
(2019) 02 J&K CK 0048

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 166 Of 2019, IA No. 01 Of 2019

Mohammad Hussain

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Constitution Of Jammu and Kashmir, 1956 — Section 103
Constitution Of India, 1950 — Article 226

Citation : (2019) 02 J&K CK 0048

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Gagan Kohli

Final Decision : Disposed Off

Judgement

1. This writ petition is filed by one Mohammad Hussain S/o Haji Mohammad Abbas R/o Village, Baroo, Kargil, before the Jammu wing of the High Court, on the ground that in view of the recent heavy snowfall in Kashmir Valley as well as in his home District, i.e. Kargil, the petitioner could not file the instant petition before the Srinagar wing of the High Court. Accordingly, a motion was laid for seeking permission to file the writ petition before the Jammu wing of the High Court which has been allowed by Hon'ble the Chief Justice.

Thereafter, the learned Registrar Judicial of the Jammu wing of this High Court, in terms of her communication dated 30th of January, 2019, has forwarded the writ petition to the Registrar Judicial of this wing of the High Court for further necessary action. On receipt of the said communication, the learned Registrar Judicial of this wing of the High Court has, vide her note dated 8th of February, 2019, observed that in terms of Circular No. 94 dated 7th of December, 2018, the writ petition in question is needed to be registered and numbered in this wing of the High Court and that same may be heard via video conferencing by a Bench of this Court having the roster. It is in the said backdrop that the instant petition is listed today before this Court and is being heard through Video

conferencing.

2. The petitioner, by medium of this petition, filed under Article 226 of the Constitution of India read with Section 103 of the State Constitution, has assailed the validity of Government Order No. DG-YSS/Estt/8900-8906 dated 14th of January, 2019, issued by respondent No.2, whereby and whereunder the petitioner has been attached with the office of Zonal Physical Education Officer, Kargil, till further orders and Mr Jaffer Husain, I/C ZPEO, Kargil, respondent No.3 herein, has been ordered to lookafter the work in District YS & Sports Office, Kargil, in addition to his own duties till further orders. A writ of mandamus is also sought directing the respondents to allow the petitioner to continue as I/C District Youth & Sports Officer, Kargil.

3. The facts, as these emerge from a study of the file under consideration, are that the petitioner claims to be the senior-most employee of the respondent Department, having a clean and unblemished service carrier. It is stated that the petitioner, while performing his duties as I/C District Youth and Sports Officer, Kargil, in terms of order No. 44-Edu(YSS) of 2018 dated 6th of March, 2018, was deprived of the said posting and the same was assigned to Assistant Director, Tourism. Aggrieved thereby, the petitioner approached this Court through the medium of writ petition, being SWP No. 614/2018. In the said writ petition, this Court, vide order dated 23rd of March, 2018, stayed the operation of the aforesaid order dated 6th of March, 2018. Thereafter, it is contended that although, in compliance of the directions of this Court, the respondents allowed the petitioner to continue discharging his duties as I/C District Youth and Sports Officer, Kargil, but they were not allowing the petitioner to exercise the powers of Drawing and Disbursing attached to such posting, constraining the petitioner to file an application before this Court which came to be registered as MP No.02/2018. This application, on consideration, was entertained by this Court on 11th of May, 2018, whereby, while issuing notice to the respondents, this Court directed the respondents to comply with the earlier directions passed by this Court on 23rd of March, 2018, in letter and spirit and allow the petitioner to exercise Drawing and Disbursing powers. It is submitted that pursuant to the directions passed by this Court dated 23rd of March, 2018 and 11th of May, 2018, the petitioner was continuously discharging his duties in the respondent Department as I/C District Youth and Sports Officer, Kargil, with utmost dedication and sincerity. However, in terms of order No. DG-YSS/Estt/8900-8906 dated 14th of January, 2019, issued by respondent No.2, the petitioner has been attached with the office of Zonal Physical Education Officer, Kargil, till further orders and Mr Jaffer Husain, I/C ZPEO, Kargil, respondent No.3 herein, has been ordered to lookafter the work in District YS & Sports Office, Kargil, in addition to his own duties till further orders. This order has been called in question by the petitioner herein this petition.

