
(1993) 07 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 842 of 1993

Lalit Kumar

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Jammu and Kashmir Business Rules — Rule 12

Citation : (1994) JKLR 905 : (1995) KashLJ 20 : (1994) SriLJ 202 : (1994) 1 SriLJ 202

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Judgement

Mr. A.Sethi.

1. Heard. Ld. counsel has drawn my attention to the fact that the petitioners who are ga/cttd officers have been placed under suspension by

Under Secretary to Govt., Education Department, who is not their appointing authority. He has further submitted that the allegations leveled against

the petitioners do not spell out (he nature of allegations and the suspending authority has not explored the possibility of other modes available.

Instead he could have transferred the petitioners or asking them to proceed on leave so thai they could in no way hamper the enquiry or influence

the witnesses. Without exploring these possibilities, the order of suspension has come against the petitioners which is illegal and unconstitlunal and

is not tenable in the eyes of law.

2. I have given my thoughtful consideration to the arguments advanced by learned counsel for the petitioners.

3. The argument of learned counsel for (he petitioners that the Under Secretary

to Government. Education Department, is not a competent person

to place the petitioners under suspension is without any force and misconceived and I do not agree on this count.

4. Rule 12 of the J&K Business Rules, the Government has to function through its functionaries namely Secretary, Additional Secretary, Deputy

Secretary and Under Secretary. All orders which are being issued by the Government are to be signed by these functionaries on behalf of the

Government. The Secretary, Add Secretary, Dy. Secretary or Under Secretary have no personal authority nor they are the persons who are

passing the orders themselves. The orders are being passed by the Government.

5. In the case under consideration, order No: 136T) Edu of 1Â°Â°3 dated 1271093 has been passed by the Government and the order does not

suffer on any count. It has been passed by the Government and Under Secretary is only a signatory being empowered under Rule 12 of the J&K

Business Rules,

6. Moreover it may be noted that the suspension of an employee pending enquiry is no punishment and does not require any interference by the

court as the same does not violate any statutory rights of the petitioner, muchless the constitutional right. However, the order in question does not

make mention of the subsistence allowance, to which the petitioners are entitled to under law and service rules.

7. For the foregoing reasons, no good ground is made out for admission of the petition, which is accordingly dismissed in limine.