

(2011) 03 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : SWP No's. 157, 158, 159, 160, 161, 162 and 163 of 2007

Nisar Ahmad Malik

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2011) 2 JKJ 650

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Muzaffar Hussain Attar, J.—In view of the fact that the issues involved in all these petitions are identical, they are heard together and

decided by this common judgment.

2. On the allegations of gross misconduct, the Petitioners were dismissed from service on September 25, 2002 by Respondent No. 2. Petitioners,

being aggrieved of the orders of dismissal challenged the same in different writ petitions before the Court. The Court decided the writ petitions vide

judgment dated February 2, 2006. The operative portion of the judgment is reproduced as under:

Since the enquiry report has not been furnished to the Petitioner he could not make a proper representation against the proposed penalty as such I

find prejudice has been caused to him for this reason. I find the order impugned cannot stand.

In the facts and circumstances of the case I think it just and proper to direct the Respondents to furnish a copy of the enquiry report to the

Petitioner within two weeks from the date a copy of this order is served on them. On receipt of the report the Petitioner shall submit his reply

within two weeks thereafter. No extension in time be allowed. The reply so submitted be considered by the Respondents and if they find the reply

is convincing one and contain sufficient grounds the Respondents may effect necessary modifications in the order impugned. Petition disposed of

accordingly. Order accordingly.

3. Petitioners being aggrieved of the judgments, challenged the same by filing letters patent appeals before the Letters Patent Bench of the Court on

the principal ground that though the Respondents were directed by the Writ Court to furnish copy of enquiry report to the Petitioners, yet the order

of dismissal has not been quashed. The Letters Patent Bench vide its order dated May 9, 2006 disposed of all the appeals by providing as under:

This appeal is, accordingly, disposed of by modifying the impugned judgment of the Writ Court by providing that order of dismissal of Appellant's

service shall stand quashed but all other directions given in the impugned judgment shall remain intact. This shall, however, leave Appellant free to

seek appropriate remedy in case any adverse order was passed against him by the competent authority.

4. The order of dismissal dated September 25, 2002 has been maintained by Respondent No. 2 in respect of all the Petitioners vide his order

dated July 3, 2006. Operative portion of the order reads as under:

In pursuance of judgment dated 02.02.06 the enquiry report was furnished to the Petitioner against proper receipt, the copy of which is annexed

herewith as annexure ""A"". Petitioner in his reply has submitted that the enquiry has not been conducted in accordance with police rules and

mentioned that instead of Dy. SP Hqrs Pulwama the same was conducted by Inspector Feroz Ahmad SHO P/S Shopian. Moreover the Petitioner

reiterated that a case FIR No. 172/02 was registered in P/S Shopian so in presence of the registration of a case parallel enquiry cannot be

conducted. While the reply submitted by the Petitioner was under consideration of undersigned, this office received the judgment dated

09.05.2005 passed by Division Bench of Hon'ble High Court of J&K comprising of Hon'ble Justice B.A. Khan, Chief Justice (A) and Hon'ble

Justice J.P. Singh in LPA No. 168/06 filed by the Petitioner Noor Mohd. The

Division Bench of Hon'ble High Court quashed the dismissal order dated 25.9.2002 passed by the then SP Pulwama but upheld the directions passed the Hon'ble High Court in SWP No. 1335/2002 dated 02.02.2006 for reconsideration of the Petitioners case as per the judgment. The reply submitted by the Petitioner was meticulously considered which is the verbatim of the grounds already raised in SWP No. 1335/2002. From the perusal of the enquiry papers it was crystal clear that full-fledged enquiry was conducted by Dy. SP Hqrs. Pulwama. Moreover, a large cake of arms/amm. was taken by the militants from the guard personnel including the Petitioner and it was necessary to register a case in concerned police station regarding the incident. Worthwhile to mention here that the Petitioner exhibited high dereliction of duty cowardice, carelessness which was uncalled for a police personnel. The Petitioner has brought a stigma on police force, so, it was imperative to dismiss him from services. The dismissal order was accordingly passed in pursuance of Section 126(2) of J&K Constitution and Article 311 of Constitution of India read with Rule 337 of J&K Police Manual Vol. II. Hence the reply submitted by the Petitioner is not convincing one. Therefore, I, Nitish Kumar, IPS, SP Pulwama, in consonance to the directions of Hon'ble High Court, J&K retain the order of dismissal passed in respect of the Petitioner, Noor Mohd. Ex-CT. No. 1290/PL by the then SSP Pulwama vide his order No. 590/02 dated 25.09.2002 and do not find any justification to modify or alter it as the same does not warrant any interference as it is well founded in accordance with law.

