
(2005) 07 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2749/1994

Habib-ul-lah Dar

APPELLANT

Vs

Chairman and Others

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 1 JKJ 205 : (2005) 2 SriLJ 757 : (2005) SriLJ 757

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : M.A.Rathore, H.I.Hussain, Advocates appearing for the Parties

Judgement

1. The petitioner has prayed for quashing of the order No.JKSRTC/MFS/431618 dated 17.10.1988 on the grounds taken in the petition. The

respondents have not filed the reply, thus the pleadings of the petitioner have remained un rebutted.

2. Mr. Hussain argued that charge sheet has been framed by incompetent authority and termination order has also been passed by incompetent authority.

3. The reply was submitted by the petitioner and after considering the reply, the respondents were under legal obligation to conduct enquiry but

without following the enquiry, the termination order has been passed. It was mandatory on the part of the respondents to hold enquiry and provide

opportunity to the petitioner in terms of Rules 148 and 151 of JKSRTC Service Rules and Regulations 1979. The impugned termination order

disclose that without conducting enquiry, the petitioner was dismissed from the service.

Considered.

4. In terms of Order dated 19.09.1987, contained in annexure PI, the petitioner was placed under suspension. The respondent no.2 i.e. General

Manager framed charge sheet on 21st November, 1987 i.e. annexure P2 and petitioner submitted reply, contained in annexure P3. The petitioner

assailed the said order of suspension by the medium of the writ petition which was conducted by a lawyer who migrated from the Valley. That the

petitioner could not contact his lawyer. It appears that this writ petition has been filed after lapse of six years.

5. The question is, whether the petition is caught by delay and laches. The petitioner has explained how delay has crept in. The averments

contained in the writ petition and affidavit sworn by the petitioner have remained un rebutted. Thus this court has to accept the explanation given by

the petitioner.

6. In order to return finding on this issue also, it is necessary to hold whether petitioner has carved out a case. If the orders have been passed by

incompetent officers then the said orders are void and then delay cannot be a ground to refuse the relief. The petitioner cannot be held guilty of

laches when dismissal order is a nullity could be challenged at any time.

7. I have laid my hands on a judgment reported in 1999 SLJ 560 titled Ghulam Ahmad Bhat Vs. State, wherein the termination order was

challenged after a lapse of ten years and it has been held that the petitioner cannot be held guilty of laches when dismissal order is a nullity in the

eyes of law. It is pertinent to mention herein that this judgment has been upheld by the Apex Court. It is profitable to reproduce paras 8 and 9 of

the said judgment herein;

8. Mr. G. Mustoff a, 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 termination, copy of which is Annexure P3. He has also stated that this appeal was followed by a representation after 'A 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 28.3.1981 may have been end others to the petitioner, but we do not find any material whether this communication was actually dispatched to the petitioner. For m these reasons, the conclusion of learned Chief Justice that the petitioner had not m 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 in Court within a reasonable time since m he had been per suing his grievance systematically, came exhausting statutory remedy.

9. While going through charge sheet, annexureP2, the same has been framed by General Manager i.e. respondent no.2 while as termination order, annexureP5, has been passed by Executive Director. This court has held in case Bashir Ahmad Balkhi Vs. State, reported in SLJ 1999 page 557, that General Manager is not a competent person to draw the disciplinary actions.

10. It appears, as discussed above, that charge sheet has been framed by the General Manager of SRTC and without conducting enquiry termination order has been passed. It is profitable to reproduce para13 of the said judgment herein;

13. The Board of Directors of the Corporation vide their decision No.(XIII) held on 28lh to 31s1 Jan., 1997 approved the Schedule of powers delegated to Chairman, Vice Chairman and Managing Director, of the Corporation. The powers of Corporation for appointment and promotion got delegated to the three functionaries thereof, namely, the Chairman/ the Vice Chairman and the Managing Director. Taking of the disciplinary

action including dismissal, termination and suspension of an employee of the Corporation vested under the delegation of powers with the Chairman,

the Vice Chairman or the Managing Director. Entry No. 19 of the Schedule of Delegation of powers, copy produced for the perusal, given out

what the power of taking of disciplinary action including dismissal, termination and suspension was delegated by the Corporation in respect of the

employees to the appointing authority, namely, the Chairman, the Vice Chairman and the Managing Director.

