

(2001) 07 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : LPA. No. 338 Of 1997

Manzoor Ahmad Sheikh & Ors.

APPELLANT

Vs

State of J&K and Ors.

RESPONDENT

Date of Decision : 11-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 407

Hon'ble Judges : H.K.Sema, C.J and B.L.Bhat, J

Bench : Division Bench

Advocate : M.I.Qadiri, M.Ali, A.Ganai, Advocates appearing for the Parties

Judgement

1. This appeal has been preferred by six petitioners against the judgement and the order dated 2961997 passed by learned single Judge in SWP

No.81722/1996, dismissing the writ petition.

2. This case has a chequerred his tory and the facts leading to the filing of the present appeal may be summarily recited.

3. Case of the petitioners as alleged in the writ petition is that the petitioners are working against following posts:

a) Petitioners NO. 1 and 2 Teacher

b) Petitioners NO. 3 Jr. Assistant

c) Petitioners NO. 4 Peon

d) Petitioners NO. 5 Library Assistant

e) Petitioners NO. 6 Physical Education Teacher.

4. It is stated that all of them are working in Government High School Larno, against vacant posts. Petitioners, however, did not annex any

appointment orders appointing them to the particular post, instead the petitioners annex Xerox copy of the certificate dated 10/4/1996 showing that

the petitioners have been discharging their duties since the date of their joining and also certified that the pay and allowance from March 1995 to

October 1995 have been drawn. The afore said certificate has been issued by the Headmaster of the High School Larnoo.

5. The grievances of the petitioners are that their pay and allowances from October, 1995 has been withheld, consequently the petitioners prayed

the following reliefs by filling the writ petition:

In the premises, it is therefore prayed that the Hon'ble Court may be pleased to pass an appropriate writ, order or direction including one in the

nature of mandamus, commanding the respondents to disburse the salary of the petitioners immediately for the period they have worked and also

to continue to pay them salary for the services to be rendered by them in future.

6. On receipt of the application, the petition was put up for admission. On 26/6/1996 while issuing notices to the other side, this court also issued

interim direction that if the petitioners are working they should be paid their wages. On 8/8/1996, another direction was issued in terms of the

following:

In continuation with this court direction dated 26/6/1996, respondents are directed to pay the unpaid wages of the petitioners within 15 days and

future wages be paid regularly. The services of the petitioners will not be dispensed with.

7. It is unfortunate that this show the appellants have been continuing in the post by various interim directions and getting their pay and allowances.

8. Counter on behalf of the respondents has been filed detailing disqualifying features. According to the respondents the petitioners have never been

appointed by any competent authority, as recognized under the rules. It is further case of the respondents that appointments to the post of teachers

are made by the Service Selection Board (SSB) in accordance with the rules. The posts of Class IV employees are to be filled up after selection

by a District Recruitment Board constituted under the provision of Subordinate Service Selection Rules, 1990. It is the specific case of the

respondents that none of the officers of the executive Department has made any appointment order in respect of the petitioners after following

procedure prescribed by the rules. It is also the case of the respondents that one Mohammad Maqbool Bhat was at the relevant time working as

Head master in the Government High School Barnoo, who happens to be the father of respondent No. 5, allowed the petitioners to work in the

school without any appointment order and when it was brought to the notice of the Department, the Joint Director of the School Education

inspected the said Govt. School and discovered the fraud committed by the Headmaster in collusion with the petitioners. Consequently it is stated

that the said Headmaster has been placed under suspension when the counter on behalf of the respondents was filed. The respondents have

clarified that alleged appointments made by the Headmaster, copy of which was never brought to the notice of the competent authority. It is also

the case of the respondents that salaries of the petitioners from March 1995 to October 1995 was paid and respondents initiated recovery

proceedings from the petitioners which has been illegally drawn. The respondents further contended that the appellants obtained interim order from

the Court by suppressing the facts.

