
(1999) 03 J&K CK 0027
In the Jammu And Kashmir High Court
Case No : S.W.P.No. 1695 Of 1998

Naseem Amir Shah

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Citation : (2000) 4 SCT 99 : (2000) 2 SriLJ 667

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : M.H.Attar, B.A.Bhat, Advocates appearing for the Parties

Judgement

1. Considered. Admitted.

2. Mr.Attar tenders a statement at bar that the objections filed on behalf of respondents may be treated as reply. The statement is taken on record, pleadings are complete. The matter has been heard finally.

3. Naseem Amir Shah petitioner was appointed as Marketting Inspector on 01.07.1996, in the office of Assistant Marketting Officer Lucknow by

the then Assistant Marketting Officer Lucknow who happen to be the father of the petitioner said Naseem Amir Shah. He came to be appointed in

the arrangement created by transfer of one A.R.Mir Marketting Inspector to Delhi on stop gap arrangement till posting of any suitable person from

the Head Office with condition that he shall have claim to continue after a gap of one year in which case he shall be treated as regular temporary

employee of the Directorate of Horticulture of the State. The petitioner joined and worked as such Marketting Inspector till 21.08.1998. The

Government of J&K terminated his services vide order No: 186 CHPM of 1998 dated:22.08.1998. This termination order is impugned in the writ

petition and is prayed to be quashed and petitioner allowed to continue to discharge his duties as Marketing Inspector with payment of salary

attached to the post through appropriate writ.

4. In reply respondents are admitting the appointment of petitioner as marketing Inspector on 01.07.96 by the then Assistant Marketing Officer

Lucknow, the father of the petitioner. It is averred that the father of the petitioner abused and misused his official position and acted violation of

rules to benefit his own son. The appointment is alleged to be dehors the selection rules. Appointment to the post of Grading and Marketing

Inspector has to be made through State Selection Recruitment Board under SSRB Rules (SRO 194/92). The selection having been made by the

SSRB and appointment having been made by the Competent authority to the post, the petitioner's services stand terminated. It is however, stated

that the arrangement of the petitioner was just a stop gap arrangement and even in the earlier writ SWP 186/98 filed by the petitioner he did not

succeeded as prayer of regularisation of his services as grading and Marketing Inspector was declined by the court. The petition is prayed to be

dismissed.

5. The counsel for the petitioner submits that the initial order of appointment of petitioners(annexure PA,though indicating in terms it as a stop gap

arrangement, provides that in case no suitable person is deputed by the head office for one year, the incumbent petitioner shall have a right to

continue and shall be deemed as regular employee of the Directorate of Horticulture. However, as the Directorate failed to appoint any person as

grading and Marketing Inspector Lucknow within one year, therefore, petitioner acquired the right to continue as regular employee. He further

submits that the termination order annexure""C"" has been passed for malafide reasons. The petitioner despite having completed over two years as

the marketing Inspector has been thrown out for extraneous reasons and on malafide considerationhe words ""Registrar"" for District Judge, as has

been pleaded and argued. The District Judge under Section 29 of the Civil Courts Act enjoys a pivotal position in the hierarchy of subordinate

courts, as he knows best about the Advocates. The respondent has failed to give particulars of the documents or the material referred to in the

certificate, even after being asked to do so. This was sufficient to reject the

certificate which even otherwise was not valid.

9. Moreover, the object of the Rule being to ensure actual practice at the Bar can be best achieved only by enforcing it and not by reading it, as

suggested. The plain language of the Rule must be followed instead of doing violence to it. In case it is found deficient amendment can be

considered. Even in case of *Girdhari Lal* (Supra) it was held that the plain language should ordinarily be adopted by observing as under:

Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of

construction should be "" preferred which advances the purpose and object of a legislation and that though a construction, according to plain

language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities.....

10. For the aforesaid reasons, this appeal is allowed and the order impugning petitioner's father and the Commissioner/Secretary is nothing but wishful

thinking. In the earlier writ, the court has refused to be drawn to pronounce on the question of regularisation of petitioner's service and impliedly

regularisation has been found not legal and just, therefore, the petitioner's prayer over again for the same relief in the petition is impermissible.

