical qualification for promotion of KFC which was pre-requisite for promotion to the next higher and petitioner got furious and shouted, abused and also assaulted respondent No.3 with glass lying on the table but also attempted to physically harm respondent No.3. However, the officers present at that time saved respondent No.3 from physical assault.

7. Against this conduct of the petitioner, an FIR was also lodged on the very same day against him at Police Station, Trikuta Nagar, Jammu. Learned counsel further stated that respondent No.3 in his capacity as HOD initiated action against the petitioner as warranted under Class-113 (xiii) of the Jammu and Kashmir State Forest Corporation Employees Regulation, 1978 (wrongly mentioned in the objections as 1981) and after moving a complaint also addressed a communication to various police agencies for providing security to the concerned.

8. Learned counsel for the respondent Nos.2&3 submits that the petitioner is habitual of such kind of 'Act of Misconduct' and has assaulted his superiors and thus, had exhibited indiscipline. It is further submitted that as per respondents' information, a committee has been constituted and in this regard, he also placed reliance on SFC Order No.187 of 2018 dated 26.05.2018 by which a committee of the officers was constituted to enquire into the matter and submit its report within 15 days. Mr. Gandotra, learned counsel further submits that the statements have been recorded in the inquiry and inquiry is not yet complete and the petitioner has approached this Court with unclean hands, therefore, cannot seek indulgence from this Court. It is also submitted by the respondents that this petition involves disputed question of fact as the date of incident is disputed and the petitioner having behaved in a manner unbecoming of the members of SFC and assaulted his superiors, as such, action has been taken against the petitioner as warranted under law. It is also stated that there is no mala fide on the part of the answering respondents which have proceeded in accordance with the SFC Rules. He further states that Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, are not applicable to the members of the SFC, who were governed by the Jammu and Kashmir State Forest Corporation Service Regulations. Relevant extract is reproduced as follows:-

"111. Suspension of An Employee:

i. The appointing authority or any authority to which it is subordinate or any other authority empowered by the Corporation in this behalf may place an employee under suspension where:-

a) an inquiry into his conduct is contemplated or is pending;

b) a compliance against him of any criminal offence is under investigation or trial.

ii. An employee who is detained in custody whether on a criminal charge of conviction or otherwise, for a period longer than for eight hours should be deemed to have been suspended by the appointing authority.

iii. An order of suspension under sub-rule. (1) May be revoked at any time by the authority making the order or by any authority to which it is subordinate."

9. Further reliance has been placed by learned counsel for the respondents upon the judgment of the Hon'ble Supreme Court in case titled Union of India & anr. vs. Ashok Kumar Aggarwal reported as 2013 (16) SCC 147 in which it has been held that purpose of suspension is to keep delinquent out of mischief range and to complete disciplinary proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that delinquent may not gain custody or control of papers or taken any advantage of his position.

10. Heard learned counsel for the parties.

11. Petitioner prays for quashing of the relieving order No.123 of 2018 dated 12.04.2018 by a writ of certiorari and mandamus commanding the respondents not to disturb the petitioner from the present place of posting as Block Manager SFC Wing Estates Jammu.

12. So far as quashing the relieving order is concerned, the order dated 12.04.2018 is clear and emphatic that the petitioner was deemed to have been relieved with effect from the same day. He filed the writ petition on 07.05.2018 and by that time, he had already been relieved, it is for this reason that, no interim relief was granted, regarding the issue of mandamus, the petitioner is under suspension and has been attached with the office of Divisional Manager SFC Ext. Division, Bhaderwah, so a person under suspension cannot be allowed to perform his duties on the post from which he has already been shifted. It is a case in which relief against the order of suspension dated 12.04.2018 has not been claimed in the writ petition.

13. In the objections filed on behalf of the respondents, it has been stated that enquiry report of the committee has already been constituted which is likely to be submitted within 15 days, the objections were filed on 01.06.2018 but no such report has been brought to the notice of this Court. However, constitution of enquiry committee without formulating Article of charge will not be of any consequence in this case, in view of the specific case that the petitioner had assaulted the then Managing Director and had abused him besides interfering in working of the officers who were engaged in the discharge of their duties. It is a serious allegation for which penalties are provided in Chapter-X for minor penalty articles of Charge are not necessary but if appointing authority comes to the conclusion that major penalty is to be imposed, that can only be after framing articles of charge.

14. In view of the above, this writ petition is disposed of with a direction to the respondents to formulate articles of charge within a period of one month and

giving 15 days' time to reply to the Articles of charge and thereafter complete the same within a period of three months. In case the respondents fail to complete the enquiry within a period of three months, the order of suspension shall stand quashed and the petitioners shall be entitled to suitable adjustment. This, however, only if the respondents decide to impose major penalty. Since law requires in case of major penalty, articles of charge are to be framed and served to delinquent official on receipt of the reply, if the allegations are denied, the regular enquiry is required to be held and thereafter, action taken on the enquiry report, a copy of which is to be served on the petitioner. This may not be necessary if minor penalty is to be awarded on the report of the committee already constituted.

15. Hence, the writ petition is disposed of in terms of the aforesaid directions.