
(2003) 09 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : SWP. No. 1452 of 2003

Parvaiz Abdullah and Others	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2004) 1 JKJ 150

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Advocate : A. Haqani, for the Appellant; M.A. Rathore, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.C. Gandhi, J.—Petitioners deputationists seek issuance of writ of Certiorari to quash Government Order No. 34-RT of 2003 dated

9.6.2003, whereby all the petitioners/deputationists have been repatriated to their parent organization i.e, J&K State Road Transport Corporation

(for short SRTC). They further seek to quash their relieving order dated 26.8.2003, passed by the Regional Transport Officer, Kashmir in

implementation of the Government order dated 9.6.2003.

2. Petitioners are the employees of the Jammu and Kashmir, State Road Transport Corporation. On account of the re-organisation of the Motor

Vehicle Department, Offices of the Assistant Regional Transport Officers at District level and additional Check Posts were created. To make these

offices functional, the requirement of staff was met by getting the staff on deputation from the S. R. T. C. Some of the petitioners were deputed

vide Government Order No. 56-TR of 2000 dated 17.10.2000 and some by the

General Manager (Administration) J&K SRTC, Srinagar. In the deployment order, it is specifically stated that the officers/officials shall continue to draw their salary from their parent organization i.e, S.R.T.C.

Respondents have repatriated the petitioners to their parent department vide impugned order. Aggrieved of the impugned order, the petitioners

seek its quashment on the ground that the petitioners are required to be absorbed in the Motor Vehicle Department as their case for absorption is

under consideration of the Government and that there is controversy, between the Administrative Head of the Department and the Minister

concerned, with regard to the repatriation of the petitioners. It is also stated that the impugned Order is not a legal Government Order on the

ground that it, has not been approved and authenticated by the Minister as the Business Rules,

3. Respondents have filed the reply stating therein that it the Motor Vehicle is denied that the petitioners absorption in Department is under

consideration of the Government. There are no posts in the department for absorption of the petitioners. It is also stated that the Check posts at

Nagrota and Manwal, which were being manned by the staff of SRTC have been closed and the requirement of Motor Vehicle Department can be

met with by the existing staff of the Motor Vehicle Department. The respondent department is not even making payment of salary to the petitioners

for the obvious reasons that there are no posts, therefore, the question of absorption of the petitioners does not arise. The Government has also not

approved creation of posts. It is also stated that the petitioners have already been relieved and are not working at present, with the respondents.

The Government order has been passed by the respondents quite in conformity with the rules and does not suffer from any vices.

4. Heard learned counsel for the parties and perused the record.

5. It. is admitted case of the parties that the petitioners, though were working on deployment in the Motor Vehicle Department yet were drawing

salary from the parent organization i.e, S.R.T.C. It is also not made out that there are posts for absorption of the petitioners. The government has

also turn down the proposal of creating the posts.

6. The petitioners have been deputed to work in the Motor Vehicle Department to meet the requirement of the said department The respondents in

their objections have stated that some of the Check Posts have been closed and the requirement of the department could be met with, with the

existing staff, meaning thereby that there is no need of the petitioners in Motor Vehicle Department.

7. Mr. Haqani, learned counsel for the petitioners referring to pleadings has drawn the attention of the Court on the noting maintained by the

Administrative Department on the file of repatriation of the petitioners and also the noting recorded by the Minister Incharge. Nodoubt there is

difference of opinion recorded in the notes between the Administrative Head of the Department and the Minister Incharge. On these basis he

submits that the impugned order has not been approved and authenticated by the Minister, therefore, being not a valid order, cannot be executed.

It is seen from the record that when the petitioners were deputed, some of the orders have been issued by the General Manager State Road

Transport Corporation who is not a competent authority to sent his employees from his department to another department. Deputation order

should be issued by the Government in consultation with both the Administrative Head of the Departments. The order of some of the petitioners

who have been deployed by the General Manager, Jammu and Kashmir State Road Transport Corporation is ab initio and patently bad. It does

not create any right to the petitioners and on the basis of such illegal order, petitioners cannot contend to remain in the borrowing department.

However, some of the, employees have been deputed by the Government vide Government order dated 17.10.2000. It is to be seen, as to

whether the petitioners have any legal right to be retained in borrowing department where there are neither posts nor salary is being it paid by the

borrowing department. The stand of the borrowing department is that they can meet their need with the existing staff, therefore, under such

circumstances the petitioners cannot have any right to raise any claim to be retained in that department.

8. So far as the question of illegality of the Government Order is concerned, before questioning it, the petitioners should have legal and enforceable

right. Petitioners are not even deputationists but have been merely deployed to meet the requirement of the State. They are not being paid by the

borrowing department. They have no legal right to question the repatriation order. To challenge the impugned order, the petitioners have to qualify

and maintain before the, Court that they have enforceable right as held by the Supreme Court case titled Calcutta Gas Company (Proprietary) Ltd.

v. State of West Bengal and Ors. AIR 1962 SC holding as under:

.....Article 226 in terms does not describe the cases of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary

jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of

the High Court under Article 226. The legal right that can be enforced under Article 226 like Article 32, must ordinarily be the right of the

petitioner himself who complains of infringement of such right and approaches the Court for relief. The right, that can be enforced under Article 226

also shall ordinarily be the personal or-individual right of the petitioner himself though in the case of some of the writ like habeas corpus or quo

warranto this rule may have to be relaxed or modified, The State of Orissa Vs. Madan Gopal Rungta,

9. This view has been reiterated by the AIR. 1977 SC case titled as Mani Subrat Jain etc etc. v. State of Haryana and Ors., wherein the Apex

Court has held that:

The High court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right.

There must be judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can

be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing

something.

10. The petitioners have no legal right to remain in the borrowing department, where there are posts.

11. So far as the plea of the learned counsel for the petitioners that their cases are under consideration of the respondents for their absorption in

the Motor Vehicle Department and till the government takes a decision thereon, the petitioners should not have been repatriated, is concerned. The

respondents have specifically taken a stand in their reply that there are no posts and the Government has also rejected the proposal of the creation

of the posts, therefore the question of the absorption of the petitioners does not rise. Assuming the cases of the petitioners for absorption are

before the Government, which in fact is not, till it does not create any right to the petitioners to remain posted in the borrowing department till

decision is taken, unless the rules provide for absorption. The rule does not contain any such provision for absorption. Thus petitioners have no right

to claim absorption in the borrowing department, while neither the rules envisage such absorption nor the borrowing department is willing to absorb

them. Had the petitioners been absorbed, in that event, the borrowing department could not have repatriated the petitioners as held by the

Supreme Court in *Umapati Choudhary Vs. State of Bihar and Another*, . This is not the position in the case in hand.

12. No case for admission of the petition is made out. The petition, is accordingly, dismissed.