9. Before the learned Single Judge save and accept the bald statement, the appellants failed to substantiate their contention that they have been

appointed to the said post by producing appointment orders. Even at the stage of hearing, the learned single Judge insisted upon the counsel for the

petitioners, which he has failed to do so on the ground that record pertaining to the appointment of the petitioners has been taken away by some

unidentified gun men from the office of the Headmaster. This is how the learned Single Judge has recorded in Paragraph 8 of his judgement:

I have even on the date of arguments desired that learned counsel for the petitioners should place on record the orders of appointment of the

petitioners but he has not done so and submitted that whole of the record including the appointment orders of the petitioners was taken away by

some unidentified gunmen from the office of Headmaster concerned. According to the learned counsel for the petitioners, an FIR in this behalf has

been lodged in the concerned police station.

10. The learned single Judge was of the view, that even the interim order was obtained by the appellants by practising fraud. Lastly the petition was

dismissed in terms of the following order:

The petitioners having failed to produce any record relating to their appointment are nor entitled to the relief of pay. Therefore, I find that there is absolutely no case made out for admission of this writ petition. That being so, this writ petition is dismissed. The interim directions issued by this court from time to time stand vacated. As no contempt is made out against the respondent, the same also stands dismissed and the rule issued against respondent No. 3 is discharged. The connected CMPs also stand dismissed. However, no order as to costs.

11. We have heard Mr. M.A.Ganai learned counsel for the appellants as well as Mr.M.I.Qadri, learned SAAG for the State at length.

12. Before us learned counsel for the appellants submit that infact the appointment order in respect of the appellants could not be traced out at the time of filing of the writ petition and produced the copies of the alleged appointment orders dated 1971988,1671991, 15121991, 1671991,

771990 and 1871991, all purportedly issued by the District Education Officer, Anantnag in favour of the appellants. The aforesaid alleged

appointment order has been seriously doubted by the court as well as Mr. Qadri appearing for the respondents; firstly on the ground that

according to Mr. Qadri no authority in the Education Department has issued such appointment orders and secondly alleged appointment order

produced at the time of hearing of the writ appeal by the petitioners is belied by the stand taken by the petitioners before the learned Single Judge

to the effect that the records of appointment of the petitioners has been taken away by an unidentified gun man, from the office of the Headmaster.

It is in these circumstances, this court passed the following order no 1752000:

Learned counsel for the appellants, Mr. M.A.Ganai, has produced six original orders of appointment of the six appellants. The originals may be

kept in sealed cover by the Registry. Xeroxed copies of the same may be given to the learned counsel for the respondents Mr.M.I.Qadri. The

originals may be shown to the Senior Additional Advocate General as and when he wants to verify the same.

Three weeks, time is granted to learned Sr. Addl. Advocate General to verify the correctness of the originals and to make an appropriate

statement before this court.

13. Pursuant to the aforesaid order, the matter has got verified by the Director of

School Education, Government of J&K, Srinagar and by its letter dated 1872000; he has sent a verification report to the learned Additional Advocate General, Srinagar, stating that the orders of appointment which have been procured and produced before the court are fake and fabricated. It is further stated in the letter that from the available records in the Chief Education Office/Zone and the Director do not support the claim of the petitioners and their engagement orders have been made without following due process of law.

14. The Director of School Education, Kashmir also submitted another verification report dated 2862000 stating interalia that on the perusal of the relevant records for verification reveal that the signatures affixed on the impugned appointment orders produced by the appellant do not tally with the admitted signatures of the then district. Education Officer, Anantnag (Ghulam Rasool Bhat). The Director of School Education specifically stated that the appointment and engagements are fake.

15. What is deduced from the afore said facts and circumstances, it clearly appears that the petitionersappellants occupied the office by means of practising fraud. There was no appointment order issued in favour of the appellants. It is a common knowledge that the Government Servants enter into the service pursuant to appointment order issued in his favour. Appointment order issued by a competent authority is a condition precedent for entering into any service. The appointment is a contract between the employer and the employee. In the instant case, it clearly appear that there was no service contract existing between the appellant and the respondentGovernment which can be enforced by issuing a writ.

16. Appellants were allegedly holding the respective posts by practising fraud. A fraud is an act of deliberate deception with the design of securing something by talking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating. It is well settled principle of law that if any advantage or order of the court is obtained by playing fraud, it is a nullity and nonest in the eyes of the law. From the facts narrated above, we are clearly of the view that the appellants not only entered into the service from the backdoor by playing fraud but also produced a fake appointment order even before the appellate court with a view to continue in the post, by practising fraud upon the court.