4. Heard the learned counsel for the petitioner, perused the record and considered the matter.

5. What requires to be stated, herein this petition, is that a plain reading of the order impugned brings it to the limelight that the very basis of issuing the same is the dereliction of duty in submitting the report of follow up action of Sports Infrastructure on the part of the petitioner. The Courts are not supposed to interfere with such orders which have been issued on the basis of some dereliction of duty on the part of the delinquent official. The order impugned, herein this case, has been issued by the Head of the Department while noticing dereliction of duty on the part of the petitioner. The Court has no material to disbelieve the stand taken by the respondent No.2 in the impugned order and stop him from proceeding further in the matter, which is well within the domain of the said authority. It is well settled that attachment is, in no way, a punishment and the respondents are well within their rights to deal with the petitioner for his alleged dereliction of duty in accordance with the law and the rules governing the field. At the same time, however, the respondents cannot keep the petitioner attached for all times to come. The impugned order has been issued by the respondents on 14th of January, 2019, that is almost a month ago, but no further progress is shown by the respondents in the matter.

6. Learned counsel for the petitioner submitted that the arrangement made on the post of District Youth Services and Sports Officer, Kargil, via the order impugned, has been assigned to a similarly situated incumbent Physical Education Master, namely, Shri Jaffer Hussain (respondent No.3), in addition to his own duties as I/C ZPEO, Kargil. Admittedly, the petitioner is, substantively, not holding the post of District Youth Service and Sports Officer and is, instead, substantively holding the post of Physical Education Master and, therefore, none of the rights of the petitioner could be said to have been violated by giving the charge of District Youth Service and Sports Officer to some other Officer of the Department. When asked as to which right of the petitioner stands violated by the aforesaid arrangement, whereby the petitioner has been attached in the office of Zonal Physical Education Officer, Kargil, the learned counsel for the petitioner could not convince the Court. In that view of the matter, this Court is satisfied that none of the right of the petitioner stands violated by the issuance of the impugned order, in terms whereof he has been attached in the office of Zonal Physical Education Officer, Kargil, for dereliction of duty on his part, which could have formed a ground for entertaining the writ petition for the reliefs claimed. It was also the case of the learned counsel for the petitioner that the order impugned is bad as the same has been issued in violation of the orders passed by this Court in SWP No. 614/2018, filed by the petitioner earlier in point of time, whereby the respondents have been directed to allow the petitioner to exercise the powers of Drawing and Disbursing attached to the post of District Youth Service and Sports Officer, Kargil. This argument of the learned counsel, too, has no merit as the Court, in the earlier writ petition, while protecting the interests of the petitioner at a particular point of time, has not, in any manner whatsoever, estopped the respondents in dealing with the petitioner if he is found involved in any misconduct or dereliction of duty.

7. Looking at the instant case from yet another perspective, it is not understandable as to why the respondents have made incharge/ temporary arrangements against the posts of District Youth Services and Sports Officer, Kargil, as well as Zonal Physical Education Officer, Kargil. Time and again, this Court has taken a very serious note of this practice of placing the Government officials/ officers on temporary/ incharge arrangement by the state functionaries which, often, leads to unnecessary litigation. The respondents are expected to make regular arrangements against any post, including the posts in question, from amongst the eligible Officers in accordance with the rules governing the subject.

8. For all that has been said and done above, I am of the opinion that the petitioner has no right to maintain the instant writ petition for the relief(s) claimed, but, at the same time, the respondent No.2 has to also ensure that the petitioner does not remain attached for all times to come in the office of Zonal Physical Education Officer, Kargil, and pass further orders in the matter in tune with the mandate of law which may also result in adjustment of the petitioner commensurate to his status and position.

9. Writ petition disposed of in the aforementioned terms, alongwith all connected IA(s).