

(1997) 02 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 63 of 1997

State of J & K

APPELLANT

Vs

Mohd.Hussain

RESPONDENT

Date of Decision : 24-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 SCT 412

Hon'ble Judges : M.Ramakrishna, C.J and R.C.Gandhi, J

Bench : Division Bench

Advocate : N.P. Kotwal, D.S. Chohan, Advocates appearing for the Parties

Judgement

M. Ramakrishna, CJ.

1. This appeal has been presented by the State through the Commissioner/ Secretary to Government, Department of Education challenging the correctness and legality of the order made by the learned Single Judge in SWP No. 1484 of 1996 dated 21.11.1996 on the grounds taken in the appeal.

We have heard Mr. Chohan, learned counsel for the appellant and Mr. Kotwal, learned counsel for the respondent.

2. The submission of Mr. Chohan, learned counsel for the appellants is that, without going into the merits of the writ petition, the nature of the interim relief granted by the learned Single Judge in the above said writ petition is contrary to the law laid down by the Supreme Court as far back as in 1985 in Assistant Collector of Central Excise v. Dunlop India Ltd. reported in AIR 1985 SC 330. The learned counsel urged that in view of the law laid by the Supreme Court, the appeal deserves to be allowed.

3. Referring to the salient facts of the case are that it is stated that Mohd. Hussain, respondent herein moved a writ petition seeking for writ of

mandamus that he be appointed as ClassIV employee against any existing post in the State of J&K in lieu of his land having been taken away by

the State Government for constructing the High School in village Mangote, District Doda in 1981.

4. Learned Single Judge having accepted the prayer for grant of interim relief sought for at the outset, though he ordered notice to be issued to the

respondents in the writ petition. He passed the following order on 21.11.1996:

` ` Mr. N.P. Kotwal for the petitioner.

Notice. Reply in six weeks

IAI/96

Notice as above. Reply within the same time. Two kanals and one marla of land of petitioner was taken by the respondents for the construction of

High School in village Magot District Doda in 1981 with this assurance that the petitioner would be appointed against Class IV post. Land has

since been utilised as school building has been constructed, but the petitioner has not been appointed against classIV post. His case was

recommended by Education Minister in addition to Head Master of the School and District Education Officer, Doda, but the Director of Education

has not made this appointment till date.

Since the land of the petitioner has been utilized by the respondents long back, there is no reason why the petitioner should not be appointed

against classIV post in the department. Respondents have to fulfil the assurance given to the petitioner and no further delay should be there in

fulfilling the same. It is pointed out by the learned counsel for the petitioner from communication of Headmaster (annexure P3) and Chief Education

Officer, Doda (annexure P4) that posts are available and the application of the petitioner is pending there. Let respondents Nos. 2 and 3 make this

appointment and file the compliance report alongwith the reply." Jammu

21.11.1996, Sd/J"

It is this order that is called in question in this LPA.

5. On the relevant question of law, the Supreme Court in Assistant Collector's case (supra) has laid down as follows :

`` A tendency to grant interim orders with a great potential for public mischief for the mere asking is deprecated by the Supreme Court. It was

further observed that such interim orders, often ex parte and non speaking are made even by the High Courts while entertaining writ petitions under

Article 226 of the Constitution, and in the Calcutta High Court, on oral application too."

In para 5 of the judgment, Their Lordships have observed:

``The Supreme Court also deprecated the practice of granting interim order which practically give the principal relief sought in the petition for no

better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a

host of other relevant considerations."

6. Now, it is brought to our notice that the respondent has initiated the contempt proceedings against the appellants herein for implementation of

the order under appeal as a whole.

7. In view of the foregoing, it is suffice to say that the orders under appeal cannot be sustained. Therefore, the appeal is allowed and the order of

the learned Single Judge made on 21.11.1996 in SWP No. 1484 of 1996 is set aside. The matter stands remitted to the writ court with a

direction, let the writ petition be heard and disposed of after hearing learned counsel on both the sides not later than 4th of April, 1997.