
(2013) 12 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : S.W.P. No. 2069/2011 and C.M.P. No. 3422/2011

Shafi Chowdhary

APPELLANT

Vs

State of J. and K.

RESPONDENT

Date of Decision : 30-12-2013

Acts Referred:

Citation : (2014) 1 JKJ 332

Hon'ble Judges : Ali Mohd. Magrey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ali Mohd. Magrey, J.—Petitioner, while he was working as teacher in the Education Department at High School Rajouri, was transferred

vide Government order No. 1176-Edu of 1988 dated 11.11.1988 and posted as Warden, Gujjar and Bakerwal Hostel, Srinagar. At the relevant

time, the said Hostel is stated to have been under the control of Education Department. Subsequently, its control is stated to have been transferred

to Social Welfare Department. It is averred in the petition that, in this connection, the Government in the General Administration Department issued

Order No. 1163-GAD of 1991 dated 29.11.1991 according sanction to the transfer of Advisory Board for the Development of Gujjar and

Bakerwals alongwith various posts and staff sanctioned there for and its placement under the charge of the Social Welfare Department.

Consequent upon the issuance of the aforesaid order, the petitioner alongwith other staff members of the Advisory Board also were permanently

transferred and given under the control of the Social Welfare Department. The petitioner was also released the grade attached to the post of

Warden in terms of Government order No. SW-150 of 1977 dated 08.07.1997. Thereafter, the petitioner's lien in the Education Department was terminated vide Government order No. 767-Edu of 2000 dated 11.07.2000. Thus, he ceased to be an employee of the Education Department.

Subsequent thereto, vide Government order No. 207-SW of 2000 dated 24.10.2000, the petitioner was posted as Child Development Project Officer, Budgam, in his own pay and grade. Meanwhile, it appears that in the year 2004, salary of the petitioner was withheld. The petitioner, claiming to be an employee of the Social Welfare Department, filed writ petition, SWP No. 1921/2004, in which, it is stated, an interim direction was passed directing the respondents to consider the case of the petitioner for assigning him the duties commensurate to his status. The matter also appears to have been taken up by the General Administration Department with the Education Department in response where to the Under Secretary to Government, Education Department, informed the Principal Secretary to Government, General Administration Department, that the petitioner's lien in the Education Department stood terminated vide Government order dated 11.07.2000 and that the petitioner no longer was on the establishment of the Education Department. Ultimately, the General Administration Department addressed communication No. GAD-Ser(KAS)21/2005/372 dated 03.04.2007 to the Secretary to Government, Social Welfare Department, directing him to issue adjustment orders in favour of the petitioner against suitable post in Social Welfare Department. Pursuant thereto, vide Government Order No. 175-SWD of 2007 dated 16.07.2007, the petitioner was posted as Child Development Project Officer, Pulwama, against an available vacancy. As a sequel thereto, the petitioner is stated to have withdrawn his aforesaid writ petition, SWP No. 1921/2004. Thereafter, the petitioner has been transferred and posted in the Social Welfare Department from time to time on various posts.

2. The petitioner had been requesting the respondents to determine and fix his seniority in the Social Welfare Department which requests have not been paid any heed. The petitioner filed writ petition, SWP No. 1715/2009. Vide order dated 12.11.2009 the respondents were directed to treat the writ petition as representation and consider his case for fixation of his seniority. Since despite court orders to the aforesaid effect the

respondents did not consider the case of the petitioner, he is stated to have filed contempt petition No. 215/2010. The respondent No. 2 instead

of according consideration to the case of the petitioner as put forth by him in his aforesaid writ petition, has issued OM No. SWB/Gaz/38/07

dated 31.05.2010 addressed to the Secretary to Government, School Education Department, requesting him to revoke Government order No.

767-Edu of 2000 dated 11.07.2000 and revive the lien of the petitioner in the Education Department. The petitioner has challenged the aforesaid

OM dated 31.05.2010 in this writ petition.

