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**(2020) 09 J&K CK 0045**

**In the Jammu And Kashmir High Court**

**Case No :** Latter Patent Appeals No. 122 Of 2018, Civil Miscellaneous No. 01 Of 2018

Showkat Ahmad Mir

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision :** 22-09-2020

**Acts Referred:**

**Citation :** (2020) 09 J&K CK 0045

**Hon'ble Judges :** Ali Mohammad Magrey, J; Sanjay Dhar, J

**Bench :** Division Bench

**Advocate :** A. H. Naik, Zia Ahmad, S. N. Rattanpuri, Hakeem Suhail

**Final Decision :** Dismissed

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## **Judgement**

Ali Mohammad Magrey, J

1. The instant Letters Patent Appeal, for short LPA, is filed against the judgment and order dated 14.08.2018, for short impugned order, passed in writ petition, SWP no. 1751/2013, titled Showkat Ahmad Mir v. Union of India and others, seeking setting aside the impugned order on the grounds detailed out in the appeal and allowing the writ petition.

2. Brief facts leading to the filing of instant appeal are desirable to taken note of in the first instance, thus:

3. Appellant/ petitioner, is stated to have been appointed as Tailor by the respondents in terms of Order No. 1 (1)/Spl/2005/4598 dated 1st February, 2012, under OBC Category from the Direct Recruitment Quota.

4. The respondents 1 to 3, subsequently, issued yet another order bearing no. 21 (Misc) 10-S(TV)/2144 dated 10th September, 2013, in terms whereof the services of the appellant were terminated.

5. The appellant/ petitioner, feeling aggrieved, had questioned the termination order on variety of grounds with particular reference to the non-adherence of

principles of natural justice. The appellant/ petitioner had taken a ground that the impugned order of termination is arbitrary, unconstitutional and illegal as the appellant/ petitioner has not been provided any opportunity of hearing; has not been served with any charge nor any enquiry has been conducted in the matter so much so that even a show cause notice was not issued to him before issuing the order of termination; and that he does not know the reasons of termination. Seeking indulgence of the court on such grounds the appellant/ petitioner had sought the following relief:

"i. Writ of Certiorari quashing the impugned order No. 21 (Misc)10-S(TV)/2144 dated 10.9.213.

ii. Writ of Mandamus Commanding the respondents to reinstate the petitioner to his original post and release all the consequential relief."

6. The Learned Single Judge after consideration of the matter did not agree with the contentions of learned counsel for the appellant/ petitioner and in terms of impugned order dated 14th August, 2018, dismissed the writ petition.

7. Appellant/ petitioner, feeling aggrieved of the impugned judgment and order of learned Single Judge, has filed the instant appeal seeking reversal of the judgment and order on the ground that the Writ Court failed to appreciate the controversy in its right perspective and has not recorded any reasons in support of the conclusion arrived at.

8. We have heard learned counsel for the parties, went through the material made available, and perused the impugned order.

9. Learned senior counsel for the appellant submits that the order of termination is issued on different facts than those projected by the respondents in their counter affidavit. Therefore, there is complete non-application of mind on the part of respondents in issuing the termination order. He submits that the termination order has been issued by the respondents 1 to 3 on the count that the temporary appointment of the appellant/ petitioner has not been made in accordance with the rules and regulations, while as the stand taken by the respondents before the writ court was that the temporary appointment had been obtained by resorting to fraud/ tampering of the date of birth record.

10. Learned senior counsel for the appellant submits further that the order of termination has aspersed a stigma on the person of the appellant which is going to affect his future prospects; therefore, on that count also the impugned order is bad in law. He submits that the order being not a termination simpliciter deserved to be quashed, which however, has not been done by the writ court, therefore, the impugned order of the writ court deserves to be set-aside.

11. Learned senior counsel for the appellant further submits that the impugned order of the writ court is unreasoned, therefore, deserves to be set-aside.

12. Learned counsel for the respondents submits that the impugned order is well

reasoned and it appreciated the controversy in its right perspective as the appellant, having indulged in fraud by manipulating his date of birth, was not entitled to hearing and no enquiry was required to be conducted as he was on probation.

13. Learned counsel further submits that the respondents were within their rights to terminate the services of the appellant/ petitioner after having noticed the fraud committed by him, therefore, the writ court rightly refused relief to the appellant.

14. The learned counsel for the respondents further submits that the termination order is a termination simpliciter and is not stigmatic as no stigmatic term is used in the order of termination.

15. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties and minutely perused the records produced by the learned counsel for the respondents.

16. Since the controversy originates from the order of termination, therefore, the same is taken note of, in the first instance, hereunder:

"As per vigilance enquiry conducted by the Vigilance wing of DG: Doordarshan, New Delhi conveyed vide No: 34/16/2011-S1, dated 03.09.2013, the Temporary appointment of Shri Showket Ahmad Mir S/o Abdul Ahad Mir R/o Hariwantoo, Tangmarg, Dist; Baramulla Kashmir (Tailor) at DDK Srinagar has not been made in accordance with the rules and regulations and it is ordered that all concerned involved in such recruitment be proceeded against. Therefore, the appointment of said Shri Showket Ahmad Mir S/O Ab. Ahad Mir R/O Hariwantoo, Tangmarg, District: Baramulla, Kashmir being not properly made and rules, regulations having been flouted, cannot be allowed to continue in the services of Doordarshan Kendra, Srinagar.

Now, therefore the services of said Showket Ahmad Mir are terminated with immediate effect, and as per rules, in lieu of notice one months salary (11.09.2013 to 10.10.2013) is credited in his account as also the salary for the period from 01.09.2013 to 10.09.2013.