Thus the charge sheet has been framed by the incompetent officer.

14. Now, coming to the termination order, the said order has been passed by the Executive Director. In terms of the regulation 32 of the Jammu

and Kashmir SRTC Service Rules and Regulations 1979, the notice is required and Rule 148 of the said Rules mandates that which acts of

omission and commission amount to misconduct on the part of an employee of the Corporation and Rule 148 of the Corporation provides

procedure for imposing major penalties. The Rule 148 reads as under;

PROCEDURE FOR IMPOSING MAJOR PENALTIES:

i) When an employee is charged with misconduct which may lead to the imposition of a major penalty, the Disciplinary Authority shall frame

definite charges on the basis of the allegations against him. The charges, together with a statement of allegations on which they are based, shall be

communicated in writing to the employee who shall be required to submit within such time as may be specified by the Disciplinary Authority (not

exceeding 15 days), a written statement of his defence,

ii) On the receipt of the written statement of the employee or if no such statement is received within the time specified an enquiry may be held by

the Disciplinary Authority itself, or by an officer or committee appointed for the purpose (hereinafter called the inquiring Authority by the

disciplinary authority).

iii) At the enquiry; a reasonable opportunity shall be afforded to the employee for explaining and defending his case but he will not be allowed to

engage a legal practitioner for this purpose.

Note: The inquiring Authority shall be the sole judge to decide what is a reasonable opportunity, iv) At the conclusion of the enquiry, the Inquiring

Authority shall prepare a report of the enquiry recording its finding on each of the charges, together with the reasons therefore.

15. Rule 151 provides that disciplinary authority may dismiss the employee without following the procedure laid down in the Rules. But no such

finding has been reported in the present case neither there is anything on the file suggesting the fact that mandatory requirement was dispensed with

in terms of Rules 151iii of the Rules..

16. The Board of Directors of the Corporation have approved the delegation of powers to Chairman, Vice Chairman and Managing Director of

the Corporation. Thus the powers have been delegated to three functionaries i.e. Chairman, Vice Chairman and Managing Director and the

disciplinary action, indicating dismissal, termination of the employee vest with Chairman, Vice Chairman and Managing Director.

Thus the termination order has been passed by Executive Director who is also not a competent person to pass such orders. This Court has held in

the judgment, referred hereinabove, that such an order is without jurisdiction and is a nullity.

17. The matter stands admitted. The question of delay should have been projected and considered before admission stage and in case it has not

been projected and then right to raise the said ground should have been reserved. The respondents are precluded from agitating the said ground.

My this view is fortified by the judgment of Division Bench of this Court delivered in LPA No. 13 8 and 168 of 1999 titled Bashir Ahmad Bhat

Vs. State of J and K, decided on 03.08.2004. It is profitable to reproduce relevant portion of para3 of the said judgment herein;

.....It is also the proposition of law that delay and latches should be considered before admission of the writ petition. The petition has not been

admitted subject to delay and latches, which were not pressed at the time of its admission. Therefore, the writ petition under such circumstances

cannot be dismissed on account of delay and latches.

18. In the given circumstances, the petition is hereby allowed and writ of certiorari, quashing impugned order No. JKSRTC/MFS/43 1018 dated

17101988 passed by Executive Director is issued. Writ of mandamus is also issued commanding the competent authority to hold enquiry, if so

warranted and desired against the petitioner. The enquiry shall be conducted

within a period of three months from the date the order is communicated to the Corporation. The quashment of the order shall not entitle the petitioner to claim any backwages/pay/salary. The period, however, shall be decided by the authorities on the basis of the finding in the enquiry, if held.