5. The said order has been challenged in these writ petitions. On notice issued, the Respondents have filed reply affidavit. Heard learned Counsel for the Petitioners. Considered the matter.

6. Learned Counsel for the Petitioners submitted that Respondent No. 2 has failed to consider the reply filed in response to show cause notice. Learned Counsel also submitted that the issues raised in the reply have not been addressed to. Learned Counsel submitted that though Deputy Superintendent of Police was appointed as Enquiry Officer but the enquiry was conducted by an Inspector. This was one amongst the other grounds raised in reply to the show cause notice but it has also not been considered.

7. This petition deserves to be allowed on one short ground. The Writ Court, while allowing the writ petitions, directed the Respondents to furnish

copy of enquiry report to the Petitioners within two weeks from the date copy of the Court order was served upon them. It was also provided

that, on receipt of the report, the Petitioners shall submit their reply within two weeks thereafter with rider that no extension in time will be allowed.

It was further directed that the Respondents will consider the reply submitted by the Petitioners and if the reply filed was found convincing and

would contain sufficient grounds the order of dismissal which was impugned in the writ petition can be modified.

8. Letters Patent Appeals were filed against these judgments, as submitted by learned Counsel for the Petitioners, to the extent of seeking

quashment of impugned dismissal order. The Letters Patent Bench vide its judgment dated May 9, 2006 modified the order of the Writ Court by

providing that the order of dismissal of Appellants from services shall stand quashed. All other directions given in the judgment by the Writ Court

were ordered to remain intact.

9. The impugned order reveals that the order of Letters Patent Bench was brought to the notice of Respondent No. 2 and the said Respondent

was made aware of the said judgment of the Court. The order of the Writ Court merged in the order of the Letters Patent Bench. The order of

dismissal was quashed by the Letters Patent Bench and other directions given by the Writ Court were maintained. In view of the judgment of the

Letters Patent Bench, dismissal orders were non-existent. The Respondent No. 2, in this factual background, was duty bound to consider the reply

of the Petitioners which they submitted in response to show cause notice and take a fresh decision thereon.

However, after getting knowledge about the disposal of the letters patent appeal fresh orders on merits were required to be passed by Respondent

No. 2. The Respondent No. 2 maintained the orders of dismissal dated September 25, 2002 which order(s) were non-existent in view of their

quashment by the Letters Patent Bench. The orders impugned suffer from non-application of mind. The Respondent No. 2 was duty bound to treat

the dismissal orders as non-existent and then proceed in the matter. He was also duty bound to consider the issues raised in the reply submitted by

the Petitioners. The gravity of charge cast added responsibility on the competent authority to deal with the issues in accordance with law. The

Respondent No. 2 has not referred to the issues raised in the reply to the show cause notice and, it appears, has not taken cognizance thereof. The

non-consideration of issues raised by Petitioners in their reply to show cause notice by Respondent No. 2 also vitiates the impugned order. The

Respondent No. 2 has maintained the orders of dismissal dated September 25, 2002 which were already quashed by the Letters Patent Bench of

the Court. What were maintained were non-existent orders, which is not countenanced in law.

10. For the above-stated reasons, these petitions are allowed in the following manner:

(a) By issuance of Writ of Certiorari, the impugned orders passed by Respondent No. 2 are quashed. The Respondent No. 2 is directed to

reconsider the entire matter in accordance with the mandate of judgments of the Letters Patent Bench and in accordance with the observations

made in this judgment. The Respondent No. 2 to take a decision in the matter within a period of two months from the date copy of this order is

served on him.