

(2011) 06 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1229 of 2005

Mukhtar Ahmad Malik

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 08-06-2011

Acts Referred:

Citation : (2011) 3 JKJ 478

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—The subject matter of the writ petition in hand is the order bearing No. 1438 of 2005 dated 01.08.2005,

whereby the petitioner came to be discharged from service by Sr. Superintendent of Police-respondent No. 3.

2. Respondents have filed reply. Petitioner has not filed any rejoinder.

3. The short controversy involved in this writ petition is whether the impugned order is legal or otherwise?

4. In order to answer the question, it is necessary to reproduce Regulation 187 of J&K Police Regulations, herein:

187. DISCHARGE OF INEFFICIENT: a constable who is found unlikely to prove an efficient police officer may be discharged by the

Superintendent at any time within three years of enrolment.

5. Admittedly, the petitioner came to be engaged as Constable in the year 2000 and was discharged in terms of the impugned order. In terms of

Regulation 187 of Police Regulations, a constable who has completed three years of service from the date of appointment cannot be said to be on

probation. The said Regulation was not applicable in the instant case for the simple reason that petitioner was not on probation.

6. Petitioner has remained absent and that is why he came to be discharged vide impugned order, is stigmatic and a full dressed enquiry was to be conducted in terms of Regulation 359 of the Police Manual.

7. In the given circumstances, the writ petition is allowed and the impugned order is quashed. Respondents are at liberty to conduct enquiry and pass appropriate orders after conducting enquiry in terms of the rules/regulations occupying the field within three months from the date the copy of this order is served upon the respondents. It goes without saying that period from the date of absence till today is kept subject to the enquiry. It is made clear that in case enquiry is not conducted, the petitioner is not entitled to any salary for the said period. However, it shall qualify for other service benefits.

8. Writ petition disposed of along with all connected CMPs.