

(1997) 03 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 665 of 1993

Mohd.Latif alias Abdul Latif

APPELLANT

Vs

Commandant, J&K Armed Police

RESPONDENT

Date of Decision : 25-03-1997

Acts Referred:

Citation : (1998) 2 SCT 410

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

Bench : Single Bench

Advocate : A. Kapoor, J.P. Singh, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—Heard. Petition admitted.

2. With the consent of learned counsel for the parties, this petition is taken up for final disposal.

3. The petitioner was absent. On account of this, an adverse order came to be passed. The order was challenged in appeal. The appeal was

accepted. After that another order came to be passed on 19.3.1992. The period of 379 days was ordered to be treated as diesnon. The relevant

portion of the order is reproduced as under:

In the light of principle ""No Work, No Pay"" the period of absence of SG. Constable Mohd. Latif No. 383 of FCoy w.e.f. 2.1.90 to 15.1.1991

i.e. 379 days is treated as diesnon as recommended by the enquiry officer. However, it will not effect upon his future increments"".

4. Against the aforementioned order, the petitioner preferred an appeal. This is so stated in paragraph 9 of the petition. The appeal is said to be pending.

5. The learned counsel for the petitioner submits that the consequences of order

by which certain period of service is treated as ""diesnon"" are serious. He is referring to Government Notification of dated 31.5.1993. The term diesnon stands elaborated in the aforementioned order. This reads as under:

Explanation The import to term `dies non' is that:

- a) it does not qualify for any remuneration (pay and allowances).
- b) It does not count for pension.
- c) It does not count for increment.
- d) It does not cause any interruption for leave earned up to the date preceding that on which the period of `dies non' has commenced unless it is the intention of the competent authority to have such period of leave forfeited in which case mention about it should be made in the order itself.

6. There are judicial pronouncements to the effect that when a civil servant is absent and thereafter he is reinstated, then he can be deprived of back wages. See the following decisions:

- i) State of Punjab v. Om Parkash, (1997) 3 SCT 186 (P&H) .
- ii) M. Annunachalam v. T.N. Electricity Board, (1997) 3 SCT 565 (Mad.) .
- iii) Government of Tamil Nadu v. K. Rajaram Appaswami, (1997)3 SCT 67 SC .

7. As indicated above, the order in question is likely to affect some other service benefits also. It would accordingly be apt, if the appeal preferred

by the petitioner is disposed of by passing a speaking order. If the appeal is not available with the respondent authorities, then this writ petition be

treated as appeal and the point of view put across by the petitioner be dealt with and a speaking order be passed. Let the appropriate decision be

taken within a period of three months. The period of three months would begin from the date, the copy of this order and writ petition alongwith its

annexures are made available to the respondent authorities by the petitioner. In case it is not possible for them to do the needful within the

aforementioned period, then they would be at liberty to seek extension of time. In that eventuality each and every day's delay would have to be explained.

8. The petition is disposed of accordingly.