17. Having confronted with the hard facts of the case, Mr. Ganai learned counsel for the appellants turned round and assailing the verification

report submitted by the Director of School Education on the ground that no reasonable opportunity has been afforded to the appellant at the time

of enquiry and the finding is *exparte* and, therefore, no reliance can be placed on such verification report. This submission is not only misplaced but

belied by the interim order passed by this court on 1782000 in terms of the following.

Learned counsel for the appellants, Mr. Ganai, seeks three weeks' time to file an affidavit on behalf of every appellant that the findings of the

State Government, that the appointment letters produced are fake, no appointments were made, no pay slips were issued and they were not

working at the places they have mentioned, are false and that they will furnish with the affidavits documentary evidence in support of the above

statements. If the appellants fail to do so, they shall be responsible for the consequences. Documents filled by the respondents to be "kept in sealed

cover by the Registrar Judicial.

18. Pursuant to the aforesaid order, appellant has filed an affidavit on behalf of the appellants No.2,3 and 4 on 892000 and further affidavits on

behalf of appellants 5 and 6 have been filed on 3011 2000 as would appear from the note of the Registry. We have perused the entire additional

affidavits filed by the appellants, all in identical nature stating that they had been duly appointed by the District Education Officer, Anantnag, which

was found to be fake by the Director of Education. No other agent or ostensible reason or documentary proof has been produced by the

appellants in the additional affidavit to disprove that the alleged appointment order issued on their behalf by the District Education Officer,

Anantnag, are fake appointments. This apart, the report submitted by the Director of School Education is pursuant to interim direction passed by

this court as already quoted to verify the genuineness of the alleged appointment order produced by the appellant before the appellate court and it

was not strictly in the sense of conducting an enquiry.

19. As already observed, Director of School Education after consulting various records/file in different offices of the Department comes to the

finding that the copies of the appellate court was not genuine and fake. Since the

report submitted by the Director School Education was on the basis of verification of the file and the documents, no prejudice has been caused to the appellants as the documents and facts speaks for itself. Man may lie but documents does not lie. We are, therefore, of the view that the appellant has been afforded adequate reasonable opportunity to rebut the verification report submitted by the Director of School Education with regard to the genuineness of the alleged appointment order, by way of affidavit.

20. The last submission of Mr.Ganai is that the appellants have now been continuing in their respective posts for a long period and equity, justice and good conscious demands that they should be allowed to continue in their respective posts. We have applied our mind to this submission, but we are unable to persuade ourselves to accept this contention. Firstly of all the continuation of the appellants in their respective posts from 2661996 and 881996 are through an interim order obtained by the appellants by suppressing of facts. Secondly, allowing them to continue in their respective posts despite of the facts that they entered into the service by playing fraud, would amount allowing perpetuation of fraud. If such situation arises, it will affect the moral of the public at large and set a bad precedence of grave consequences. On the other hand, the problems if any that may be faced by the appellants are selfcreation and nobody should be blamed. We are aware that the appellants may now be overaged and not fit for applying for new post but at the same time, they should not be allowed to reap the harvest of their misdeeds. Allowing them to continue in their respective posts would amount to perpetuation of illegality. At the same time, any order obtained by fraud is a nullity and void abinitio and no right whatsoever has been accrued to the appellants. He who comes for equity must come with clean hands. Appellants have not approached the court with clean hands and, therefore they are debarred from claiming equitable justice. Appellants entered into the service by applying backdoor method and therefore, they must go back by that door.

21. In the result, there is no merit in this appeal which is accordingly dismissed. Looking into the entire facts and circum stances of the case, parties are asked to bear their own costs. Interim orders stand vacated.

22. Before parting with the record, we are of considered view that such grave

misconduct of the appellants is penally liable apart from civil consequences. Registrar Judicial of this Registry shall file a compliant along with fake appointment orders said to be in original submitted by the appellants to the Officer Incharge of the Police Station having jurisdiction to enquire into such matter and such officer shall on receipt of the compliant from this Registry, register a case and investigate into the matter and fix responsibility on any erring officer or personnel in accordance with law.