
(2019) 09 J&K CK 0064

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 196 Of 2017

Showkat Ahmad Kundoo

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Jammu And Kashmir Police Rules, 1960 — Rule 187

Citation : (2019) 09 J&K CK 0064

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : B. A. Dar

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

1. By the present writ petition, the petitioner seeks a writ of certiorari to quash the Order No. 421/2016 dated 11.11.2016, for short impugned order, and the period from 7th May 2015 till the disposal of the writ petition may be declared as on duty. The petitioner has further prayed that respondents be directed to reinstate the petitioner into service w.e.f. 07.05.2015 and grant him all the consequential benefits including back wages w.e.f. 7th May, 2015.

2. Briefly stated the petitioner claims to have been appointed as Constable in the J&K Police (Executive) in terms of order No. 320 of 2012 dated 14.08.2012 after having emerged as successful in the selection process initiated by the respondent no. 2. The petitioner, subsequently, joined in the District Police Lines, Ganderbal, on 14th August, 2012. The petitioner, later on, was transferred to district Pulwama and he joined his service in district police lines Pulwama on 28th May, 2014. The petitioner is stated to have absented from duties because of the worsening health conditions of his parents and the petitioner, being the only son, could not afford to leave them alone. The petitioner has placed on record the medical prescriptions of his parents in support of his plea. The petitioner has

further averred in the writ petition that the petitioner lost his father to illness while as the mother continued to be sick. He further avers that on seeing some improvement in the health of his mother he reported back to his duties and requested the authorities to allow him to join his duties, but his request was not acceded to. It is further averred in the writ petition that even though he was not allowed to mark his attendance he continued to attend to his duties.

3. The petitioner is, thereafter, stated to have been discharged from service in terms of Order No. 421/2016 dated 11/11/2016, impugned herein. The challenge to the impugned order and the further relief of mandamus is sought inter alia on the ground that the petitioner was condemned unheard as no enquiry in the matter, as was required in terms of the relevant rules, has ever been conducted; the impugned order is stigmatic therefore, bad in law; the respondents have taken recourse to Rule 187 of the Police Rules of 1960 which could not have been applied to the petitioner as he had completed continuous three years of service by the time the impugned order came to be issued.

4. Upon notice respondents appeared and filed their reply resisting the claim of the petitioner inter alia on the ground that the petitioner has raised the disputed question of fact which cannot be gone into by this Court in its writ jurisdiction; the impugned order has been issued validly after having received the recommendations of the enquiry officer who recommended petitioner's discharge from service for having failed to respond to the notices issued to him during the course of enquiry.

5. Refuting the averments of the respondents as were taken by them in the counter affidavit to the effect that petitioner did not report physically after making request for allowing him to join, the petitioner filed the rejoinder affidavit denying such assertion as a lie. The petitioner has further refuted the assertion of respondents that any notice was issued to him.

6. Heard learned counsel for the parties.

7. The learned counsel for the petitioner, while reiterating the grounds of challenge, submits that the impugned order is stigmatic as the respondents have observed in the impugned discharge order that the petitioner cannot prove to be a good police official in future which is likely to prevent him from securing any job anywhere else. He submits that on this score alone the impugned order can be set-aside being legally untenable.

8. On the other hand, Mr B. A. Dar, learned Sr. AAG, submits that the petitioner has unauthorizedly absented himself and did not respond to the notices issued to him for showing cause of his absence, therefore, the conclusion arrived at by the respondents is well justified. He, therefore, prays for the dismissal of the writ petition.

9. Considered the submissions made and perused the record made available.

10. There is no dispute as regards the petitioner being the member of service

after having been appointed as such in the year 2012. There is also no dispute as regards the date of appointment; his status of being a probationer; his continuation; the unauthorized absence of the petitioner and the competence of the issuing authority. The only dispute is as regards the validity or otherwise of the impugned order of discharge.

11. The petitioner though admits that he remained absent from duty, has taken a plea that his absence was not deliberate and he could not join the duties because of the illness of his parents.

12. In the counter affidavit filed by the Superintendent of Police, district Pulwama, has admitted that petitioner was not associated with the enquiry as he did not respond to the notices sent to him. Accordingly, the respondents have reached to the conclusion that petitioner does not deserve to be on the Police rolls for his indiscipline and absenteeism.

13. The services of the petitioner are shown to have been discharged by taking recourse to Rule 187 of the J&K Police Rules. Rule 187 of the J&K Police Rules is reproduced for facility of reference, in the first instance:

"187. Discharge of inefficients

A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment."

14. It is reiterated at the cost of repetition that petitioner after his appointment in the Police department on 14.08.2012 continued unblemished for almost three years and absented himself from 7th May, 2015 for the reason that his parents were seriously ill and had nobody, other than him, to look after them. The plea taken in support of his case by the petitioner has gone un rebutted.

15. Let us now take a look at the impugned order:

"01. Whereas, Constable Showkat Ahmad No. 113/PI PID No. EXK-126928 S/O Gh. Rasool Koundoo R/o Mirpora Soura Anchar Srinagar of this District absented himself unauthorizedly from duty since 07.05.2015. Accordingly he was informed to report for duties several times vide signal No. DPL/Pul/2015/396 dated 15.10.2015 and again vide signal No. DPL/Pul/2015/468 dated 05.12.2015 but he failed to do so.

