

(2011) 05 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 292 of 2003

Mubarak Ahmad Bhat

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Citation : (2011) 2 JKJ 586

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Order No. 309 DSEK of 2003 dated 24.1.2003-Annexure-E is the subject matter of the writ petition in hand,

passed by Respondent No. 2, hereinafter for short as impugned order, by virtue of which the services of the Petitioner are alleged to have been

discontinued. The said impugned order is disputed generally on variety of grounds itemized in the writ petition, the main thrust amongst being, that it

has been passed arbitrarily; against the principles of fair play, equity, unknown to law, and unconstitutional. The relief of quashment of the

impugned order; reinstatement of the Petitioner and release of all consequential service benefits including salary is sought for besides the claim of

parity with the private Respondents is also made.

2. Respondents have resisted the petition mainly on the ground that no appointment order was ever passed in favour of the Petitioner, but his entry

into Govt., service is an outcome of fraud. The Petitioner, in terms of a fraudulent order came to be transferred and concerned Headmaster

allowed him to join when the fact of the matter is that no appointment order was

issued in his favour not to speak of having entered through selection process. The post of teacher, against which the Petitioner has made his claim, can be filled up only by Service Selection Recruitment Board after a regular process of recruitment. The order on which the Petitioner relies is virtually a fraudulent appointment order under the garb of transfer order. The Respondents have also stated that said order is outcome of fraud, forgery and also FIR has been lodged in the concerned Police Station.

3. Petitioner has failed to indicate that he came to be appointed as teacher in pursuance to an authentic and genuine order; no order has been produced to place reliance on except the order forming Annexure-A to the writ petition, but the same also is without signatures giving a reasonable belief of it being an outcome of fraud. Any appointment made without undergoing a regular recruitment process is illegal; a backdoor entry and such person is not vested with any right to seek protection of. Here, in the case in hand, the person before the court is not even a backdoor entrant but is on the Govt., establishment only because of fraud and is seeking his continuance, virtually expecting the court to endorse the fraud committed by him in league with some Govt., officials. It becomes imperative to see as to how the concerned Headmaster allowed the Petitioner to perform duties in the capacity of teacher.

4. The Respondents after noticing the said fraud have drawn action, lodged FIR against the Petitioner and rightly issued the impugned order. Any person making entry in the Govt., department de hors of rules; by fraud has no claim to seek consideration. My this view is fortified by a judgment passed by this Court in case titled Mohammad Maqbool Wagay v. State of J & K and Ors. 2007 (3) JKJ HC-167: SLJ 2007, 351.

5. The principles of natural justice demand that even right of hearing is to be given to such a person who legally has acquired some right or a person who genuinely came to be appointed or engaged and not to the person who adopts illegal means to accomplish his desire of making entry in the public service. A Government employee is an essential component of the machinery that helps to keep the public order in tact and in lieu thereof gets paid the salary as per his ability. The right of wages, is a precious right, and is available only to such persons, who make their entry into

Govt., service by legal means. At a time when unemployment is a global challenge in general and in our State in particular; educated but unemployed youth are dying to get a chance to serve the public machinery; when courts are burdened with heavy litigations on this count; when even the street vending has fallen in the hands of educated persons; the people like Petitioner cannot be allowed to drain out such a valuable and highly sought after treasure.

6. In the given backdrop, the writ petition is dismissed along with all CMPs. Interim direction, if any, shall stand vacated.