3. Respondent No. 1, Commissioner/Secretary to Government, General Administration Department, in its objections/reply to the writ petition has,

inter alia, stated that the Education Department has not called any comments from the Social Welfare Department before termination of lien of the

petitioner. In the said backdrop, the Social Welfare Department vide the impugned memo has requested the Education Department to rescind the

Government order No. 767-Edu. of 2000 dated 11.07.2000 where under the lien of the petitioner was terminated from Education Department.

4. Respondent No. 2, i.e., the Commissioner/Secretary to Government, Social Welfare Department, has wholly admitted the facts pleaded by the

petitioner in his writ petition. However, it is stated that petitioner was appointed as Warden on deputation basis. It is also stated that the Hon'ble

Minister and respondent No. 2 approved the note for petitioner's absorption in the Social Welfare Department, but the file was returned by the

General Administration Department with advice to get the status-quo order vacated from this Hon'ble Court. It is stated that in terms of Article 37-

B of the J & K CSRs, the answering respondent could not unilaterally extinguish the lien of the petitioner unless he was absorbed in any other

department against a substantive vacancy.

5. Respondent No. 3, Commissioner/Secretary to - Government, Education Department, in his reply has stated that the lien of the petitioner has

been terminated from Education Department vide Government order No. 767-Edu. of 2000 dated 11.07.2000, therefore, he cannot claim any

relief against the answering respondent.

6. I have heard learned counsel for the parties, perused the material on record and considered the matter.

7. Government order dated 11.11.1988 demonstrates that the petitioner was transferred and posted as Warden, Gujjar and Bakerwal Hostel,

Srinagar. It is not, therefore, correct to say that the petitioner was on deputation to the aforesaid post. Vide Government order No. SW-150 of

1997 dated 08.07.1997 the petitioner was also released the scale of pay of Rs. 2000-3500 attached to the aforesaid post. After the termination of

his lien in Education Department, the petitioner was posted as Child Development Project Officer, Budgam, in terms of the Government order No.

207-SW of 2000 dated 24.10.2000 issued by respondent No. 2. In terms of communication/Memo dated 03.04.2007, the General

Administration Department clearly required the respondent No. 2 to issue adjustment orders in favour of the petitioner against a suitable post in the

Social Welfare Department. At the top of everything, in compliance to the orders of this Court passed in SWP No. 1921/2004 and the

clarification made by the General Administration Department, respondent No. 2 issued Government order No. 175-SWD of 2007 dated

16.07.2007 to the following effect:

Now, therefore, in compliance to Hon'ble High Court orders and the instructions issued by the GAD, Shri Mohd Shall is posted as CDPO,

Pulwama against an available vacancy till the case is decided by the Hon'ble High Court. He shall relieve Programme Officer, Pulwama of

additional charge.

Consequent upon passing of the aforesaid order, the writ petition filed by the petitioner was dismissed in the following terms:

Pursuant to the above direction, the case of the petitioner has been considered and the Government has passed Govt. Order No. 175-SWD of

2007 dated 16.07.2007, posting the petitioner as CDPO Pulwama against an available vacancy. Copy of the said order has been placed on

record by the learned counsel for the petitioner. Thereafter, vide order No. 1174-DSWK of 2007 dated 07.12.2007, passed by the Director

Social Welfare Department, Kashmir the petitioner has been empowered to look after the work of ICDS Project Tral, in addition to his own

duties. A copy of the said order has also been placed on record by the learned counsel for the petitioner.

On the strength of the above said orders, Mr. Raina submits that the grievance of

the petitioner stands redressed, therefore, this writ petition has been rendered infructuous.

In view of the submissions made, this writ petition is dismissed for having been rendered infructuous. Connected CMP shall also stand dismissed.

The dismissal of this writ petition shall, however, not come in the way of the petitioner for approaching this Court again, if any further cause of action survives.

