

(2001) 07 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 436/2001

Mushtaq Ahmad Rather

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Constitution of India, 1950 — Article 310

Citation : (2001) KashLJ 529

Hon'ble Judges : H.K.Sema, J

Bench : Single Bench

Advocate : S.Majid, J.A.Kawoosa, Advocates appearing for the Parties

Judgement

H.K. Sema, J.—I have heard Mr. S. Majid, Learned Counsel for the petitioner. Heard Mr. Kawoosa, Learned AAG for the State. Notice

has been served. However, no objections have been filed. At the out set Mr. Kawoosa, AAG, pray for granting of some time, so as to enable him to file objections.

This request has been declined. In view of the facts and the point of law involved in this writ petition. I am of the view that granting more time to the respondents would not be of any help to the respondent's case.

2. This petition is admitted to be heard.

3. Petitioner was appointed as a teacher under the Rehber Taleem Scheme to Govt. Pry. School Gadoora, Gandharbal preceded by the recommendation by the duly constituted Selection Committee. While he was serving as such, he has been dismissed by the impugned order dated

24.11.2000. The order runs:

Whereas, Government launched Rehber Taleem Scheme with the objective of

providing teaching staff to the farflung areas with the active participation of the community: Whereas, Sh. Mushtaq Ahmad S/o Ab. Samad Rather R/o Gadoora was engaged at RehbareTeleem on the recommendations of the village Committee of village Gadoora by the Zonal Education Officer Ganderbal vide his No. 749 of 2000 dated 17.08.2000 consequent upon approval to the engagement given by the Chief Education Officer, Srinagar and Deputy Commissioner, Srinagar.

Whereas, the said Sh. Mushtaq Ahmed, RahbereTaleem Pry. School Gadru, Zone Gandeбал was found absent from duty by the Chief Education Officer, Srinagar on his visit to the School on 09.11.2000. Whereas, the said Sh. Mushtaq Ahmed RehbareTaleem Teacher, Pry. School Gadru has failed to fulfil the contractual obligations case upon him for teaching the student of primary school, Gadru.

Whereas, it is not desirable to continue the said Mushtaq Ahmed as RehbareTaleem in the said School. Now, therefore, the said Sh. Mushtaq Ahmad S/o Ab. Samad Rather R/o Gadru working as RehbareTalem on contract basis, Primary School, Gardu is hereby disengaged with immediate effect.

S/D

Chief Education officer Srinagar.

4. From the order it will clearly appear that the service of the petitioner has been done away with on sole ground that he was found absent on 09.11.2000, when the Chief Education Officer Srinagar visited the school on that day. Petitioner has annexed the letter dated 27.11.2000 addressed to Zonal Education Officer Ganderbal by the Headmaster, Middle School Kujjar, Ganderbal stating that the petitioner was sent on duty to the office of Zonal Education Officer by the Headmaster for confirmation of the school result on 09.11.2000, when the Chief Education Officer, Srinagar visited the said school. He has also annexed the letter dated 29.11.2000, written by Zonal Education Officer, Ganderbal addressed to the Chief Education Officer, Ganderbal addressed to the Chief Education Officer, Srinagar stating that the petitioner was sent on duty on 09.11.2000, when the Chief Education Officer Srinagar visited the school.

5. From the letters as referred above, it will clearly appear that the petitioner was on duty on 09.11.2000, when the Chief Education Officer,

Srinagar visited the school on that day.

6. Apart from the facts as adumbrated above, a cursory look of the impugned order quoted above would depict the arbitrary exercise of power is

writ large. Seeming absence of one day would not invite such a drastic action of the dismissal from service having grave civil consequences without

even scant regard for observance of the principle of natural justice. Had he been given an opportunity, he would have explained his position that he

was sent on duty. Again the punishment sought to be imposed is utterly disproportionate to the gravity of the offence. It is settled law that

punishment must commensurate with the gravity of the offence proved.

7. It must be grasped that public authority vested with power are not only require to act bonafide, honesty and conscientiously, but also require to

act justly, fairly and rationally. No court will be a party to such an arbitrary exercise of power.

8. In the result, the impugned order dated 24.11.2000 is hereby quashed and set aside. Needless to say that the petitioner is continuing on the

post, because of the interim order dated 03.05.2001 and he shall be allowed to continue till the engagement period expires or the period is

extended, as the case may be. He shall also be entitled to full salary and allowances due to him. Srinagar