
(2016) 03 J&K CK 0037
In the Jammu And Kashmir High Court
Case No : SWP No. 963 of 2004

Mst. Zahida

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 677

Hon'ble Judges : Mr. Muzaffar Hussain Attar, J.

Bench : Single Bench

Advocate : Mr. Z.A. Qureshi, Sr. Advocate with Ms. Rehana, Advocates, for the Petitioners; Mr. S.A. Makroo, ASGI, for the Respondents

Final Decision : Allowed

Judgement

Mr. Muzaffar Hussain Attar, J.(Oral) - One Shabir Ahmad Khan filed this petition challenging the order passed by respondent no. 2 where

under he was removed from service. During the pendency of this writ petition the petitioner Shabir Ahmad Khan died and his legal representatives

have been substituted as writ petitioners.

2. Shabir Ahmad Khan (for short ""deceased"") was appointed as Constable in Central Reserve Police Force (CRPF) on 5th April, 1997. He was

given Belt No. 973361401 of 5 Bn. on 3rd June, 2002. The deceased was deputed to Dett Hqr, Amarpur in the capacity of a member of SOG

Platoon. The deceased was granted 60 days leave on 2nd September, 2002. The deceased before proceeding on leave deposited the ammunition

except one Magazine and twenty rounds of Insas rifle. As per pleading of the deceased in the writ petition, he in hurry and mental tension, forgot to

deposit one Magazine and twenty rounds of Insas rifle with the concerned

authority. It is further pleaded that after the expiry of his leave the deceased deposited the aforesaid ammunition with the concerned authority.

3. Deceased was placed on suspension on 16th November, 2002, and an enquiry was conducted. After the conclusion of enquiry, the respondent

no. 2 passed the order where under deceased was removed from service.

4. The respondents have filed reply affidavit in which the action of respondent no. 2 has been justified.

5. Learned counsel for the petitioners submitted that the punishment inflicted on the deceased is not commensurate with his misconduct. Learned

counsel further submitted that deceased has not deliberately or intentionally deposited one magazine and 20 bullets with the concerned authority

but due to some confusion and hurry in going back home, after sanction of the leave, he forgot to deposit the aforesaid ammunition with the

concerned authority. Learned counsel also submitted that in this fact situation the deceased could not be removed from the service. Learned

counsel in support of his case relied upon and referred to the Judgment of Hon'ble the Supreme Court reported in AIR 2010 SC and Judgment of

this Court reported in JKJ (HC) (3) 2012.

6. Learned counsel for the respondents raised objection about the maintainability of this writ petition. Learned counsel submitted that the order of

removal has been passed at Agartala and it will be the Court of that place which will have jurisdiction to entertain any plea against the order of

removal. Learned counsel further submitted that the deceased was member of disciplined force and his non-depositing of the ammunition was a

serious misconduct which deserved the punishment which has been inflicted upon him. Learned counsel also submitted that in the face of the

admission made by the deceased no relief can be granted to him by the Court. Learned counsel in support of his contentions referred to and relied

upon Judgments reported in (2005) 10 Supreme Court Cases 84, (1995) 5 Supreme Court Cases 682 and AIR 1991 Supreme Court 1241 and

accordingly prayed for dismissal of this writ petition.

7. This writ petition has been filed in the year 2004. Reply affidavit has been filed on 11th October, 2006. In the counter affidavit no objection has

been raised about the jurisdiction of this Court to entertain and hear this petition. Had this objection been raised at the earliest, the deceased would

have taken steps to seek remedy at the place where the removal order was passed against him. Petitioner has died during the pendency of this writ

petition. His wife and his minor son were substituted as party petitioners. In the peculiar facts and circumstances of this case the objection about

the maintainability of this petition raised at this distance of time cannot become the ground for rejection of this petition as that would result in huge

injustice to the petitioners.

8. Even otherwise in law the jurisdiction of Court to take cognizance of any issue has many dimensions. One would be that by a provision of

statute the jurisdiction of Court is barred to hear any case, another would be a case in which Court would lack the inherent jurisdiction to hear the

case and third would be situation where Court would lack territorial jurisdiction to hear a case. In such a case the Court would be having the

jurisdiction to decide an issue or cause, but it may not entertain the same on the ground that it does not have territorial jurisdiction to entertain the

same. In such circumstances the Court though may be lacking territorial jurisdiction to entertain a cause but when it does not lack the inherent

jurisdiction to decide the issue or cause, then in such cases the objection about the maintainability of the petition has to be raised at the earliest. In

this case the objection is raised for the first time today at the time of hearing of this case. This objection as already stated in the peculiar facts of this

case cannot be entertained and justice cannot be denied to the aggrieved persons. This Court is possessed of the jurisdiction under Article 226 of

Constitution of India and Section 103 of Constitution of Jammu and Kashmir, to issue writs, direction and order for remedying the wrong done and

securing the ends of justice.

9. Justice is over and above all the values and virtues of human life. No human endeavour or effort can abridge or destroy the overwhelming

concept of justice. Justice sustains all human values and virtues.

10. The objection about the maintainability of the writ petition in the aforesaid fact situation and circumstances is rejected.

11. Now question arises as to whether in the facts of this case the punishment of removal from service was commensurate to the guilt of the deceased.

12. The stand of the deceased was that in a hurry to reach his home he forgot to

deposit part of ammunition which was an empty magazine and 20

cartridges. It is not in dispute that on his return from leave he deposited the same with the concerned authority. It is nowhere alleged and proved

that the deceased had either carried the aforesaid ammunition to his home with some mala fide intention or that he had not deposited it with the

concerned authority for securing any oblique motive.

13. No human being is infallible. Mistakes are committed by everybody. The mistakes committed by a person can be said to be of serious nature

when it is committed with intention to cause harm to anybody. In this case nothing is placed on record to show that non depositing of the

ammunition was done with some bad intention. It is also not the case of respondents that the ammunition was misused. It is admitted that the

ammunition which was provided to the deceased was the same which was returned by him to the concerned authority.

14. In this fact situation the misconduct of the deceased cannot be said to be of such a great magnitude which would warrant for his removal from

service. The punishment awarded to the deceased in the facts of this case is held to be not only highly excessive but unjust also. This punishment

cannot be sustained.

15. The question now arises is as to whether after death of the constable any lesser punishment can be awarded to him. The answer has to be no.

The punishment can be awarded to a living person and to a person with whom relationship of employer and employee exists. After the death of the

deceased constable the relationship of employer and employee would not survive between him and the competent authority, so no punishment can

be awarded to a deceased person.

16. For the above stated reasons this writ petition is disposed of in the following manner:

17. By issuance of writ of certiorari order dated 4.04.2003 passed by respondent no. 2 and order dated 26.03.2004 passed by respondent no. 4

are quashed. It is declared that the deceased would be deemed to have been in continuous service till the time of his death. The respondents are

directed to pay all service benefits to the petitioners in accordance with rules. The necessary order in this behalf be passed within four weeks from

the date copy of this order is served and benefits thereof shall be paid within

further two weeks thereafter.