

(2022) 04 CAT CK 0025

In the Central Administrative Tribunal

Case No : Transfer Appeal No. 5465, 2397 Of 2021, 1995 Of 2020

Nazir Ahbad Dar

APPELLANT

Vs

State Of J&K Through Commissioner, Secretary To Govt.
Power Development Department, Civil Sect., Srinagar,
Jammu & Others

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Citation : (2022) 04 CAT CK 0025

Hon'ble Judges : Anand Mathur, Member (A); D.S. Mahra, Member (J)

Bench : Division Bench

Advocate : Parvaiz Lone, Muzaffar Kirmani

Final Decision : Disposed Of

Judgement

D.S. Mahra, Member (J)

1. Since cause of action and relief sought by all the applicants are common, hence all the three TAs are being disposed off by a common order.

2. The applicants have filed the present TAs with prayer for release of salary for the period they had worked in the department.

3. The applicants had filed the SWP No. 414/2018, SWP No. 2118/2018 and SWP No. 2117/2018 before the Hon'ble High Court of Jammu and Kashmir, which was subsequently transferred to this Tribunal. While issuing the notice, the Hon'ble High Court on 2.3.2018 and 7.9.2018 passed the following orders in all the three SWPs:-

"In the meantime, the legitimately earned salary to the petitioners, if they are found entitled shall be released in their favour and the present status of the petitioners shall not be disturbed."

4. The applicants in the writ petition, which was subsequently transferred to this Tribunal made a limited prayer for release of the salary.

5. Learned counsel for the applicants submitted that it will suffice, if a direction is given to the respondents to release the salary of the applicants for the period during which they had worked in the respondent department. The learned counsel for the applicants has also relied on the judgment and order of Hon'ble High Court of J&K in the case of Union Territory of J&K and others Vs. Aishiq Hussain Dar and others (LPA No. 136/2020) decided on 18.11.2020.

6. Learned counsel for the respondents submitted that the appointments of the applicants in the department have been made on the basis of fake documents. Therefore, they are not entitled to any salary or to continue in the department. He further submitted that an enquiry is still pending against the applicants.

7. Heard the learned counsel for both the parties.

8. The respondents have admitted that there is no denial of the fact that the applicants were receiving salary in the past. However, after the complaint received in the department, an enquiry is going on against the fraudulent, illegal appointment of the applicants and no competent authority has appointed them.

9. Hon'ble High Court of J&K in the matter of Union Territory of J&K and others Vs. Aishiq Hussain Dar and others in (LPA No. 136/2020) decided on 18.11.2020 has held as under:-

"Having heard learned counsel for the parties and perused the record, we are of the view that the judgment of the learned writ Court, impugned in this letters patent appeal is, well reasoned and does not call for any interference. The learned Single Judge has rightly concluded that so long the appointment of the respondents is intact and has not been held to be illegal or irregular by any competent authority, they cannot be denied the salary for the period they perform their duties. It is rightly held by the learned Single Judge that taking the work from the respondents without paying their due salary is tantamount to "Begar" which is constitutionally prohibited. Thus the view taken by the learned Single Judge is unexceptionable and, therefore, cannot be interfered with.

We, therefore, find no merit in this appeal and the same is, accordingly dismissed."

10. In a latest judgment passed by the Hon'ble Apex Court in the case of Man Singh Vs. The State of U.P. through Secretary & Others Civil Appeal No. 7841/2011, decided on 31.3.2022 has passed the following orders:-

"We find that the Hon'ble High Court has failed to consider the fact that even if the appointment is irregular, the appellant had discharged the duties and in lieu of duties, he had to be paid. The state cannot take any work from any employee without payment of any salary. "

11. In view of the above, T.A. No. 5465/2021, T.A. No. 2397/2021 and TA. No. 1995/2020 are disposed off with a direction to the respondents to consider the case of the applicants in the light of judgment and order passed by the Hon'ble

High Court of J&K in the case of Union Territory of J&K and others Vs. Aishiq Hussain Dar (supra) on 18.11.2020 and judgment and order passed by the Hon'ble Supreme Court in the case of Man Singh Vs. State of U.P. (supra) on 31.3.2022. The respondents are directed to make payment of salary to the applicants, for the period, during which they had actually worked in the department, within a period of 6 weeks from the date of receipt of a certified copy of this order. So far as the appointments of the applicants are concerned, this is a matter of inquiry and investigations to be made by the respondent department separately, if so desired and advised.

12. With these observations, T.A. No. 5465/2021, T.A. No. 2397/2021 and TA. No. 1995/2020 are disposed off.

13. No order as to costs.