7. Initial appointment order of petitioner dated:01.07.96(annexure,A), as Marketing Inspector in Assistant Marketing Officer at Lucknow by the

then Assistant Marketing Officer father of appointee petitioner is just a stop gap arrangement ordered consequent on the arrangement created by

transfer of one M.R.Mir the then Marketing Inspector at Lucknow as Marketing Inspector Delhi. The condition in the order that if in case

petitioner continues in the arrangement for one year, he shall have the right to continue and to be treated as regular temporary employee of the

Directorate of Horticulture, is not covered by any provision of law or rules, such condition can not even serve the ends of administration. The

appointment.. to the post of Grading and Marketing Inspector in Horticulture department may be at Lucknow, Delhi or any other place within or

outside the state, has to be in accordance with the recruitment rules applicable in the field. The appointment to the post of the Inspector is made in

accordance with and under Jammu & Kashmir Subordinate Service Recruitment Rules, 1992 (SRO 194 of 1992). Any appointment dehors these

rules can neither be regularised nor can such appointment or arrangement confer any benefit or right on an incumbent to continue. From record it is

seen that this post of Grading and Marketing Inspector available in the Directorate of Horticulture has been filled in accordance with the rules and

the competent authority has issued orders of appointment on the recommendation and selection made by the SSRB and consequent upon such

appointment, one Bashir Ahmad Bhat Grading/Marketing Inspector AGMO's office Bomai Sopore Zone has been transferred and posted as

marketing Inspector in the office of Area Marketing Office Lucknow. This order has been issued on 22.08.98, even earlier to the presentation of

the instant writ before the High Court.

8. The contention that the action of the competent authority namely Commissioner/Secretary respondent No:1 in issuing the order of termination of

petitioner (annexure c) is malafide on extraneous considerations and based on (some) rivalry between petitioner's father and respondent No:1, is,

not supported either by facts or by any material on record. The contention is bald. It lacks in details. No particulars or details required to lay

foundation for malafide are mentioned or given in the petition. Mention of ""words"" malafide reasons, ""malafide consideration"" without anything more

can not cloth the impugned order malafide. The necessary pleadings thereto are lacking. The impugned order on the face of it has been passed

within jurisdiction by a competent authority. All aspects of the matter have been considered. Even the earlier direction of this court while disposing

of SWP No: 186/98 interse the parties on 06.05.98 has been also considered. The rule position has been also accounted for. The order does not

appear either on facts or law to suffer from any malice. There is nothing on record to indicate any rivalry between the petitioner's father and

Assistant Marketing Officer at Lucknow(on the relevant date) and the respondent No: 1 Commissioner/Secretary and in any case nothing of the

sort based on any fact is given out in the petition. Mere mention of a word or two of the supposed rivalry will not suffice. In such a situation it is not

an adverse reflection on the impugned action of the respondents.

9. The petitioner earlier filed writ petition No: 186/98 against the very respondents who are before the court in the instant writ petition, with prayer

for declaring him as a regular employee and for release of salary for the period

he rendered services in the arrangement as Marketing Inspector

Lucknow. The court while disposing of the petition on 06.05.98 vide annexure,RI declined to grant the relief of regularisation but issued a direction

for release of salary to the petitioner for the period he has worked or may work. In fact the relief of the regularisation as sought in this petition

stands declined earlier also. In such circumstances to petition pray for grant of the relief second time is not appropriate as a matter of policy, if not

on other counts. Merely working in an arrangement over a period may be for a year or two can not confer any right on the occupant of such

arrangement to hold the post indefinitely and then to seek regularisation on such basis.when the arrangement and the appointment itself is beyond the

competence of the authority allowing and providing such arrangement and more when so the arrangement/employment is not covered by the

recruitment/appointment rules. In this case, the act(s) of omission and commission is compounded as the then Assistant Marketing Officer at

Lucknow who allowed and ordered the arrangement and made the appointment of the petitioner.happens to be no other person than the father of

the petitioner. No other point was taken or canvassed before this court.

10. In the result, for the aforesaid reasons, the petition is dismissed.