

(2003) 11 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 862 of 2003

Khursheed Ahmed & others

APPELLANT

Vs

State of Jammu and Kashmir & others

RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 2 SCT 703

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : B.S. Salathia, I.H. Bhat, Advocates appearing for the Parties

Judgement

Permod Kohli, J.—Government Order No. 2GADVig of 2003 dated 24.1.2003 according sanction for launching prosecution against the

petitioners and six others as also order No. DSHK/Estt. 876173 dated 28.3.2003 placing the petitioners under suspension are subject matter of

challenge in the present writ petition.

2. At the outset Mr. I.H. Bhat, Advocate of the petitioners seeks to withdraw the challenge in respect to Government order No. 2GAD Vig of

2003 dated 24.1.2003 whereby sanction for prosecution was given and maintains the challenge regarding suspension order. The writ petition to

this extent does not survive.

3. The sanction order is challenged primarily on two grounds :

(1) that the departmental inquiry in respect of the same incident was held in which petitioners have been exonerated;

(2) that the officials of the department, who are also arrayed as accused in the chargesheet presented before the Special Judge, Anti Corruption

and also named in the sanction order have not been placed under suspension, while the petitioners have been booked and treated differently in arbitrary manner.

4. The facts of the case as pleaded in the writ petition are that a complaint was lodged by one Mast Nath Jogi regarding some misappropriation in

Animal Husbandary Department. An FIR No. 32/98 was registered with Police Station, Crime Branch, Jammu for offences under section 5(2)

P.C. Act read with sections 409, 420, 467, 468, 471 & 120B RPC. While the departmental inquiry held in respect to the same incident

exonerated the petitioners, the Crime Branch on completion of investigation has produced a chargesheet No. 7 dated 19.3.2003 before the

Special Judge, Anti Corruption, Jammu. Officers namely, Dr. M.R. Malik and Dr. Kamaljit Singh are also accused in the said charge sheet

alongwith the petitioners. It is stated that though the petitioners have been placed under suspension, but these two officers are still holding the

office. Sanction order is said to be discriminatory in nature and without application of mind as also against all cannons of justice. It is further stated

that the petitioners, who are junior officers have been suspended and the high officers have been let off.

5. Reply has been filed by the respondents. In the reply filed, it is stated that the petitioners having been involved in a criminal case, employer is

entitled to place them under suspension. It is further stated that the departmental inquiry and criminal proceedings are based on different footings

and therefore, the exoneration from the departmental inquiry does not entitle the petitioners to seek any benefit so long as criminal proceedings are

pending against them. Respondents have not stated anything regarding the different treatment given to the petitioners for their suspension despite

specific averments made in the writ petition that two officers, namely, Dr. M.R. Malik and Dr. Kamaljit Singh have been let off. From the sanction

order dated 24.1.2003, it appears that the above named officers alongwith some others are accused in FIR No. 32/98 for various offences and

considering their role sanction for prosecution has been given and now a chargesheet has also been filed. No reasons whatsoever have been

indicated in the reply for placing the petitioners under suspension and not giving same treatment to other offices, who are equally responsible and

involved in the criminal proceedings alongwith the petitioners. The State being a model employer cannot adopt different yardsticks for similarly situated persons. No distinguishing feature has been reflected in the reply or otherwise, either on the basis of their role in the alleged commission of the offences or their conduct. Therefore, it is held that the petitioners have been treated with hostility in a most arbitrary manner in respect of their suspension. In *Abdul Majir v. State*, reported in 1987 SLJ 372 it was held as under :

9. The respondent No. 2 vide order impugned is not even under the rules on the subject to give different treatment to similarly situated delinquent officials. Once respondent thought it proper exercise powers under section 31 of the Classification, Control and Appeal Rules, 1956 the order of suspension should have followed enblock against all the officials involved in the crime for uniform application of rule but rule does not envisage power to the Government to apply method of pick and chose while passing the order of suspension in respect of a similarly or equally situated officials as in the case in hand. Once the charge is levelled against a Government official particularly when offence under section 120B RPC i.e. conspiracy is involved it is immaterial what is the contribution of each official particularly when there is no violation in the heads of charges against the officials as in the case in hand. The petitioners alongwith 10 other officials named in para 4 of the petition admittedly are facing trial jointly against joint charges before Special Judge, Anti Corruption, Srinagar. No one on earth muchless under the Constitution of India any authority has power to discriminate in respect of favourable or unfavourable action against or in favour of similarly situated officials, be it a simple suspension. The suspending authority cannot look to the gravity of the allegation in respect of one and let off the other when commonly involved whatever be the reason. The order impugned while putting to task on the facts of this case smells official discrimination which is not arbitrary only but unconstitutional too.

6. From the above position of law and the facts of this case, prima facie it appears that the action of respondents placing the petitioners under suspension and avoiding similar action against other two accused is discriminatory in nature and against the spirit of Article 14 of the Constitution of

India. In this view of the matter, this petition is disposed of with a direction to the respondents to either place all the coaccused involved in FIR No.

32/1998 under suspension on the basis of sanction for prosecution and presentation of the chargesheet against them or revoke the suspension of the petitioners within a period of one month.