
(1998) 12 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 4888/96

Manzoor Ahmad Sheikh

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31

Citation : (1998) SriLJ 192

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : Shahnaz, M.Y.Bhat, Advocates appearing for the Parties

Judgement

1. Heard

2. The petitioner has challenged his order of suspension No. 22/DCK/VI dated 191196 (AnnexureP3) on the following averred grounds :

3. The petitioner is a guard on substantive basis in Sales Tax Department. On 18101996 the petitioner was apprehended by the Police Station

Shergari in the kidnapping case of a girl with whom petitioner's brother Nazir Ahmad was to marry. The petitioner was detained by the Police from

18101996 to 26101996 and on this last date he was set free. He reported for duty, but was not allowed to join and perform his duties. Petitioner

approached Respondent No. 2 and at his bidding obtained a certificate from the S.H.O Police Station Shergari mentioning amongst other things

therein that the accused was apprehended in FIR No. 321/96 under section 366109 R.P.C, but as he was found ""innocent"" he was accordingly set

free and deleted from the array of the accused (AnnexurePI).

4. That despite producing the certificate before Respondents 2 and 3, he was not

allowed to join his duties, notwithstanding, that he obtained another letter from Police Station Shergari (AnxP2). The Respondent No.2, Deputy Commissioner, Sales Tax Vigilance and Inspection Srinagar, placed the petitioner under suspension on 19111996 (AnnexureP3).

5. That the petitioner represented against the suspension order, but the suspension order was not revoked, despite the case being made out by him before his employer, the Sales Tax Department, of being innocent and not guilty. As no inquiry was pending or contemplated against the petitioner and further as he was not involved in any criminal case, therefore, he deserved to be reinstated.

Petitioner has prayed for appropriate writ, order or direction, quashing the suspension order and for his reinstatement.

6. Mrs. Shahnaz, counsel for the respondents submits that objections filed by her may be treated as reply.

7. The respondents have not controverted the pleas of the petition, of the petitioner having been apprehended in the criminal case and detained by

the Police for eight days. It is further stated in reply that he was subsequently released on bail. The petitioner was placed under suspension for

having been in the Police custody for eight days in terms of provisions of Section 31 of the Jammu and Kashmir Civil Services (Classification

Control and Appeal) Rules, 1956.

8. There is no dispute that the petitioner is a guard on substantive basic in Sales Tax Department. It is also admitted by the respondents that the

S.H.O. Police Station Shergari informed the Respondent No. 2 that the Petitioner was apprehended in FIR No. 321/ 96 and was found innocent

and deleted from the array of accused (Annexure PI). It is again admitted that the petitioner was not permitted to resume duties even after

receiving Annexure PI, and P2. Petitioner was placed under suspension on 19111996. Petitioner's act of representing against the suspension order

is also admitted.

9. On these admitted facts, it would be seen that despite the petitioner having been detained form 11th October 1996 to 26th October, 96

suspension order was passed on 19111996 and that too when it was certified and reported to the department that the petitioner though

apprehended in FIR No. 321/96 of Police Station Shergari was found innocent

and deleted from the array of the accused in the case.

10. The petitioner being apprehended and detained by the Police in connection with the investigation of the case was for reasons beyond his

control and even for no fault of his. Infact, there was no incriminating allegation against the petitioner, only because the Police suspected him and

was detained at the Police Station suspicion. It cannot be said that the petitioner was kept in Police custody on criminal charges. In this case the

provision of the rules sought to be pressed in service by the respondents does not apply. It is also disturbing that it took the respondents about a

month to place the petitioner under suspension after the department was apprised of the innocence of the petitioner. No justification is coming

forthwith for the suspension. It appears a mechanical order passed without consideration of facts and circumstances of the case. To allow the

order to hold field would be improper and not in consonance with the canons of justice. This is all the more so when no inquiry whatsoever has

been initiated or is being contemplated by the respondents' against the conduct of the petitioner in the matter.

11. For the aforesaid reasons the petition is allowed and the order impugned dated 19111996 (Annexure P3) is quashed and the respondents are

directed to reinstate the Petitioner forthwith and he shall be paid due emoluments after treating him on duty.