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**(2014) 07 J&K CK 0034**

**In the Jammu And Kashmir High Court**

**Case No : S.W.P. No. 438 Of 2005 and I.A. No. 2845 Of 2006**

Mir Hussain

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision :** 10-07-2014

**Acts Referred:**

**Citation :** (2014) 4 JKJ 43

**Hon'ble Judges :** Mohammad Yaqoob Mir, J

**Bench :** Single Bench

**Advocate :** S.T. Hussain, Sr. Advocate and Masooda Jan, Advocates for the Appellant; R.A. Khan, A.A.G, Advocates for the Respondent

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## **Judgement**

Mohammad Yaqoob Mir, J.—Petitioner was dismissed from service by Commandant 1st Bn. Auxiliary Police, Srinagar, vide order No.

402 of 1991 dated 22.11.1991. Same was challenged by medium of SWP No. 153/94 which has been allowed vide judgment dated 17.07.1997.

The order of dismissal has been quashed. Fresh enquiry was required to be held, assumption of duty was directed to abide by the final orders to

be passed by the competent authority. The fate of the intervening period was also required to be decided in accordance with law. In compliance to

the judgment, fresh order was passed by the respondents bearing No. 2874 of 2002 dated 01.09.2002. In terms whereof, petitioner was

reinstated, the period of absence was directed to be adjusted by sanctioning earned as well as half pay leave whatever was due to him at the time

of his dismissal and remaining period was treated as dies-non. Dissatisfied therewith, petitioner again filed SWP No. 777/2003 which has been

disposed of on 15.06.2003 where-under period of absence was directed to be re-considered. On re-consideration of the same, Order No. 3562

of 2004 dated 21.10.2004 has been issued which is quoted hereunder:

ORDER NO. 3562 OF 2004

DATED: 21-10-2004

Constable Mir Hussain No. 1065/Aux Police filed writ petition No. 777/2003 against the PHQ Order No. 2874 OF 2002 dated: 01/09/2002

whereby the period of absence to the extent of all kinds of leave of the petitioner was adjusted and remaining period was treated as dies non.

WHEREAS, in the light of the judgment passed by the Hon'ble High Court in the said writ petition, the case of the petitioner was considered and

an opportunity of being heard was also provided to him;

In view of the representation made by the petitioner and the totality of the case, the period of absence of Constable Mir Hussain No. 1065/Aux

Police 1st Bn. w.e.f. 15/07/1990 to 07/03/2000 i.e. till the date of his rejoining in-service for the said period governing the rule no work no pay.

2. Again dissatisfied therewith, petitioner has filed the instant petition seeking quashment of the aforesaid order dated 20.10.2004 to the extent it

provides that the petitioner shall not be entitled to monetary benefits for the period of absence on the rule of ""no work no pay"".

3. Learned counsel for the petitioner would project that the order impugned dated 21.10.2004 providing that the petitioner shall not be entitled to

monetary benefits runs contrary to the decision taken by the respondents because in the order it is clearly indicated that the period of absence of

the petitioner with effect from 15.7.1990 to 07.03.2000 i.e. till the date of his joining in service to be treated as on duty. Once he is treated to be

on duty, then there is no scope for denying monetary benefits for the said period. Learned counsel would contend that if worse comes worst, still

petitioner at least shall be entitled to 50% of the wages for the period of his absence and in case same is allowed, he will be satisfied.

4. When the case was considered yesterday i.e. on 9th July, 2014, learned AAG confronted with the said position had sought time for having

instruction. Today he submitted that in accordance with law as laid down in the judgment C.N. Malla Vs. State of Jammu and Kashmir and

Others, , orders may be passed.

5. In the reported judgment, on conclusion of the enquiry, petitioner, a doctor by profession, was exonerated and his period of absence was

treated as on duty but he was denied monetary benefits for the period of absence. Hon'ble Apex Court has held that since petitioner is a doctor, he would not have remained idle, therefore, he shall be entitled to 50% of wages for the period of his absence. In the case in hand, petitioner was a Police Constable, he has been exonerated but his period of absence has been treated as on duty without monetary benefits. Applying the ratio of the reported judgment, petitioner herein shall be entitled to the wages for the period of absence.

6. Learned counsel for the petitioner would submit that the petitioner will be satisfied if he is paid 50% of his wages for the period of absence.

7. Submission is reasonable and in conformity with law, therefore, this petition is allowed. Order impugned as quoted above to the extent it

provides for forfeiture of monetary benefits for the period of absence is set aside. For period of absence, 50% of the wages, as admissible under rules, shall be paid to the petitioner.

8. Record of earlier disposed of SWP Nos. 153/1994 and 777/2003 be detached and consigned to records.

9. One more petition SWP No. 658/2000 titled Mohammad Maqbool Badhama v. State & Ors., as is attached with this file appear to have been

wrongly attached because same does not pertain to the present case, shall be de-linked and appropriate steps for its listing shall be taken. Petition

disposed of along with connected CMP.