
(2011) 03 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : LPA No. 114 of 2006

State of Jammu & Kashmir and Others	APPELLANT
Vs	
B.L. Koul (Dr.)	RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 2 JKJ 304

Hon'ble Judges : Mansoor Ahmad Mir, J;Hasnain Massodi, J

Bench : Division Bench

Judgement

Hasnain Massodi, J.—This Letters Patent Appeal is directed against the judgment and order dated 7th of June, 2005 passed by the writ

Court in SWP No. 92/1984 on the grounds taken in the memo of appeal (hereinafter referred as impugned judgment).

2. Respondent-Dr. B. L. Koul went abroad on earned leave for a period of one month. Thereafter he failed to resume his duties and order of

discharge (order No. 15 ? HME of 1984 dated 05.01.1984) came to be passed by the Appellants on the ground of overstaying the leave. Feeling

aggrieved, the Respondent (writ Petitioner) questioned the same by medium of writ petition (SWP No. 92/1984) on the grounds taken therein.

During the pendency of the writ petition, the Respondent-writ Petitioner laid a motion (CMP No. 1107/1986) for a direction to the Respondents

to allow him to join on the post he was holding before the order of discharge was passed against him. The Court while issuing notice to the other

side left the Respondent-writ Petitioner free to seek re-employment in terms of Government Order No. 102?GD of 1986 dated 22.01.1986. In

the said order, it was clearly observed that seeking reemployment shall not affect

his rights which are to be considered in the writ petition.

Accordingly, he accepted the reemployment in terms of Government order aforementioned and joined on 25.07.1989 and came to be posted in

CVTS vide Order No. 1949 of 1989 dated 07.08.1989. Respondent-writ Petitioner represented before the Appellants-writ Respondents for

settling his claim on the post which he was working before passing of order No. 15 ? HME of 1984 dated 15.01.1984. The Appellants did not

consider his representation and due to the turmoil in the valley in 1989 the Respondent-writ Petitioner migrated to Delhi. He made another

representation on 4th of February, 1989 to the Principal Secretary to Government, Health & Medical Education Department to consider his case

and revoke the order of discharge which was subject matter of the writ petition and regularize his services in terms of provisions of Rule 14 B (ii)

of the Jammu & Kashmir Civil Service Leave Rules, 1979. The Appellants failed to consider his representation which constrained the Respondent-

writ Petitioner to file another writ petition (SWP 587/1999) before the Jammu Wing, which came to be disposed of with a direction to the

Respondents therein to decide the representation of the writ Petitioner within two weeks. It is apt to reproduce relevant portion of the order, which

reads:

Respondent No. 2 is directed to dispose of the representation made by the Petitioner vice Annexure 'J' dated 4th of February, 1999 within two

weeks from the date of receipt of certified copy of this order which will be submitted by the Petitioner to the said Respondent. Direction regarding

time granted is pre-emptory. In case for any reasons beyond his control it is not possible for Respondent No. 2 to do the needful within the time

allowed, after satisfactorily explaining the reasons he may file an application of extension of time in that behalf. With this direction this writ petition is

disposed of. It is clarified that other grounds urged in the writ petition have not been gone into at this stage

3. From perusal of the reproduction aforementioned, it is quite clear that the other grounds taken in the writ petition were not gone into by the writ

Court at that stage. In terms of the said judgment, the Appellants examined the claim of the writ Petitioner and rejected the same. Feeling

aggrieved, the Respondent-writ Petitioner filed another writ petition (SWP

194/2000) at Jammu, whereby he questioned the rejection order, which writ petition came to be disposed of in terms of order dated 30.10.2001 with an observation that the relief's which the writ Petitioner is to get would ultimately depend upon a decision which will be given in the writ petition (SWP 92/1984). However, the writ Court allowed the writ Petitioner to amend his writ petition (SWP 92/1984), in view of the later developments including his superannuation. Accordingly, the Respondent-writ Petitioner filed an application for seeking amendment of the writ petition (SWP 92/1984) which was granted and he filed the amended writ petition. The writ Respondents despite sufficient opportunities failed to file the counter, thus the averments made in the amended writ petition have gone un rebutted.

4. The core question involved in this Letters Patent Appeal is as to whether a Government servant, who proceeds on leave and thereafter overstayed leave without sanction, can be discharged/removed from service and can it be held that overstaying amounts to automatic termination of his service.

