
(1998) 06 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 300-11 Of 1997

Mohammad Maqbool Ors.

APPELLANT

Vs

J.K.Industries Srinagar and Ors.

RESPONDENT

Date of Decision : 23-06-1998

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1999) KashLJ 32

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : S.Manzoor, M.A.Chashoo, H.M.Sadiq, Advocates appearing for the Parties

Judgement

1. The Petitioner No.1 is Hawaldar and petitioners 2 to 12 are Santeries on the establishment of respondent No. 1. They are responsible to maintain the watch and ward of Bemina Woollen Mills Srinagar and everyone discharges the duties at different hours during day and night. A theft is reported to have taken place during strike of employees, knowledge of which accrued to the respondents on 1st October, 1996. A committee was constituted to enquire into the matter and a report came to be filed that since petitioners were attending the Mills during the strike period, therefore they alone can be held responsible for theft. It is also indicated from the impugned order that the petitioners admitted before the committee that theft could not have taken place unless anyone of them was associated with the mischief. The loss was assessed to the tune of Rs. 1,02,779.75 and each of them required to deposit Rs. 8,564.98 vide Order No. BWH/172/97 dated 611997. This order is impugned through this writ petition.

2. The petitioners admit that a depart mental committee was constituted to enquire into the matter but petitioners have not been charge sheeted at

all, no opportunity of hearing has been provided to them, no evidence was produced in the matter against the petitioners and there is nothing on the

record of the respondents to indict the petitioners, the order has been passed in contravention to the rules and principles of natural justice and the

respondents have been unfair and unreasonable to the petitioners. These averments have been specifically taken in the writ petition also.

3. The writ petition was admitted on 26 21997 after hearing the learned counsel for the parties. Six weeks were granted to the respondents to file

the counter with liberty to the petitioners to file the rejoinder within two weeks therefater. It was specifically provided in the order that defaulting

party would not be entitled to extension of time. Respondents did not choose to file the counter and the factual averments made in the writ petition

are un rebutted.

4. I have heard learned counsel for the parties. There can't be two opinions that wherever loss is caused to the state exchequer the authorities are

expected to rise to the occasion and deal with the public servant, omission to act into such matter tantamounts to dereliction of duty, therefore

respondents are justified to deal with the petitioners but the question which arises for consideration is whether a public servant can be penalised for

his fault without following the procedure established under law and the reply is in negative, therefore, if court comes to a conclusion that procedure

has not been followed and opportunity of hearing has not been provided, the impugned order has to be set aside.

5. Here the punishment has been imposed on the basis of a statement attributed to the petitioners detailed in the preceding paras of this order.

Assuming that the petitioners had admitted that theft was not possible without involvement of anyone of them, yet the petitioners cannot be

punished on the strength of such statement and there is no scope available to justify the condemnation of the petitioners on such statement and the

respondents are required to derive satisfaction about proof of a charge on the basis of evidence under law. It is relevant to notice here that it is the

definite case of the petitioners that no enquiry into the alleged lapses has been conducted and no opportunity has been provided to them. The

respondents were required to enquire into the matter to satisfy themselves about the involvement of the petitioners The impugned order does not at

all indicate that any enquiry was conducted into the matter and it is no more re-integra that omission on the part of the functionaries of the state to

provide opportunity of hearing which is a safeguard available to a public servant renders the punishment liable to set aside Needless to emphasise

that the failure of respondents to refute the factual averments made by the petitioners in the writ petition supported by an affidavit establishes the

correctness of the said averments and I am left with no option but to presume correctness of such averments which lead me to a conclusion that

these averments are well founded and the petitioners have been punished in derogation to the mandate of law.

6. For the reasons aforementioned make the order which follows hereinafter.

7. Impugned order is quashed, however respondents shall hold an enquiry in accordance with the procedure established under law and shall pass

orders on the strength of legally valid enquiry.

8. No order as to costs.