
(2020) 02 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 3406 Of 2014

Mohd Zabeer

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Limitation Act 1963 — Section 5

Citation : (2020) 02 J&K CK 0024

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : M.R.Qureshi, Eishan Dadechi

Final Decision : Dismissed

Judgement

1. The order dated 15.01.2014 passed by the respondent No.2, in compliance to the order dated 16.01.2013 passed in SWP No. 91/2013 titled Mohd

Zabeer Vs. UOI and others is subject matter of challenge in this petition. By virtue of order dated 15.01.2014 (hereinafter referred to as "the

impugned order"), the representation of the petitioner for allowing him to join as Constable (GD) in pursuance of order of his appointment issued to the

petitioner on 18.11.2005 has been rejected.

2. The relevant facts, which are necessary for the disposal of this petition deserve to be noticed before considering the grounds of challenge urged in

this petition. Pursuant to an Advertisement Notification issued by the respondents for appointment of Constable (GD), the petitioner participated in the

selection process and was declared successful. An offer of appointment was issued to him by the FHQ, SSB, New Delhi vide Memorandum

No.12/31/13 Bn/2005/SSB/E-III/15273-75 dated 08.11.2005 and the petitioner was directed to report at Training Centre, SSB Gorakpur on

15.12.2005. The petitioner failed to report for training on 15.12.2005 despite having been clearly warned that in case he failed to report within 45 days of the cut-off date, his appointment would be deemed to have been cancelled. The petitioner, however, disputes that the offer of appointment was ever issued/served upon him. The case of the petitioner is that after he was declared selected as Constable (GD) in the selection process he had participated, he was not issued any appointment order. It is claimed that it was only in the month of February, 2012, when the petitioner came to know from his colleagues that he was selected like them and they had been issued appointment orders, he made request to the respondents for issuance of formal order of appointment and permit him to join his duties. The petitioner claims to have made representation on 21.02.2012 in this regard. It is further case of the petitioner that when his representation was not considered, he was constrained to file SWP No. 91/2013 which came to be decided by this Court on the motion hearing date itself vide order dated 16.01.2013. The respondents were directed to accord consideration to the representation claimed to have been filed by the petitioner, in accordance with the rules occupying the field and take a decision within eight weeks from the date a copy of the order was made available to the respondents. In compliance to the order dated 16.01.2013, the respondents considered the claim of the petitioner and rejected the same vide order impugned on the grounds that it was highly belated and the petitioner lost the appointment by not reporting for training within the stipulated period. It is categorical assertion of the petitioner that he was never served with offer of appointment nor was he ever told to report for training as is contended by the respondents.

3. The respondents have contested the writ petition and have justified the impugned order. It is contention of the respondents that not only the offer of appointment was issued by the respondents with a direction to the petitioner to report at Training Centre Gorakhpur on 15.12.2005, but, in the same letter, the petitioner was made aware that non-reporting on the date above, would result in loss of inter se seniority on his initial appointment and also that, if he failed to report within 45 days of the cut-off date, his offer of appointment would be treated as "cancelled". It is further submitted by the respondents that the aforesaid letter was sent to the petitioner on the address given by him under registered post bearing No.RLL No.4076 dated

18.11.2005. It is, thus, the stand of the respondents that on account of failure of the petitioner to report at Training Centre, Gorakpur, the offer of appointment issued to the petitioner was withdrawn. The writ petition has also been opposed on the ground that the petitioner has filed this petition after a gap of eight years of the cause of action and, therefore, the same is hit by inordinate delay and laches. The petitioner has not given any explanation for approaching this Court after eight years. The respondents also assert that no representation before filing of the writ petition was ever received by them, and therefore, there was no question of according any consideration to the claim of the petitioner. It is, thus, urged that the claim of the petitioner was considered by the respondents when they received the directions passed by this Court on 16.01.2013 in SWP No. 91/2013.

