

**(1993) 11 J&K CK 0005**

**In the Jammu And Kashmir High Court**

**Case No : Others Writ Petition (OWP) No. 729/1993**

Subash Chander

APPELLANT

Vs

State and Ors.

RESPONDENT

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**Date of Decision : 18-11-1993**

**Acts Referred:**

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 33  
Civil Services Regulations, 1956 — Regulation 128

**Citation : (1994) KashLJ 145**

**Hon'ble Judges : S.M.Rizvi, J**

**Bench : Single Bench**

**Advocate : C.L.Raina, A.Kapoor, Advocates appearing for the Parties**

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## **Judgement**

By medium of this writ petition, the order on dent No : 4 removing the petitioner from service, is challenged on various grounds :

The petitioner was appointed as ""Follower"" (water carrier) on 10.10.1991 in the Police department, and was posted at J&K Armed Police Force

IX Bn. Zewan Srinagar. He belongs to a village in Tehsil of Akhnoor (Jammu) and came to his home after getting his leave properly sanctioned

from 18th March to 22nd. March 1993. He could not report back on duty at the expiry of leave allegedly on the ground that the road from Jammu

to Srinagar was blocked due to land slides. He reported at Police Station Akhnoor and on entry came to be made in the Roznamcha there on

23.3.1993. Allegedly, he fell ill thereafter and was under the treatment of a doctor, certificates where of he has annexed as a proof. Last of all, he

went to Zewan to attend his duty, where he came to know that he stood dismissed from service on 8.5,1993 under Article 128 of the Jammu and

Kashmir Civil Service Regulations.

It is stated in the writ petition that due to road blockade, the petitioner could not report back on duty after the expiry of his sanctioned leave, and

as a proof thereof, he has annexed a copy of the entry of Roznamcha of Police Station Akhnoor dated : 23.3.1993 with the petition. Thereafter, he

has allegedly sent telegrams and a registered letter to respondent No : 4 seeking extension of leave on medical grounds, and in this behalf, he has

annexed copies of the said documents with the petition. It is emphatically asserted in the petition that the petitioner has not remained absent from

duty without any justifiable cause, and that without following the procedure as established by law, He has been dismissed from service by

respondent No : 4 in pursuance of the order impugned therein.

In the counter filed by respondent No: 4, it is admitted that leave was sanctioned in favour of the petitioner from 18th March to 23rd. of March. It

is, however, denied that any telegram or application was received from the petitioner for extension of his leave. It is further stated that the petitioner

remained absent unauthorisedly for 100 days though he was still a probationer and that a notice too was issued to him to resume his duty. It is

admitted that the petitioner was removed from service after taking recourse to Article 128 of the Jammu and Kashmir Civil Service Regulations.

I have heard the learned counsel for the parties and have also gone through the record. As agreed to by the learned counsel for the parties, the

petition is disposed of on its merits at the admission stage itself.

Admittedly, the petitioner had proceeded on leave after getting the same sanctioned by the competent authority. Admittedly, the petitioner could

not resume his duty at the expiry of leave allegedly due to road blockade. There is no rebuttal to the assertion of the petitioner that he reported to

Police Station, Akhoor on the last day of his sanctioned leave and informed there about the matter. The copy of Roznamcha is on the file as a

proof of this fact. There is no denial of the fact in the counter that the petitioner was ill and as a proof thereof he has produced the medical

certificates. Not only that, the receipts of telegrams and of a registered letter have also been annexed with the file, which were sent to respondent

No : 4 seeking extension of leave.

Now, the question is as to whether in these circumstances of the case, the petitioner could be removed from service without a proper inquiry as

provided under law. Admittedly, no inquiry has been made by the respondent No : 4 into the matter. He has not afforded any opportunity of being

heard to the petitioner. Could he remove the petitioner from service without an inquiry and without affording him an opportunity of being heard?

Unfortunately, Article 128 of the J&K Civil Service Regulations is being misinterpreted and misconstrued by the executive authorities once and

again, and they dispense with the services of absentees under this Article without holding an inquiry. The scope and extent of this Article and its

import has been interpreted by this Court in various judgments which are even reported in various law journals, Unfortunately, nobody bothers to

go through the judgments. This is an irony that even the law officers or the Advocate General do not inform the executive authorities about such

important judgments. In my opinion, it should be the duty of the Law Departments to issue circulars to all heads of departments informing them

about such matters. Recently, a Division bench of this Court consisting of Lord Chief Justice and myself has gone into this question. It is now an

established law that even in Article 128, a Government servant cannot be dismissed or removed from service without an inquiry and without

following the procedure as established by law. Mere issuing notice to the absentee to resume his duty or issuing of a notice in Government Gazette

in this behalf is not sufficient to terminate his services. Absence from duty no doubt involves loss of appointment, but after following the set

procedure. Article 311 of the Constitution of India and Section 126 of the Constitution of Jammu and Kashmir guarantee the service rights of

Government servants and the law is laid down there under as to how and in what circumstances termination of service can be effected. The

procedure is also provided in Rule 33 of the J&K. Civil Services (Classification, Control and Appeal) Rules, 1956 which is to be followed

necessarily. After all, we are governed by rule of law and therefore, nobody can be condemned unheard. If any adverse action is to be taken

against any person affecting his vested rights, it can be effectuated only after affording him a reasonable opportunity of being heard. In absence of

such opportunity such action is not maintainable and is bad in law.

In the present case also, the respondent No : 4 has not given any opportunity of being heard to the petitioner and has without that removed him

from service. Admittedly, he had proceeded on leave with his permission and thereafter could not report for duty allegedly due to some justifiable

cause. Unless an inquiry is held as to whether that justifiable cause was or was not there, how could he be punished. May be, that the road was

blocked and in that case, how could he report for duty. He has approached the nearest Police Station and reported the matter there. The Police

Station was required to inform the respondent about the matter. Similarly, if he fell ill and remained so for sometime, how could he report for duty.

If the medical certificates are to be believed, then apparently he was ill. The question is that an inquiry is always required to be made in such

matters and without that no adverse action is permissible to be taken under law.

In the counter it is indicated that as the petitioner was still on probation, therefore any action could be taken against him. This is not the true

position under law. For discharging a probationer, a 'separate procedure is Laid down. He can be discharged for want of vacancy etc; but no

stigma can be cast on him in any manner whatsoever. In the present case, all sorts of stigmas have been cast on the petitioner and the order

impugned is replete with it.

I have given my serious consideration to the merits of the case, and in my opinion, the order impugned is unconstitutional, illegal and bad in law. I,

therefore, allow this petition and quash the said order. The petitioner shall be treated in continuous service with all consequential benefits. The

respondents shall, however, have the liberty to make an inquiry about the alleged unauthorised absence of the petitioner. In case, they want to do

so, they are required to follow the procedure as established by law.

The petitioner is held entitled to costs assessed at Rs. 1.000/

Court further held :

I have given my serious consideration to the matter, and I think, injustice has been caused to the petitioner by dismissing his revision on merits

without affording him any opportunity of being heard. In exercise of my inherent power U/S 561A of the Cr. P.C. and in order to prevent abuse of

the process of Court or otherwise secure the ends of justice, I have reheard the learned counsel for the petitioner on the merits of the revision

petition.