
(1998) 07 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : SWP Nos. 619 of 1998 and 244 of 1997

Mohd Hayat

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Citation : (1999) 1 SCT 733

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Onkar Seth, M.R. Qureshi, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.

Petitioner is challenging order annexure `G'. For facility of reference this order is reproduced as under:

Pending further enquiry into the matter, Shri Mohd. Hayat Projector Operator, District Information Centre Poonch is hereby placed under

suspension with immediate effect and attached with the Field Publicity Unit Jammu.

He will be chargesheeted separately.

A persual of the above order indicates that during the pendency of departmental proceedings, petitioner has been placed under suspension. At the

same time he has been attached with the Field Publicity Unit Jammu.

Learned counsel for the petitioner submits that if the petitioner was to be attached to another office outside the District then he should not have

been placed under suspension. According to the petitioner, purpose of keeping a person under suspension is to see that he does not interfere with

day to day administration. It is accordingly submitted that when the petitioner

was transferred and attached with Field Publicity Unit Jammu, there was no necessity to place him under suspension. Reliance is being placed on instructions issued by the State Government.

It be seen that the Government instructions on which the reliance has been placed by the petitioner are not binding. This view which has been expressed in the case reported as Hem Raj v. State of Jammu and Kashmir, 1998(2) SCT 817. In para 23, it was said:

With regard to the argument raised visavis the nonobservance of instructions referred to above all that is being observed is that these instructions are not justiciable. Reference in this regard be made to a Division Bench judgment of this Court in the case reported as Mohammad Sikander Bhat v. State of Jammu and Kashmir, 1989 SLJ 141. The decision was considered by this court in the case reported as 1997 SLJ 133, G.A. Ganie v.

State of Jammu and Kashmir. The relevant observations made in para 14 are as under:

On that analogy, these government instructions do not have a binding force particularly as against Rule 31(a) itself. However, even if later part of these guidelines are seriously noticed, it knocks out the case of the petitioner. This is so, because, all the three conditions spelled out in these guidelines reproduced above enable the Government to place a Government servant under suspension.

The above position of law would apply to this case also.

I am of the opinion this is a matter which is basically to be decided by the administrative authorities. If presence of an employee is considered to be not conducive at a particular place then administration can definitely attach the official to another office. If this be the position then no interference is called for. Writ petition SWP 619 of 1998 is dismissed. The further result would be that writ petition No. 244 of 1997 would be rendered infructuous and is being disposed of as such.

Respondents would take steps to complete the enquiry at an early date preferably within a period of six months. The period of six months would begin from the date a copy of order passed by this court is made available by the petitioner to the respondents. If for any practical reasons it is not possible to complete the enquiry respondents would be at liberty to seek extension of time but in that eventuality they would have to explain each

and every day's delay.

Disposed of accordingly.