4. Having heard learned counsel for the parties and perused the record, I am of the view that this petition is hit by gross delay and laches and, therefore, cannot be entertained. Admittedly, the process of selection for the post of Constable (GD) was initiated by the respondents somewhere in the year 2005 and the same culminated into the selection of the eligible candidates in the year 2005 itself. The Memorandum whereby offer of appointment was issued to the petitioner was issued by the respondents on 08.11.2005 and in paragraph No.7 whereof there was clear stipulation, which for facility of reference is reproduced as under:-

“If Sh. Mohd Zabeer accepts offer of appointment for the post of Constable/ (GD) on the above terms and conditions, he should report at TC, Gorakpur (UP) on 15.12.2005 without fail, as non-reporting on the date mentioned above shall result in loss of inter se seniority on his initial appointment and he, fails to report to TC Gorakpur (UP) within 45 days from the cut-off date, his offer of appointment, shall be treated as cancelled.”

5. This offer of appointment was sent by the respondents under registered post vide RRL No. 4076 dated 18.11.2005. Similar offers of appointment by similar mode were issued to other selected candidates. Almost all candidates except the petitioner reported for training at TC Gorakpur (UP) within time stipulated in their offer of appointment. The petitioner, however, failed to report for training even after the expiry of 45 days from the cut-off date, i.e., 15.12.2005 and, accordingly, lost his appointment. The plea of the

petitioner that he was not served with the offer of appointment is thoroughly afterthought and cannot be accepted. The offer of appointment has been sent to the petitioner through registered post on the address given by him in his application form and there is presumption that the same has been received by the petitioner.

6. It may be noted that with a view to get better proof of service of offer of appointment, this Court vide order dated 17.09.2019 had directed the respondents to produce the receipt of registered AD post whereby the appointment order of the petitioner had been sent to the petitioner. In response the respondents have placed on record a communication of the Govt. of India, Ministry of Home Affairs dated 07.11.2019 in which learned Central Govt. Standing Counsel has been intimated that the matter was taken up with the postal authorities for requisite certificate, but, it was intimated that the case was time-barred and the old records had been weeded out. It was further intimated that as per departmental rules, records are maintained only for one year and six months for the registered article. In short, it was brought to the notice of this Court that at this belated stage, i.e., after more than nine years of the event it was not possible to produce any record. A copy of the communication dated 07.11.2019 (supra) along with annexure passed on by Mr. E.Dadichi in the open Court is taken on record. Otherwise also it defies logic that the petitioner waited for the selection process to be concluded and the offer of appointment to be issued for more than eight years. The plea of the petitioner that he came to know in the year 2012 from his colleagues that he too had been selected is totally unbelievable. If the colleagues of the petitioner had been appointed in the year 2005, it is not understandable as to how the petitioner came to know about their employment as Constable (GD) only in the year 2012. Even if the petitioner was to be believed that he came to know that he was selected as Constable (GD), but, had not been issued the letter of appointment, he would have immediately explored his remedies and not waited for another two years to come to the Court. He claims to have moved the representation in the year 2012, but, has not placed on record any receipt, which would demonstrate that the said representation was actually received by the respondents. The respondents in their reply affidavit as also in the order impugned have categorically stated that no representation purportedly made in the year 2012

was ever received by them. From these facts and circumstances, only possible conclusion that can be drawn is that the petitioner was all along aware

or at least had the reason to be aware that selection process had been concluded and offer of appointment to the selected candidates has been issued,

yet, did not report for training for the reasons best known to him. He waited for about nine years and filed the instant petition in an attempt to revive

his offer of appointment issued as far as back on 08.11.2005. There is no cogent explanation given by the petitioner to justify huge delay of nine years.

7. The judgments relied upon by learned counsel for the petitioner, i.e., AIR 1987 SC 1353, Collector, Land Acquisition, Anantnag Vs. Katiji and

2008(1) ALT 53, Superintending Engineer, Irrigation Circle Department, Hyderabad and others Vs. B. Sathaiah and another are beside the point and,

therefore, are of no help to the petitioner. The judgment in the case of Katiji (supra) pertains to the issue of condonation of delay in terms of Section 5

of the Limitation Act and the Hon'ble Supreme Court has held that the State Government is not entitled to any special treatment in the matter of

condonation of delay and that the doctrine of equality before law demands that all litigants including the State as litigant are accorded the same

treatment and the law is administered in an even handed manner. The judgment in the case of B. Sathaiah (supra) has arisen out of Industrial Disputes

Act, 1947 and, therefore, is not applicable to the facts of the instant case.

8. In view of the foregoing reasons, I find no merit in this petition.

Accordingly, the same is dismissed along with connected CM(s).