

(1996) 10 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal (SW) No. 235 of 1996

State

APPELLANT

Vs

Alla Singh

RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Jammu and Kashmir Civil Procedure Code, 1977 — Order 3 Rule 1, Order 41
Jammu and Kashmir Letters Patent — Clause 12

Citation : (1998) SriLJ 50

Hon'ble Judges : B.A.Khan, J and G.D.Sharma, J

Bench : Division Bench

Advocate : Seema Shehkar, Advocates appearing for the Parties

Judgement

1. This appeal is filed on behalf of the State and without any authorisation from the Competent Authority. Confronted with this situation, Mrs.

Seema Shekhar, G.A. submitted that she could maintain it in her capacity as a Govt Advocate.

2. The right of appeal is a statutory right liable to be exercised only by the aggrieved party. A Govt. advocate cannot be treated to be the party for

the purpose. An Advocate, private or the Govt. one, is an authorised agent/representative to maintain and conduct the cause of the party. But such

advocate cannot claim to be a substitute for the party⁴ and equate himself/herself with the party. Moreso, a Govt, Advocate carries on case to

case basis, therefore, no Govt. Advocate could not take it upon himself/herself to file an appeal for the State which may or may not like to exercise

its right in the given circumstances. It is noticed that the Govt. appeals, expected to be maintained on close scrutiny and due deliberations, are now

filed with no holds barred (SIC) and without any proper authorisation leading to unnecessary multiplicity of litigation, and resulting in sheer waste of

court time. In the circumstances it become necessary to direct the Stateappellant and its concerned functionaries including the law Secretary, to

take steps to deal with this situation and to ensure that the Govt. appeals are filed on proper authoritisation in accordance with the prevalent rules.

The appeal is rejected on this count also.

3. On merits, we find the respondent's land measuring 2 kanals was taken away by the Govt. for installation of a water pump in 1994. In lieu

thereof he was promised employment in ClassIV category and was engaged on daily wage basis. He was allowed to continue in the engagement till

September, 1995. Meanwhile he approached this court in SWP No. 1527/ 95 and the writ court by order dated 26.6.1996 allowed his petition

and directed the State to reengage him as daily wager within a week from the date of the order. This appeal has been filed to assail this order.

4. Appellant's counsel Mrs. Shekhar, contends that the writ court had fallen in error by applying Sec. 25F of the Industrial Disputes Act of 1994 to

the case. She also pointed out that the provision for providing employment for land acquisition stood scrapped. But, she admits that the

respondent's land was taken away for the construction of water tank and without any compensation till date. It is also conceded that he was first

engaged on daily wage basis and then disengaged.

5. We feel sad at the callousness of the approach adopted towards the respondent. On the one hand, he stands deprived of his land without any

authority of law and on the other, hand, he was disengaged without any justification. The arbitrariness is writ large on the whole transaction. The

question is not whether Sec. 25F of the Industrial Disputes Act, is attracted but the patently illegal way in which the respondent was treated.

6. In the circumstances and in disregard to the writcourt's observation regarding the application of Sec.25f of the industrial Disputes Act to the

facts of the present case, we find no infirmity in this judgment and see no difficulty for the state to reengage the respondent on daily wage basis,

only to compensate him for deprivation of his land and without any authority .The State and its concerned functionaries and additionally directed to

examine and process his case for payment of compensation with interest

permissible under law within four months from the date of receipt of this order. Addi. Registrar to despatch a copy to the Chief Engineer, Public Health Engg., Jammu, for compliance.

The Appeal is dismissed.