
(1998) 05 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 31 of 1998

S.Attar Singh

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 05-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 SriLJ 197 : (1999) SriLJ 197

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : M.A.Goni, A.K.Thakur , A.K.Gupta , Advocates appearing for the Parties

Judgement

1. This petition has been filed under the following circumstances. An order annexure 'E' has been passed by the Addl. Secretary to Government,

Public works Department. This order reads as under:

'In the interest of administration Sh.D.P.Khajuria, Assistant Executive Engineer (Mech) presently posted in Mechanical Irrigation Construction

Division Jammu is transferred and posted in Jammu Municipality against an available vacancy with immediate effect.

By order of Government of Jammu and Kashmir".

2. The aforementioned order was challenged by this present writ petition. Petitioner submits that he is Assistant Engineer and is holding charge of

Executive Engineer (Mech) Jammu Municipality. According to the petitioner by passing annexure 'E' his chances of getting permanent post of

Assistant Executive Engineer have been blocked.

3. It is further stated that no employee can be sent to the Jammu Municipality until and unless Jammu Municipality is willing to have him. It is further

stated that on 6th of December 1997, Administrator of Municipality sent a communication into CommissionerCumSecretary Power Works

Department intimating that Sh.D.P.Khajuria be not allowed to join Jammu Municipality.

4. In my opinion so far as Government order passed on 2nd of January 1998 by Addl. Secretary to Government, Power Works Department is

concerned, it can be challenged by the Administrator Municipality only. Present writ petitioner has no locus standi. In this regard reference be

made to the decision given by the Supreme Court of India in the case reported as Sh.Subhash Chandra and others verses Municipal Corporation

of Delhi and another AIR 1965 Supreme Court 1275. A decision taken by the Municipal Corporation of Delhi was nullified by the Chief

Commissioner Delhi. Power was exercised under section 232 of Punjab Municipal Act. Municipal Corporation had given service benefits to the

employee. This as indicated above was taken away. This action was challenged by the employees. It was contended that the order passed by the

Chief Commissioner Delhi is bad as this was passed without affording opportunity of hearing. This contention was negatived. It was held that the

aggrieved party is the Municipal Corporation and as such employees cannot contend that the order is bad as it has been passed without hearing

them. In para 13 following observations have been made:

The committee can therefore, acquiesce in it and waive the noncompliance by the State Government with the provisions of S.235. Since S.235

does not require an opportunity to be given to parties affected by the order other than the Municipality the petitioners are not entitled to say that

the order is bad.

5. Thus person aggrieved in this case thus has no locus standi in this matter. The aforementioned decision given by the Supreme Court of India was

followed by the Punjab and Haryana High Court in the case reported as Karam Singh versus State of Punjab 1979 PLR 426.

6. Independently of above mere loss of chance of promotion, a right which is purely contingent, cannot be enforced at the instance of the petitioner.

7. This petition is accordingly held to be not maintainable; the petitioner has no locus standi to challenge the order passed by the State Government

on 2nd of January 1998. Petition is dismissed.