

(2019) 05 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1440, 1824 Of 2019, IA No. 01 Of 2018, 01 Of 2019

Muzaffar Ahmad Malik @APPELLANT@Hash State And Others

Date of Decision : 01-05-2019

Acts Referred:

Classification, Control And Appeal Rules, 1956 — Rule 27
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 05 J&K CK 0007

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : A.H. Naik, Zia, G.A. Lone, N.H. Shah

Judgement

During the pendency of these writ petitions, Mr. N. H. Shah, learned Sr. AAG, has filed application being IA no. 01/2019 in SWP no. 1824/2018 seeking permission to make transfer and posting of the petitioner Tehsildar out of his local area on account of enforcement of Model Code of Conduct notified for conducting Lok Sabha elections in Anantnag Parliamentary Constituency.

Notice in the application was issued to the counsel appearing for the petitioner on 26.4.2019 which was waived by the counsel and the matter was directed to be listed today along with the main petition.

Today when the application was considered for orders, learned counsel for the parties arrived at a consensus to have decision on the main writ petitions, as otherwise any decision in the application will render the lis infructuous. Therefore, on the consensus of learned counsel for the parties, both the writ petitions are taken on board for final disposal.

Brief facts:

Petitioner is admittedly holding the post of Tehsildar in the respondent department. During his posting as Tehsildar in tehsil Dooru with additional charge of Tehsil Verinag (Shahabad Bala), the petitioner was allegedly found involved in dereliction of duties, and therefore placed under suspension by respondent no. 2,

Divisional Commissioner, Kashmir, in terms of order no. 764 DIVCOM 2018 dated 07.2.2018 and attached with the office of Deputy Commissioner, Anantnag, who was asked to conduct inquiry in the matter.

On the basis of the report of the Deputy Commissioner, Anantnag, the respondent no. 2, Divisional Commissioner, Kashmir, in terms of order no. 806 DIVCOM 2018 dated 28.2.2018 reinstated the petitioner in service on the condition that he will remain extra careful in discharging his duties and will submit an undertaking to the effect that he will not repeat dereliction of duty.

In terms of order no. 166 DIVCOM 2018 dated 28.6.2018, the respondent no. 2, Divisional Commissioner Kashmir, placed the petitioner again under suspension for his alleged involvement in allowing construction on either side of the national highway at Dooru/Qazigund against the rules and the law. The aforesaid order dated 28.6.2018 is challenged in SWP no. 1440/2018, on various grounds with particular reference to respondent no. 2, Divisional Commissioner, Kashmir, as not being competent to place the petitioner under suspension as the petitioner is holding the gazetted post and the competent authority for placing him under suspension is the government. A coordinate bench of this court in terms of order dated 3.7.2018 while issuing notice to other side had directed the respondents not to disturb the present status of the petitioner.

As stated, while the petitioner was working as Tehsildar Dooru with additional charge of tehsil Verinag (Shahabad Bala), the respondent government in terms of order no. 142-Rev (Gaz) of 2018 dated 02.8.2018, transferred the petitioner and directed him to report to Divisional Commissioner, Kashmir, till further orders. It is this order which is challenged in the second writ petition i.e. SWP no. 1824/2018. A coordinate bench of this court on consideration of the matter and in terms of order dated 8.8.2018 while issuing notice to other side had stayed the operation of the impugned order dated 02.8.2018 qua the petitioner. Resultantly, the petitioner is continuing as Tehsildar Dooru with additional charge of tehsil Verinag (Shahabad Bala).

The main grounds of challenge to the two impugned orders, one issued by the Divisional Commissioner placing the petitioner under suspension which is the subject matter of SWP no. 1440/2018, and another issued by the government attaching the petitioner in the office of Divisional Commissioner which is the subject matter of SWP 1824/2018, have reference to competence of the Divisional Commissioner qua placing the petitioner under suspension as also the authority of the government to attach the petitioner in the office of Divisional Commissioner. It is submitted by the learned counsel for the petitioners that the attachment is not permissible under rules governing the service conditions of the petitioner and the law on the subject. Learned counsel for the petitioner while reiterating the grounds taken in the petitions with reference to claim made for the relief, invited attention of the court to Rule 27 of the Classification, Control and Appeal Rules, 1956, which is enabling rule for the competent authorities to make posting of the government employees anywhere in the state of Jammu and

Kashmir in the same service, same class, category and grade. It is submitted that there is no enabling provision for the government to attach the government servant in any office which attachment amounts to depriving the government servant from continuing on the post against which he is appointed and such deprivation amounts to violation of Articles 14 and 16 of the constitution. Further elaborating his argument, Mr. Naik, learned senior counsel for the petitioner submits that by no stretch of imagination the respondents can attach the petitioner as such as the attachment amounts to punishment to puts him to disadvantageous position.

Mr. Lone, learned counsel for the petitioner while strengthening the claim made in SWP no. 1440/2018 qua the challenge to the suspension order, submits that the order cannot stand the test of judicial scrutiny as the same is issued by an incompetent officer. He submits that the petitioner admittedly holds a gazetted post in J&K Revenue Gazetted Service, therefore the only authority which is competent to place him under suspension under rules is the appointing authority, which for all intents and purposes is the government.

Mr. Shah, learned Sr. AAG, submits that both the orders, forming subject matter of the two writ petitions, qua the suspension and the attachment of the petitioner, are not only legal but also have been issued by the competent authorities. He submits that the respondents were under authority of law required to place the petitioner under suspension on both accounts. But the respondents have taken a lenient view to deal with him for dereliction of duty by attaching him only, as the attached is not a punishment. He further submits that the suspension of the petitioner is against his misconduct and misuse of his authority. However, without joining any further issue, learned Sr. AAG, submits that let the government be permitted to make the transfer/posting of the petitioner commensurate to this status and position. Mr. Shah, learned Sr. AAG, submits that pendency of the writ petition and interim orders passed cannot be permissible permanent solution for dealing with the matter. He submits that transfer/posting is an exigency of service and the petitioner under the garb of challenge to both the impugned orders is continuing as Tehsildar not only for one tehsil but for two tehsils. He further submits that the interference of the court with the administrative matters not only causes administrative confusion but is also against the public interest.

Heard learned counsel for the parties and perused the record. I have considered the matter.

Before the court would record any findings and make any observations on issues raised by either counsel of the parties, a joint submission was made before the court for disposal of the writ petitions by quashing the impugned orders and enabling the government to make posting of the petitioner commensurate to his status and position. The court on agreement of the parties is not inclined to make any observation or finding on the issues raised. Therefore, with agreement of the learned counsel for the parties, both the writ petitions along with

connected IAs are disposed of in the following manner:

i) Government order no. 142 - Rev (Gaz) of 2018 dated 02.8.2018 impugned in SWP no. 1824/2018 shall stand quashed to the extent it transfers the petitioner from the post of Tehsildar Verinag and attaches him with the office of the Divisional Commissioner, Kashmir.

ii) Order no. 166 DIVCOM 2018 dated 28.6.2018 impugned in SWP no. 1440/2018 shall stand quashed in so far as it relates to the suspension and attachment of the petitioner in the office of Deputy Commissioner, Anantnag.

iii) Respondent no. 1 shall be at liberty to pass fresh order of transfer and posting of the petitioner commensurate to his status and position and in accordance with rules, as and when desired.