
(1970) 03 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 134 of 1969

Mohd. Sharif

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 15-03-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 311

Citation : AIR 1970 J&K 156

Hon'ble Judges : Mian Jalal-Ud-Din, J

Bench : Single Bench

Advocate : K.N. Raina, for the Appellant; A.K. Malik, Dy. Advocate-General, for the Respondent

Judgement

Mian Jalal-Ud-Din, J.—This is a writ petition u/s 103 of the Jammu and Kashmir Constitution made by Mohd. Sharif, the petitioner, with the

following averments:

2. This petitioner has stated that he was employed as Junior Clerk in the office of the Joint Director, Women's Education against a vacant post of

senior clerk which is a permanent post. The petitioner was once on a false charge of misconduct discharged from service by the said Director,

Women's Education on 8-5-68 without holding any enquiry and without giving any opportunity to the petitioner to show cause against the order of

discharge Aggrieved by this order the petitioner approached the High Court which was pleased to pass the order on 15-5-69 declaring the order

of the termination of service of the petitioner as illegal.

After this judgment the said Director took a long time to implement the order of the Court. However, after persistent reminders and directions of

Law Department the said Joint Director re-instated the petitioner on his own post

on 30-8-69. But, in order to circumvent this direction and

somehow to terminate the services of the petitioner the Joint Director being gravely biased against the petitioner started victimising and harassing

him and consequently terminated the services of the petitioner showing in the order that the services of the petitioner were no longer required.

This order is liable to be quashed on the ground that it amounts to termination on stigma and by way of punishment. No enquiry was held against

the petitioner and the impugned order was passed arbitrarily and in a mala fide way. The petitioner has been discriminated against on the basis of

personal bias. In these circumstances it is prayed that the impugned order be quashed by issue of a writ certiorari and the respondent be directed

to re-instate the petitioner against his own post. The petitioner has filed a copy of the original order of appointment (Annexure 'A'), a copy of the

judgment of this Court (Annexure 'B') and a copy of the impugned order (Annexure 'C').

3. A notice was issued to the respondent to show cause as to why the writ be not admitted. The Deputy Advocate-General has appeared on

behalf of the State.

4. I have heard the arguments in the case.

5. It is conceded by the learned Counsel for the petitioner that the writ does not fall within the purview of Article 311 of the Constitution of India

read with Section 126 of the Jammu and Kashmir Constitution. He has, however, invoked the provisions of Article 14 of the Constitution of India

to his aid. The argument is that the petitioner has been discriminated against inasmuch as the impugned order has been passed in a mala fide way

without any enquiry. The services of the petitioner have been terminated in a slipshod manner.

The counsel for the respondent has on the other hand referred me to Rule 5 of the Jammu and Kashmir Civil Service (Temporary Service) Rules,

1961. According to Rule 5(1) the services of a temporary Government servant can be dispensed with by the appointing authority on one month's

notice; on either side. This Rule 5(1) provides:

The service of a temporary Government (sic) (servant?) who is not in quasi-permanent service shall be liable to termination on the expiry of the life

of the post, or at any time by notice in writing given either by the Government

Servant to the appointing authority, or by the appointing authority to the Government servant.

6. It is submitted that the impugned order has been passed by the Joint Director of Women's Education under this Rule and as such it cannot be called in question as the petitioner had not acquired any rights. There was no question of any mala fide on the part of the appointing authority and the allegation of discrimination is wholly baseless.

7. On a consideration of the provisions of Rule 5 referred to above it is clear that the services of a temporary hand in a Government department can be terminated by the appointing authority in accordance with the procedure as indicated in the said Rule. The case of a temporary Government servant stands on a different footing from the one who holds a quasi-permanent post or a permanent post in a Government institution. In the case of a quasi-permanent or permanent Government servant his services cannot be terminated by a mere notice and in case any such Government servant is to be dismissed or demoted in rank or any other punishment is proposed to be passed as against him the constitutional requirements as provided by Article 311 of the Constitution of India read with Section 126 of the Jammu and Kashmir Constitution must be fulfilled. But such is not the procedure contemplated in the case of a temporary Government servant.

It is only when the order of discharge carries a stigma with it and a temporary Government servant is discharged without any enquiry in regard to the stigma made against him that he can approach the Court by means of a writ and get his grievance vindicated. But where the order merely fulfils the requirements of Rule 5 and the order simply says that the services of such Government servant are no longer required it does not mean that the order carries with it any stigma and the case calls for any enquiry in his case. In the instant case notice of one month as required by Rule 5(1) of the aforesaid Rules has been given to the petitioner by the appointing authority. The order does not carry with it any stigma as against the petitioner.

From the order it does not appear that the same has been passed in a mala fide way or there has been any discrimination exercised by the appointing authority so as to offend the provisions of Article 14 of the Constitution of India.

8. In these circumstances no writ can lie against the respondent. The petition is,

therefore, dismissed but without making any order as to costs.