

(2000) 04 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 3102 of 1992

Mohd. Ramzan Lone

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 18-04-2000

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 126(2)(b)

Citation : (2010) 4 JKJ 239

Hon'ble Judges : N.A. Kakru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nisar Ahmad Kakru, Judge

1. The petitioner, having functioned as Constable in the Police Department for about a decade, was discharged vide order No.706/91 dated:-

10.05.1991 by respondent No.3, taking recourse to Section 126(2)(b) of J&K Constitution. This order is called in question through this writ

petition which has been filed on 05.12.1992. Opportunities to file the objections were sought and granted to the respondents but not availed,

consequently, the writ petition was admitted to hearing. Counter too has not been filed. In this behalf it needs to be noticed that on the request of

Mr. M.I. Qadri last opportunity of five weeks was granted to file the counter with further direction to the Registry to list the matter for hearing

without reference to the bench. The respondents have not deemed it proper to take the benefit of this direction also, consequently, the right to file

the counter was closed. On 14.10.1999 writ petition came up for final hearing. Learned Counsel for the petitioner made a statement at the bar that

order of dismissal arising from a similar incident stands quashed by the court, which judgment according to him should hold good in the case of the

petitioner as well and time was sought to produce the judgment before the court. On 15.12.1999 the parties were heard. Mr. M.I. Qadri was

directed to ascertain as to whether LPA has been filed against the judgment. Despite lapse of three months nothing has been communicated and I

proceed on the assumption that no LPA has been filed and the judgment has attained finality.

2. I have perused the record of SWP No. 1984/91 titled Nazir Ahmad Thoker v. State decided on 09.08.1996 and have also gone through the

judgment. It transpires that removal of the petitioner has emanated from the same allegations which had resulted in removal of writ petitioner of

SWP 1984/91 but the reasons responsible for such removal have not been approved of by the court. The judgment was not challenged and fact of

the matter is that the State has implemented it. Why the judgment impugned herein be not quashed on the same reasoning, nothing has been

canvassed, therefore it has a direct bearing on the case in hand.

3. No doubt, the authority empowered to dismiss or remove an employee from the service, has the power to dispense with the inquiry, if it is not

reasonably practicable to hold such an inquiry but the satisfaction to do away with the inquiry has to be based on objective facts and the reasons.

The, satisfaction being subject to judicial scrutiny it is imperative upon the authority to show from the reasons recorded that the satisfaction derived

by him is neither malafide nor motivated by extraneous considerations. How far the respondents have succeeded in discharging such onus it needs

to be noticed that they have failed to file the counter. They have not produced any material before the court, which would depict any reason which

rendered the inquiry reasonably impracticable. Examining the order impugned, its perusal depicts that it is so cryptic in character that nothing can

be made out and suffers from gross non application of mind. So much so, even the requisite, details are wanting. Thus the power to dispense with

the departmental inquiry has been exercised arbitrarily and is based on ipse dixit of respondent 2.

4. The averments made in the writ petition having gone un-rebutted same have to be believed and considering these averments the only conclusion

available is that departure from the normal procedure emanates from malafides to divest the petitioner of his legal and constitutional rights to hold

the post till he reaches superannuation and impracticability of inquiry is nothing but a pretext. Moreso, recording reasons is one of the conditions

precedent and effect of omission has been dealt with by me in Muhammad Khalil Hajam v. State and others, SWP No. 2450/93 decided on

18.04.2000 (refer para 7), which squarely covers the issue and renders the impugned order liable to be set aside.

5. In the result, this writ petition is allowed and the order impugned bearing No. 706/91 dated:-10.05.1991 is quashed with a direction to the

respondents to put back the petitioner to duty with all consequential benefits including arrears and salary.

6. No order as to costs.