
(1998) 02 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : Letters Patent Appeal No. 110/1994

Gh.Ahmad Bhat	Vs	APPELLANT
State of J & K		RESPONDENT

Date of Decision : 03-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1999) SriLJ 560 : (1999) 2 SriLJ 560

Hon'ble Judges : Bhawani Singh, C.J and M.Y.Kawoosa, J

Bench : Division Bench

Advocate : H.I.Hussain, G.Mustaffa, Advocates appearing for the Parties

Judgement

Bhawani Singh, ACJ.

1. Through this appeal, decision dated October 17, 1994 in SWP No. 1300/1991 has been challenged whereby the petition of the petitioner had been dismissed. Before advertng to the question involved for determination in this case, it is desirable to refer to some of the important facts of the case.

2. The petitioner was appointed a Process Server by respondent2 vide order No. DLC/K/ 19/98294 dated 20081979 in the pay scale of Rs.

170230, later revised to Rs. 345460 and again revised to Rs. 630940 (AnnexureP).

3. While posted at Anantnag, he discharged the duties of his office with complete dedication and to the satisfaction of his superior. During

November 1980, he fell ill and could not attend the office for a few months. When he recovered from illness in the 1st week of April, 1981, he

wanted to resume the duties, but he was not permitted to do so by respondent1

stating that through Order No. ALC/A/87178 dated 28031981, his services stood terminated.

4. Immediately, the petitioner preferred appeal against this order to respondent3 through proper channel. He was not informed of the result of this appeal (Annexure P3). Waiting for about one and a half year for the decision on his appeal, representation was also filed requesting respondent3

to decide his appeal, but nothing was done. Another representation was made to the Minister Incharge of the Department, but with no result.

Again, representation dated 15071991 was also moved (Annexure P4). Ultimately the petitioner filed this petition in this court on 07081991.

Through the reply affidavit, respondents have stated that the petition suffered from delays and laches since order sought to be quashed pertaining

to 1981. On the merits of the case, it had been stated inter alia that the petitioner remained absent from duty from 15111980. Respondent1 called

for his explanation vide letter No. ALC/Angt/558 dated 26111980, followed by reminder No. ALC/Ang/ 594 dated 08121980. Another chance

was given to the petitioner vide notice No. ALC/A/ 81/78083 dated 26021981 by publication in Government Gazette directing the petitioner to

attend his duties, but he failed to turn up. Keeping in view the unauthorised absence of the petitioner, without any rhyme or reason and failing to

avail the opportunity extended to him, the Department was left with no option but to terminate his services vide Order No. ALC/A/ 87173 dated

28031981 from 15101980. As to the filing of the appeal by the petitioner, it has been stated that respondent1 did not receive any appeal from the

petitioner.

5. Learned Chief Justice examined the matter and came to the conclusion that the petitioner was not entitled to any relief for two reasons, namely:

that the petition was belated and no appeal was preferred by the petitioner.

6. As already stated above, the petitioner has grievance against this decision, hence this appeal.

7. Heard learned counsel for the parties. First question raised by learned counsel for the appellant is that dismissal of the petition on the ground of

delay is completely untenable. Explaining this contention, our attention was drawn to the fact that order of termination was not communicated to the

petitioner. Unless it is communicated, the petitioner is not expected to know of it,

therefore, the petition should not have been dismissed on this ground. In addition, petitioner has explained the delay in approaching this Court. Apart from this submission, it was stated that when the order of termination is ex facie illegal, it could be challenged at any time.

8. Mr. G. Mustafa, learned Govt. Advocate, submitted that the petitioner had come to know about the termination of his services, therefore, it is not right to contend that the petitioner could file the petition only after receiving the termination order. We do not propose to examine the question

whether actual receipt of the termination order is necessary in this case when petitioner had come to know about the order of termination sometime

during the beginning of 1981. Having come to know of it, he preferred the appeal. Here, it is contended by the learned counsel for the State that

this appeal was not received by the Department. We do not accept this contention. The petitioner has specifically submitted in para 5 of the

petition that he filed appeal against the order of termination, copy of which is Annexure P3. He has also stated that this appeal was followed by a

representation after 1 1/2 year when the petitioner did not receive any result on his appeal. Again, he filed two other representations. Why the

petitioner's appeal was not decided is not understandable? The petitioner was waiting for the decision of respondents on his appeal. In

corroboration of the statement that he had actually preferred the appeal, the petitioner has filed postal receipt which demonstrate that his

appeal/representations were submitted to Assistant Labour Commissioner, Anantnag, Minister Incharge of the Department and Chief Minister of

the State (Annexure A3). Additionally, we may notice that the termination order No. ALC/A/87173 dated 28031981 may have been endorsered

to the petitioner, but we do not find any material whether this communication was actually dispatched to the petitioner. For these reasons, the

conclusion of learned Chief Justice that the petitioner had not preferred any appeal does not appeal to us. Therefore, we do not see any difficulty in

coming to the conclusion that the petitioner had approached this Court within a reasonable time since he had been pursuing his grievance

systematically, came exhausting statutory remedy.

9. Turning to the second question, we have examined the termination order available on the case file. It may be that the petitioner did not attend the

duties for some time, may be on account of illness as contended, by his learned counsel. This absence may have committed misconduct, but his services could not be terminated without taking recourse to the procedure established by law. In case, respondent1 had come to the conclusion that the petitioner had not turned up to join the service despite notice, instead of terminating the services, the petitioner should have been proceeded against departmentally for misconduct in accordance with law. This course has not been adopted with the result that impugned order of termination is nullity and liable to be set aside. Therefore, the contention of Mr. H.I. Hussain that this order being nullity and in breach of fundamental rights could be challenged by the petitioner at any time has substance in the light of numerous decisions of Apex Court and this Court. (See W.P. No. 109 of 1971,) Thakur Sachdev Singh Versus The State of Jammu and Kashmir (All India Service Law Journal, Vol. 1 1973,138) C. W.P. No. 270 of 1983; S.C. Anand, Dy. Director Inspector D.G.S and D. Versus Union of India and others (All India Service Law Journal, Vol. 1 1984(1), 628) W.P No. 20 of 1978; Gh. Qa'dir Reshi Versus Executive Officer, Srinagar Municipal Council, Srinagar and another (All India Service Law Journal, Vol. 1 20 1986(2), 88), SWP No. 523/1991; Ghulam Muhammad Baqal Vs. State of J and K and Others decided at Srinagar on May 25,1992; AND LPA No. 356/1993; State of Jammu and Kashmir Vs. S. Qamar Ali (Srinagar Law Journal2, 1994, 373).

10. For the reasons stated above, there is merit in this appeal and the same is allowed. The impugned judgment is hereby set aside. The petitioner shall be deemed to be in service with all consequential benefits.