8. It is thus clear that the aforesaid writ petition was dismissed as having been rendered infructuous, not because there was no merit found in the writ petition, but the grievances projected therein by the petitioner were accepted and redressed by the respondents. This becomes clear from the judgment of the Court. When during the pendency of a writ petition, the grievance of the petitioner raised in the petition is redressed, it tantamount to admission of the case of the petitioner and its settlement outside the Court. The respondents cannot be allowed to resile from such a settlement and turn round saying that the writ petition was dismissed. When a case is dismissed as having been rendered infructuous in such a situation, it does not mean that the case was without any merit; it connotes further proceedings would not be fruitful, since the relief prayed for therein stood already granted. It would be playing deceit with the course of justice chosen by a litigant if during the pendency of the lis his grievance is redressed, and later, after the proceedings are terminated on such redressal, the respondent turns round, saying that the lis was dismissed as infructuous. It hardly needs to be mentioned that the Court had taken note of the fact that the controversy raised in the petition stood resolved. Therefore, it is binding on the respondents.

9. It is also the clear case of respondent No. 2 that the note prepared by it for adjustment of the petitioner in the Social Welfare Department was approved by the Minister Incharge, but the same was returned by the General Administration Department. The records speak the contrary, inasmuch as the General Administration Department is shown to have instructed the respondent No. 2 to adjust the petitioner, as is borne out from the contents of Memo dated 03.04.2007 addressed by Deputy Secretary to Government, General Administration Department to respondent No. 2 as well as Government order dated 16.07.2007.

10. The petitioner having been released the pay scale of the post of Warden, Gujjar and Bakerwal Hostel, Srinagar, and, thereafter, posted against

an available post in terms of Government order dated 16.07.2007, has to be deemed to have acquired his lien on the post of Warden. Reference

in this connection may be made to Article 37-A of the Jammu and Kashmir Civil Service Regulations, 1956, which reads as under:

37-A. Unless in any case it be otherwise provided in these Regulations, a Government servant on substantive appointment to any permanent post

acquires a lien on that post and ceases to hold any lien previously acquired on any other post. A Government servant on his substantive

appointment to a tenure post may acquire a lien thereon without ceasing his lien on any other permanent post.

11. It is nobody's case that the petitioner was not substantively appointed on the post of Warden. It, therefore, has to be deemed that the

petitioner had acquired his lien on that post. In fact, the Government order dated 11.07.2000 issued by the Special Secretary to Government,

Education Department, while according sanction to the termination of lien of the petitioner from District Cadre Rajouri, Education Department,

took note of these facts in the order. The Note under Article 37-C of the CSRs says that ""when it is known that a Government servant on transfer

to a post outside his cadre is confirmed in that post, his lien on the permanent post shall be terminated in his parent office"". Order dated

11.07.2000 appears to have been issued in terms of the above note. Be that as it may, in view of the above established facts coupled with the

aforesaid provisions of the CSRs, it cannot lie in the mouth of respondent No. 2 that his lien in the Education Department had been terminated

without seeking comments from the Social Welfare Department. In view of the provision of Article 37-A of the J & K CSRs quoted above,

reference to Article 37-B is irrelevant and inconsequential. Resultantly, order dated 11.07.2000 issued by the Education Department cannot be

asked to be revoked 13 years of its passing to the detriment and prejudice of the petitioner. The petitioner has been all along treated as an

employee of the Social Welfare Department.

12. During the course of hearing of this petition, the learned counsel for the petitioner submitted that the petitioner has attained the age of

superannuation and in fact, the Director, Social Welfare Department, Kashmir, vide order No. 792-DSWK dated 09.12.2013 has accorded

sanctioned to the grant of superannuation of the petitioner as Child Development Project Officer, Ganderbal with effect from 30.11.2013. This

almost clinches the issue, inasmuch as the petitioner is shown retired as Child Development Project Officer in the Social Welfare Department.

Accordingly, this writ petition is allowed. The impugned Memo No. SWB/Gaz/38/07 dated 31.05.2010 issued by respondent No. 2 and

endorsed to respondent No. 3 is rendered inconsequential and, accordingly, quashed. Now that the petitioner has been retired as Child

Development Project Officer, Ganderbal, the respondents are directed to accord him all the consequential service and retiral benefits to which he

would be entitled in accordance with the rules in the Social Welfare Department. Connected CMP shall, accordingly, stand disposed of. No order

as to costs.