He is directed to handover all the store items issued to him from time to time including the identity Card, which is cancelled herewith."(Emphasis supplied)

17. At the very outset, what requires to be stated herein this case is that although various contentions were raised by the learned senior counsel for seeking quashing of the impugned orders, yet the primary and the most important one is whether there had been violation of principles of natural justice on the part of the respondent-department in the process of termination of the petitioner without giving him any opportunity of being heard.

18. From the perusal of the pleadings placed on record by both the parties, it can be seen from a naked eye that no opportunity of being heard, as provided under

the rules, appears to have been given to the petitioner before issuing the impugned order of termination. The petitioner has been simply thrown out of the service without following the due procedure of law, with a premeditated design to divest him of his right of being heard. An opportunity of being heard is the 'sine-qua-non' of every order/ decision involving termination of the services of Government servants, besides, reasons justifying so, while issuing the said order, have to be spelt out in detail. However, in the case on hand, the principles of natural justice appear to have been violated with impunity. The defence of the petitioner has been scuttled/ shut by deception and the procedure governing the subject has been given a complete go by.

19. Justice is not only law and its administration, but is, in most cases, above law and is done to safeguard an individual from whatever he/ she seeks protection. Our Country aims at the goal of achieving a welfare State where everyone is/ has to be, as far as possible, looked after. The principles of natural justice are imbibed from the Constitution itself. These are of paramount importance and nobody can be condemned unheard.

20. In AIR 2005 SC 2020; Canara Bank v. V. K. Awashty, the Hon'ble Apex Court, while dealing with the extent and scope of the principles of natural justice, held as under:

"10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes whole vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the 'Magna Carta'. The classic exposition of Sir Edward Coke of natural justice requires to 'vacate interrogate and adjudicate'. In the celebrated case of Cooper v. Wandsworth Board of Works, [1963] 413 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam", says God, "Where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiseled, honed and refined, enriching its

content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond."

21. We are of the considered view that the writ court has dealt with the matter by solely proceeding on the premise that as to whether the termination order challenged before it was bad in law if the same has been issued on detecting a fraud committed by the delinquent official and as to whether such delinquent official was entitled to a hearing and/ or an enquiry was required to be conducted in the matter concerning a probationer. The Writ Court has not at all discussed the contents of the termination order which does not talk of any fraud having been committed by the appellant but simply refers to the non-adherence of rules and regulations, therefore, the case, in terms of the termination order, is that the respondent-department did not adhere to the Rules and regulations while making the temporary appointment of the appellant and not that the appellant indulged in any fraud for obtaining the appointment order as is being pleaded in the counter affidavit by the respondents or as is being contended by the learned senior panel counsel for the respondents. Having said that the proper course for the court was to see as to whether the appointment made in de-hors the rules entails termination of the beneficiary and whether such termination could be passed without hearing him or without conducting any enquiry. That having not been done, we feel that the writ court has failed to appreciate the controversy in its right perspective.

22. The Hon'ble Supreme Court in case titled *Ratnesh Kumar Choudhary v. India Gandhi Institute of Medical Sciences, Patna, Bihar and others*, has taken a cue from the *Palak Modi's* case wherein the following ratio was laid down:

"The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice."

23. The right to terminate a probationer during the course of probation, therefore, is not absolute but is subject to deriving a satisfaction by the competent authority vis-à-vis his continuance or otherwise based on his general suitability and only if such a course is adopted the action of termination cannot be termed as punitive. Otherwise, it is.

24. It is nobody's case here that during the course of probation of the appellant his performance was not judged to be satisfactory, therefore, the respondents exercised their power, after deriving satisfaction about his general unsuitability

for the post, and terminated his service.

25. The perusal of the record produced by the learned counsel for the respondents does reflect certain irregularities having been committed by the concerned officials during the special drive of recruitment, in which the appellant has also been appointed, and they have also been proceeded against but that will not cloak the respondents with a right to terminate the services of the appellant without affording him an opportunity of being heard.

26. The contention of the learned counsel that the order of termination is not stigmatic but is a termination simpliciter as no stigmatic term is used in the termination order is noted to be rejected only as the form of the order can be a camouflage and it is always open to the Court to go behind the form and ascertain the true character of the order. The Hon'ble Supreme Court, in case titled Gujarat Steel Tubes Ltd. V. Gujarat Steel Tubes Mazdoor Sabha reported as (1980) 2 SCC p. 593 has held as under:-

"A termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits, as on simple termination, are given and non-injurious terminology is used."

27. The Writ Court did not, therefore, deal with the issue directly as to whether the respondents were within their rights to terminate the services of the appellant in view of alleged misconduct, but it proceeded on the premise that the appellant has committed a fraud, of which nobody talks about, therefore, principles of natural justice are not required to be followed. The contention of the learned senior counsel for the appellant that the Writ Court did not record any finding of its own in support of its conclusion carries weight as the impugned order appears to be bereft of reasons.

28. In view of what has been said hereinbefore we are of the considered view that the respondents ought to have followed the principles of natural justice and afforded an opportunity of hearing to the appellant before issuing the order of termination.

29. In View of above, the appeal is allowed and the impugned order dated 14.08.2018 passed by the Writ Court in case titled Showkat Ahmad Mir v. Union of India and others in SWP no. 1751/2013 is set-aside and in consequence whereof the writ petition of the appellant is allowed and by a writ of certiorari the order impugned in the writ petition bearing No. 219 Misc)/10-S-(TV)/2144 dated 10.09.2013 is quashed. Resultantly, the respondents are directed to reinstate the

appellant in service within one month from the date copy of the order is furnished to them and give him all consequential benefits including pay, allowances etcetera within one month thereafter.

30. Bench Secretary shall return the records to the learned counsel for the respondents 1 to 3 against proper receipt.