5. Admittedly, the Respondent - writ Petitioner had proceeded abroad for a period of six months for visiting purposes and permission was accorded vide letter No. 72-ME-GM/77 dated 14.07.1982. Subsequently, the writ Petitioner applied for one month's earned leave w.e.f. 6th of

January, 1983. The leave was sanctioned in his favour and he was required to join his duties in Government Chest Disease Hospital Srinagar on

04.02.1983. He failed to do so and he was asked to join his duties within a period of one month vide office letter dated 23.06.1983. The

Respondent-writ Petitioner replied the notice vide his response dated 19.07.1983 but the Appellants without considering his reply discharged him

from service. It is apt to reproduce the reply filed by the writ Petitioner (forming Annexure 'F' to the amended writ petition) which reads:

One month's privilege leave was duly sanctioned in my favour vide order No. ADM/103 of 1982 dated 05.01.1983 and it was during this period

that I left the State. Subsequently I applied for further privilege leave for three months vide my application receipt Suptd. C. D. Hospital No. 5927

dated 08.03.1983. I presume that as the leave applied was due to me the same must have been sanctioned in my favour.

Subsequent to the expire of privilege leave, I have extended my leave of whatsoever nature is due to me vide my application receipt Suptd. C. D.

Hospital No. 499 dated 20.05.1983. In presume that the leave applied for must have been sanctioned in normal course.

6. What we gather from above said reproduction is that the Respondent-writ Petitioner has explained his absence and virtually he has taken a stand that he applied for extension of leave which was not granted.

7. The apex Court and this Court in series of cases have held that if an employee overstays leave, his services cannot be terminated without

following the due procedure of law. The apex Court in Jai Shanker Vs. State of Rajasthan, ; Union of India (UOI) and Others Vs. M.B. Patnaik

and Others, and this Court in LPA Bench titled State V. S. Qamar Ali SLJ 1994 373; Dr. Abdul Hamid Fazili v. State of J & K and Ors. 1998

SLJ 86 & Ghulam Qadir v. DFO National Highway Forest Division SLJ 1981 J & K 81 held that dismissal on the ground of absence after expiry

of leave without inquiry is bad. The writ Court has also relied upon so many judgments wherein the same ratio is laid down.

8. Mr. Magray, learned Sr. AAG, appearing counsel for the Appellants has vehemently argued that the Respondent-writ Petitioner has almost

relinquished his claim by accepting the reemployment, thus he is precluded/estopped to challenge the impugned order of discharge. The argument

though attractive is devoid of any force, for the simple reason that the Respondent-writ Petitioner has sought permission from the writ Court for

permitting him to accept the reemployment and reemployment shall not have caused any prejudice to his rights. The writ Court vide order passed

in CMP No. 1107/1986 protected his rights and even thereafter the writ Petitioner has filed writ petitions (SWP Nos. 587/1999 and 194/2000)

which has also protected his rights by way of amending his earlier writ petition (SWP 92/1984), wherein the writ Respondents have failed to file

the counter despite sufficient opportunities, thereby the averments have gone un rebutted. In the given circumstance, the writ Petitioner is neither

caught by law of estoppel nor precluded from claiming the reliefs sought in the writ petition (SWP 92/1984).

9. Now a question arises as to whether a fresh inquiry can be conducted at this stage. There is no denial that Respondent-writ Petitioner was

reemployed and has reached the age of superannuation. 27 years have elapsed from the date of passing of impugned order of discharge and it will

be unjust and inappropriate to hold such inquiry after a long period of time in view of the fact that the Petitioner has reached the age of

superannuation since. For that reason, we are of the considered view that it will be a futile exercise to conduct the inquiry afresh, for, the

Respondent-writ Petitioner was reemployed and he has accepted the same. Our view is fortified by a judgment of the apex Court reported in

Union of India (UOI) and Others Vs. M.B. Patnaik and Others, .

10. Admittedly, in the case on hand no inquiry has been conducted by the Appellants-writ Respondents, thus the impugned order of discharge is

bad in law and the writ Court has rightly allowed the writ petition and quashed the impugned order. However, the Appellants have to make a

decision about the intervening period from the date of absence till the date of reemployment and that decision shall also govern the other benefits of

the Respondent-writ Petitioner.

11. In the given situation, we do not find any valid ground for interference with the impugned judgment.

12. Appeal is disposed of as indicated above.