
(2018) 08 J&K CK 0055

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1390 Of 2018

Nazir Ahmad Wani @APPELLANT@Hash State And Ors

Date of Decision : 24-08-2018

Acts Referred:

Citation : (2018) 08 J&K CK 0055

Hon'ble Judges : M. K. Hanjura, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

The writ petitioner, a Senior Drug Inspector in the respondent department, came to be selected/appointed as Assistant Drug Controller, being at

S.No.1 in the Waiting List. The respondent No.2, who was appointed as a selected candidate against the said post, was on deputation in the State Aids

Control Society Union Territory, Chandigarh at the relevant point of time. Subsequently, the petitioner was given the additional charge of the post of

Controller of Drugs & Food Control Organization, and vide Govt. order No. 550-HME of 2014 dated 01-10-2014, he came to be promoted as Deputy

Controller Drugs.

02/ The respondent No.2, being aggrieved of the order, challenged the same before the writ court through SWP No. 2878/2014 and obtained an

interim stay on 14-10-2014. It is stated that the said writ petition came to be dismissed on 24th of November, 2014 and the impugned order dated 01-

10-2014 was kept intact with some time bound restrictions. Both the petitioner as also the respondent No.2 assailed the order/judgement dated 24-11-

2014 by the medium of LPA NOs. 11/2015 & 01/2015, which were decided on 13th of May, 2015 by a common judgement modifying the time bound

conditions/restrictions imposed in the order of the writ Court dated Â

24-11-2014. It is further stated that the petitioner thereafter filed a review petition against the Division Bench order, which too came to be disposed of on 26-05-2015 with the observation that the petitioner has an edge, experience-wise, over the respondent No.2 and the official respondents were directed to consider the same at the time of passing any order.

However, the direction was totally ignored by the respondent No.1, who issued an order bearing No. 817-HME of 2015 dated 22-12-2015, pursuant to which the respondent No.2 was given the temporary charge of the post of Controller Drugs, already held by the petitioner. It is further stated that by the dint of the Govt. order No. 388 â?" HME of 2016 dated 05-07-2016, the petitioner, who had proceeded on protest leave for six months, came to be deputed to J&K Medical Supplies Corp. Ltd. and was posted as Incharge Quality Control Cell. It is further contended that the respondent No.1, being dissatisfied and dismayed by the performance of the respondent No. 2 as Incharge Controller of Drugs, passed an order dated 22-03-2018, which had the effect of recalling the petitioner from deputation and he was given the temporary charge of Controller Drug & Food Control Organization.

03/ It is further pleaded that the respondent No.2 again approached the Court by the medium of SWP No. 580/2018 and called in question the aforesaid order dated 22-03-2018 and the writ Court, vide its order dated 23-03-2018, restrained both the Â respondent No.2 and the petitioner to hold the charge of Controller Drugs & Food Control Organization, till next date of hearing. The matter came up before the Court thereafter on several occasions but the interim direction was not extended. Â It is further averred that in opposition to the writ petition (SWP 580/2018), the respondent No.1 vehemently objected the contentions raised Â by the respondent No.2 therein, challenging the Incharge position of the petitioner. It was specifically averred that the Govt. order No. 201-HME of 2018 dated 22-03-2018 has been passed in the public interest and the petitioner, in view of his past performance, experience and efficiency, has been made as Incharge Controller of Drugs.

04/ Thepetitioner has proceeded to state that although the writ petition, whereunder the Govt. order No. 201-HME of 2018 dated 22-03-2018 has been challenged, is subjudice and the categoric stand of Â the respondent No.1 before the writ Court that the respondent No.2 is not suitable to hold the

post, yet the impugned order, bearing No. 369-HME of 2018 dated 18-06-2018, has been passed. It is further stated that the said order has been ante dated due to the recent political developments in the State of J&K on 19th of June, 2018, dislodging the elected Government before noon. The

petitioner has stated further that the impugned order was issued in the late hours of 19th of June, 2018 but it was ante dated as 18th of June, 2018.

05/ It is further stated that in terms of the Gazetted Recruitment rules of 1997, the job of Controller is mainly dependent upon experience, integrity and efficiency and the criteria of seniority alone cannot be made the basis for manning such post. The decision taken by the respondent No.1 to give the charge of the Controller to the petitioner is conscious, deliberate and well thought over besides being persuaded and guided in the public interest and the order, impugned herein, has been issued without proper application of mind and for achieving oblique motives, besides being arbitrary, illegal and tainted, and, as such, deserves to be quashed.

06/ In the end it is prayed that by issuance of writ of certiorari, the impugned order bearing No. 369-HME of 2018 dated 18-06-2018, being unwarranted and illegal, be set aside.

07/ In the objections filed by the respondents, it is stated that the petitioner was not holding the post of Controller Drug on substantive basis and was given the charge of Controller Drug and Food Control Organization vide order dated 22-03-2018 on temporary basis, which order has been rescinded by the Government, therefore, there is no question of removal of the petitioner from the said post. It is further stated that the Hon'ble Court, vide its order dated 23-03-2018, issued in SWP 580/2018, filed by the respondent No.2, directed that both the petitioner herein and the respondent No.2 be restrained to hold the post of Controller, Drug & Food Control Organization, J&K. The said Court order proved detrimental to the public interest and the Organization was suffering badly as it was continuing unabated without any further direction from the Court. Respondents have further gone to state that the order No. 201-HME of 2018 dated 22-03-2018 was, therefore, rescinded and the Govt. order No. 369-HME of 2018 dated 18-06-2018, impugned herein was passed, keeping in view the direction of the Court not to permit the parties to hold the post of Controller Drugs & Food Control Organization

Â 08/ Heard & considered.

09/ The Government of Jammu & Kashmir General Administration Department Civil Secretariat Srinagar issued a Circular bearing No. 30 â?"GAD

of 2018 dated 20.07.2018 which has a direct bearing on the matter in controversy and it is reproduced below verbatim et literatim: Â

â??1/It has been brought to the notice of the Government that certain Departments/HODs have in the recent past issued orders at their own level

without approval of the Cabinet or concurrence of the Finance Department wherever it was required. There is a need to examine such erroneous

orders for their regularization. 2/All the Administrative Secretaries are accordingly requested to bring to the notice of the General Administration

Department by Monday i.e. July 23, 2018 (11.00 AM) such orders which need to be regularized.

3/If, later on, it emanates that details of any order issued erroneously have not been brought to the notice of General Administration Department, the

concerned Administrative Secretary will be personally responsible for such action.â??

10/ The circular cited above, is, in effect, a policy decision evolved by the Government whereby all the Administrative Secretaries have been

requested to bring to the notice of the General Administrative Department on or before a particular date, i.e. July 23rd, 2018, such orders which need

to be regularized for having been passed by certain departments/heads of the departments in the recent past, at their own level without the approval of

the cabinet or the concurrence of the Finance Department, wherever it was required. The object of the circular appears to be that the Government

has felt the need to review the erroneous orders, passed before its promulgation by the authorities that had no competence and jurisdiction to pass

them. The petition of the petitioner squarely falls within the scales and parameters of the circular issued by the Government, which is detailed above

for the convenience of the ready reference. The Government on the face of the circular aforesaid has the power and authority to examine the validity

of the orders, which are the subject matter of challenge in this petition. The circular cited above brings it to the fruition that the Government has the

dexterity and competence to find out which of the orders shall hold the roost or who is the person competent to man the post on substantive basis.

11/ Accordingly, the writ petition is disposed of as above along with the connected IAs with the observation made above. The record relating to the matter shall be returned to the learned counsel representing the State.