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**(2014) 03 J&K CK 0022**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 2523 of 2012

Gh. Ahmad Shah

APPELLANT

Vs

State of JandK and Others

RESPONDENT

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**Date of Decision :** 17-03-2014

**Acts Referred:**

**Citation :** (2014) 3 JKJ 474

**Hon'ble Judges :** Tashi Rabstan, J

**Bench :** Single Bench

**Advocate :** Tasaduq Khawaja, Advocate for the Appellant; Mohsin Qadri, Advocate for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Tashi Rabstan, J.—By the medium of this petition, the petitioner is seeking quashment of Order No. DDAMA-34 of 2012 dated

15.10.2012 issued by respondent No. 3, whereby his period of suspension with effect from 06.06.1990 to 09.04.2002 has been treated as leave

of whatever kind due; with a further direction to the respondents to treat his period of suspension as on duty with all consequential benefits, on the

grounds taken in the writ petition. The facts, as averred in the writ petition, are that the petitioner was placed under suspension vide Order No.

ADAK-11/AK-4/90 dated 06.06.1990. He questioned his suspension by the medium of SWP No. 3157/1992. The said writ petition came to be

disposed of vide order dated 14.09.2000 with a direction to the respondents to hold an inquiry against the petitioner within a period of six months,

failing which the order of suspension was to be treated as quashed. Despite passing of the above direction, respondents failed to hold an inquiry

against the petitioner within the period allowed, therefore, vide order dated 09.04.2002 issued by respondent no. 4 he came to be reinstated with immediate effect. It is submitted that while issuing the aforesaid reinstatement order, the period of suspension of the petitioner was not settled. It is further submitted that the petitioner again approached this Court by the medium of SWP No. 1142/2006 seeking a direction to the respondents to treat his period of suspension as on duty and to allow him all consequential benefits. The said writ petition came to be disposed of vide order dated 22.05.2008 with a direction to the respondents to settle the period of suspension of the petitioner in accordance with rules and keeping into consideration the directions of this Court passed in the earlier writ petition. The respondents while implementing the direction of this Court passed in SWP No. 1142/2006, issued order dated 15.10.2012, impugned herein, whereby the suspension period of the petitioner has been treated as leave of whatever kind due. It is this order which is being challenged in the present writ petition.

2. The grounds taken by the petitioner in the writ petition is that since he was not found guilty and the respondents had failed to conduct inquiry against him, the respondents are bound to treat his period of suspension as on duty, instead of treating the same as on leave. It is urged that since the respondents had failed to conduct inquiry against him within the time as allowed by this Court, therefore, in terms of the directions passed by this Court in SWP No. 3157/1992, his order of suspension has automatically been treated as quashed, and consequently he has already been reinstated. Thus, it is argued that there is no question of treating his period of suspension as on leave; the same is arbitrary, unreasonable and against the principles of natural justice, besides being harsh and punitive. Learned counsel appearing for petitioner further argued that once the order of suspension of the petitioner has been treated as quashed, therefore, the said period has to be treated as the period spent on duty in terms of the provisions of Article 108-B of J & K Civil Service Regulations (Vol. 1).

3. Counter has been filed on behalf of respondents. It is contended that the impugned order does not suffer from any vice or arbitrariness. While opposing the petition filed by the petitioner, no new ground has been taken by the respondents. Whatever reasoning has been given by them in the

impugned order and in the objections to the earlier writ petitions, almost the same has been repeated in the counter.

4. Heard learned counsel for the parties and perused the record.

5. Before arriving at any conclusion, it would be appropriate to reproduce Article 108-B of the J & K Civil Service Regulations (Vol. 1) herein.

108-B. (i) When a Government servant who has been dismissed, removed, compulsorily retired before attaining the age of superannuation 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 superannuation or suspended, as the case may be. The period of absence from the duty shall be treated as period spent

on duty.

6. A plain reading of the aforesaid Article reveals that once a Government employee is fully exonerated and his suspension is held to be wholly

unjustified and he is reinstated, the competent authority shall be under an obligation to consider and make a specific order regarding the pay and

allowances to be paid to such Government employee for the period of his absence from duty and the said period shall be treated as the period

spent on duty. The words shall consider cast an obligation upon the respondents to consider judiciously and pass appropriate orders in

consequence thereof. Any order passed without such consideration is in negation to the mandatory provisions of aforesaid Article/Rules. In the

present case the respondents though first reinstated the petitioner, but his period of suspension remained unsettled. The respondents after the

directions of this Court issued the order impugned treating the period of his suspension as leave of whatever kind due. Thus, the order impugned

seems to be not in consonance with the provisions of Article 108-B of J & K CSR

when, of course, his period of suspension has already been deemed to have been quashed as per the orders of this Court. Thus, the respondents have violated the provisions of aforesaid Article.

7. A Coordinate Bench of this Court in case, titled as, Mohammad Shafi Bhat vs. State & others, 2008 (11) S.L.J. 633, while referring to the judgment of Supreme Court, reported in Brahma Chandra Gupta Vs. Union of India (UOI), , has held as under:

9. In case of suspension the competent authority should form an opinion whether it was wholly unjustified or not before making an order of

settlement of suspension period. Where the authority does not make a mention of it in the order, it would be taken that the authority was satisfied

that the suspension was wholly unjustified. Where an employee is suspended on a criminal charge but on conclusion of the trial/or appeal arising

out of a conviction if any, he is exonerated and the authority does not return a specific finding that the suspension was justified, the employee is

entitled to full pay or allowances to which he would have been entitled otherwise. Such an employee cannot be asked to remain without pay for the

period of his suspension and he is to be treated as on duty. Reliance in this behalf can be placed on Brahma Chandra Gupta Vs. Union of India

(UOI), , Ghulam Mohd. Dar v. Education Commissioner, 1986 SLJ 339, and Sudershan Kumar Abrol v. State of J & K, 1989 SLJ 29.

8. A Coordinate Bench of this Court in case, titled as, Gh. Mohd. Dar vs. Edu. Commissioner & anr., 1986 KLJ 25 534, while holding that

prolonged suspension without holding inquiry is not only bad and against the service rules and fundamental rights, has held as under:

8. I would therefore allow this writ petition and hold that the order of reinstatement so far as it refers to his period of suspension as on leave is

violative of service rules and fundamental rights of the petitioner because he has been denied his due benefit available to him under rules. It is

further commanded that petitioner's period of suspension from 07.04.1975 to 03.07.1976 shall be treated as period spent by the petitioner on

duty and he shall be given full salary and other benefit, increments attached to his post. No order as to costs.

9. In view of the discussion made hereinabove and the legal position, I find merit in the writ petition. Accordingly, the same is allowed and the

order impugned to the extent the respondents treated the suspension period of petitioner as leave of whatever kind due is quashed. Respondents

are directed to treat the period of suspension of the petitioner as the period spent on duty for all purposes by allowing him full pay and allowances

subject to deduction of his subsistence allowance that has been drawn by him. The respondents shall pay the dues to the petitioner within a period

two months from the date a copy of this judgment is received by them.

10. Registry is directed to return the record against proper receipt. Disposed of along with connected CMA(s), if any.