
(1998) 11 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 485 of 1994

Javed Anwar

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 03-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 SCT 692

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : D.S. Chauhan, M.S. Malik, Advocates appearing for the Parties

Judgement

O.P. Sharma, J.—The case of the petitioner is that he was appointed teacher by order dated 6.5.1989 issued by Block Education Officer,

Khawas on the basis of selection made by the Service Selection Board communicated vide No. SSB/19/89 dated 10.3.1989 and was posted in

Govt. Primary School Samote, Rajouri. He claims to have submitted joining report on 6.5.1989, but absented from duty with effect from

31.7.1989 because of his illhealth and after recovering from illness he claims to have approached respondent No. 2 on 16.12.1993, who by his

letter dated 18.12.1993 directed respondent No. 3 to allow him to join provisionally. The latter, however, informed the former that the petitioner

joined his duty on 6.5.1989 and after some time absented himself from duty for more than four years. On this respondent No. 2 wrote the

following letter to respondent No. 3 :

Before any action is taken in the matter, you are requested to please furnish the following information to this office to proceed further in the matter:

1. Copy of Ist appointment;
2. Date of joining the School;
3. Whether the teacher has applied for leave after summer vacations, if so the copy of leave application be furnished;
4. Whether you have served a notice to the teacher to join his duty. If so, the copy of the notice be furnished.

This letter was replied on 2.4.1994 by respondent No. 3 to respondent No. 2 stating therein that the petitioner was appointed as teacher on the basis of letter dated 2.5.1989 written by the then Distt. Education Officer, Rajouri. The petitioner remained absent without leave for more than four years. While the respondents 2 and 3 were looking into the matter how the period of absence be treated, the petitioner moved this petition seeking a direction to the respondents to allow him to join in service as Teacher in Government Primary School, Shamoti and treat him in service with effect from 25.12.1993 till his reinstatement with full wages.

2. According to the petitioner, he was appointed teacher and he joined his service on 6.5.1989. He has himself admitted that he worked only upto 31.7.1989 and then absented himself upto 16.12.1993 (more than four and half years). Between May and July, 1989 there were Summer vacations also. So he was in service for only about three months, including two months vacations during June and July, 1989.

The question is, whether the petitioner could be allowed to join his service, which is the only relief claimed by him after remaining absent from duty for a period of more than four years.

3. This question was considered by a learned Single Judge of this Court in *Munshi Ram v. State and others*, 1997 SLJ 266, in which it has been laid down that:

It is not in dispute that the Govt. employer is to pass formal order in accordance with rules to put an end to the services of an employee even

while invoking the provisions of Article 113 or 128 of the CSR. But, there could be cases where an employee's services could be treated to have

ended by his conduct and under the force of circumstances. If an employee stays away from duty years on and does not express his desire and

intention to return, even after a decade or so, and where his fitness for duty is under cloud, it cannot be said or held that he should be treated in

service because the employer had omitted to put him on notice or to pass a formal order of termination. In such cases the conduct of the employee

would constitute a base for concluding that he had surrendered his employment even if he was not removed from service by a formal order.

Otherwise a delinquent employee can stay away from duty for years on and return one day at the fag end cash on the employer's omission to put

him on notice or to pass a formal order which could result in his reinstatement on a technicality. In the circumstances, I find it easy to hold that the

petitioner can no longer be treated in service in the facts and circumstances of the case even when no formal order of his termination of service was

passed. It would also be administratively inexpedient at this stage to allow him to return to duty when he is at the verge of retirement and when his

fitness for such duty is in doubt.

4. However, Munshi Ram had been in service since December 1956 until January, 1974. So he had been in service for more than eighteen years

and was thus a confirmed Government servant. But the petitioner was in service from 6th May, 1989 to 31st of July, 1989 i.e. less than three

months. He in fact served only for few days before summer vacations and then absented himself. He was a temporary employee on probation

whose service could be terminated without assigning any reason. The rights which a probationer enjoys in service have been summarised by a

learned single Judge of this Court in Dr. Kuldeep Singh Choudhary v. State and others, 1996 SLJ 145 observing that:

The legal position on the point in issue is fairly well settled which makes the matters easy in determining the controversy in the present case. It is

elementary that under the service jurisprudence, a probationer has no right to hold a post and his services are liable to be terminated in accordance

with relevant rules and the terms of the contract. After all, when an employee is put on probation, he is on trial during the probationary period and

the purpose in so doing is to try him during the probation period and to assess when his work record shows unsatisfactory performance,

inefficiency or negligence and he is ousted on the ground of unsuitability, it does not amount to his removal or dismissal within the meaning of

Article 311(2) or of the Indian Constitution or Sec. 126 of the State Constitution.

He, thus, has no enforceable right under the Constitution, unless the termination

is by way of punishment. So if he could be discharged without assigning any reason, he could likewise abandon his right to continue in service without giving any notice by remaining unauthorisedly absent for four and half years. There can be no better case of negligence justifying his discharge. The failure to pass such an order is no ground to hold otherwise because he had no right to resume duty on a post, which he abandoned voluntarily.

5. In view of the above, the petitioner is not entitled to any relief as he has voluntarily abandoned the post on which he was appointed. So there is no merit in this petition, which is dismissed without any order as to costs.