2. Whereas an attendance notice was issued from this office vide office No. Estt/E-2/2016/3200-03 dated 18.02.2016 and served to him on 06.03.2016 but in vain.

3. Whereas a final notice was published in daily news paper Srinagar times on 28.02.2016 with clear-cut directions to report for duties within 07 days otherwise departmental action will be taken against him, but he did not returned back for duties.

4. Whereas the said official was again and again informed to report DPL Pulwama

to which he failed, finally a Departmental Enquiry vide this office order No.208/2016 dated 19.04.2016 was ordered to be initiated against him and entrusted to DYSP (DAR) Pulwama for its finalization.

5. Whereas on 01.06.2016 DYSP (DAR) Pulwama vide his letter No. DAR/Pul/2016/2533 forwarded an application of the subject requesting therein for resumption of duties, but the official did not physically reported.

6. Whereas DYSP (DAR) Pulwama vide his letter No. DAR/Pul/2016/2634 dated 08.06.2016 intimated that a notice was served to Ct. Showkat Ahmad No. 1113/PI vide No. RI/Pul/2016/E-1/2224-27 dated 12.05.2016 though const Reyaz Ahmad No. 1487/PI and further reveals that summary of allegation was prepared which could not be served to him because he did not respond for facing departmental enquiry and remained continuously absent and is still at large which clearly indicates that he is not willing to serve the department any more. This type of attitude shown by the said constable tantamount his negligence, carelessness, disinterest and absenteeism from duties for prolonged period without prior permission by the government servant has become a principal cause of indiscipline and complete dereliction of duty on his part, thus he is found unlikely to prove an efficient police official and keeping in view the above circumstances it is recommended that "Const. Showkat Ahmad No. 11134/PI may be Discharged from the services with immediate effect."

Therefore keeping in view the above, I Rayees Mohammad Bhat-IPS Superintendent of Pollice District Pulwama in exercise of powers vested to me in terms of article 187 of J&K Police Manual it is hereby ordered that:-

1. Constable Showkat Ahmad No. 1113/PI PID No. EXK-126928 S/O Gh. Rasool Koundoo R/o Mirpora Soura Anchar Srinagar is hereby Discharged from services of J&K Police and is struck off from the rolls of Police Department w.e.f 07.05.2015 I,e the date he absented himself unauthorizedly from DPL Pulwama.

2. He shall deposit uniform/ equipment articles in DPL Store and shall clear his NDC from all the Branches of DPO/DPL Pulwama.

3. Regimental No. 1113/PI is treated as vacant."

16. The order of discharge, on the face of it, is stigmatic and required a full dressed enquiry which though being talked about has not taken place. Not emerging, at least, from the perusal of the records. The charges against the petitioner that he absented without permission for a prolonged period admittedly amounts to misconduct and the misconduct of the official had to be seen through a regular enquiry. The petitioner ought to have been associated with it and then an appropriate order, following such enquiry, could have been issued. Had the discharge order of the petitioner been a discharge simpliciter, there would have been no need of any enquiry but since that is not so, the order of discharge becomes not only stigmatic but punitive too, and the enquiry in such circumstances was imperative. The petitioner was required to be given an

adequate and effective opportunities of being heard as also for showing cause as to why he should not be discharged from service. My view is fortified by the authority reported as AIR 1995 SC 984 delivered in case titled *State of Haryana v. Jagdish Chander*. The Hon'ble Supreme Court held that the finding cast stigma on the career of the constable and it would act as an impediment for his future employment. It further held that principles of natural justice demand that the delinquent official should have been given an opportunity of explaining the grounds on which the proposed action might be taken. Needless to mention that in the said case also a constable had been discharged by the Superintendent of Police on the ground of habitual absence and negligence in duties. It would be apt to take note of paragraph no. 3 of the said judgment herein:

"It would thus be clear from the order of discharge that it is not an order of discharge simpliciter. On the other hand, the S.P., considered the record and found him to be habitual absentee, negligent to his duty and indisciplined. The findings of habitual absence and indiscipline would be an impediment for any future employment elsewhere. Under those circumstances, the principles of natural justice do require that he should be given an opportunity to explain the grounds on which the S.P. proposes to pass an order of discharge and then to consider the explanation submitted by the Police Officer. Then the S.P. is competent to pass appropriate orders according to the rules. Since this part of the procedure had not been adopted, the order of discharge is vitiated by manifest error of law."

17. A similar view has been taken by the Hon'ble Supreme Court in case titled *V. P. Ahuja v. State of Punjab* reported as (2000) 3 SCC 239. The Hon'ble Supreme Court in the said case has further held that if the order is stigmatic or punitive the rules of principles of natural justice ought to have been followed by the respondents as because a probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

18. Except for not responding to the alleged notices sent to the petitioner, there is absolutely no material on record to suggest that the respondent/ issuing authority has derived satisfaction that the petitioner was unlikely to become a good police officer.

19. Having regard to above narration the writ petition succeeds and is allowed as such. The impugned order no. 421/2016 dated 11.11.2016, being bad in law, is quashed. Respondents shall re-induct the petitioner in service within two weeks. It would be open for the respondents to conduct enquiry into the unauthorized absence of petitioner, if they so choose. Needless to mention that the period of absence of petitioner shall be subject to the outcome of enquiry, if any, conducted.

20. Disposed of.

21. Record be returned to the learned State Counsel.