
(2018) 03 J&K CK 0031
In the Jammu And Kashmir High Court
Case No : SWP No. 1842 OF 2017

YASIN HUSSAIN

APPELLANT

Vs

STATE & ORS

RESPONDENT

Date of Decision : 14-03-2018

Acts Referred:

Citation : (2018) 03 J&K CK 0031

Hon'ble Judges : MOHAMMAD YAQOOB MIR

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Petitioner admittedly is suffering from multiple ailments more particularly from heart disease; twice stunts have been implanted. On medical grounds

he had all along representing for his adjustment in Jammu so as to enable him to discharge duties smoothly. In essence petitioner wants to discharge

his duties but his health condition is such which requires providing him the posting at the place which shall be advantageous for him as well as for the

department. His representations have been considered from time to time by the respondents and he has been posted at the places which were

inkeeping with his health condition.Â

2. Vide order No. 369-DSEJ of 2015 dated 19.06.2015 transfers/postings in the interest of administration include petitioner who has been

transferredÂ and posted in HSS Surianser, Jammu, admittedly a hilly terrain; very difficult for him to discharge his duties in the said school.Â

3. Confronted with the peculiar circumstances he has filed detailed representation requesting the respondents that in-keeping with his health condition

he may be adjusted at some other place. The representation dated 22.06.2015 has remained pending with the respondents. In the meantime petitioner filed writ petition bearing SWP No. 2936/2015 which has been disposed of vide order dated 02.11.2015 directing the respondents to have re-look on the representation of the petitioner dated 22.06.2015 seeking modification of his transfer on medical grounds and to release his legitimately earned salary.Â

4. In compliance whereof respondents have considered his representation which has culminated in issue of the order dated 04.06.2016, in terms whereof while following clause 13 of the transfer policy issued vide Government order no. 622-Edu of 2015 dated 22.12.2015, he has been directed to report to the Principle Government HSS, Julaka Mohalla, Jammu for further duties; with a stipulation that his salary shall be drawn from the overall cadre strength of masters of Jammu division.Â

5. Accordingly petitioner has joined. The intervening period i.e. the date when petitioner was transferred to Surianser and the date he joined in pursuance of the order dated 04.06.2016, his salary has not been released; in short the dispute relates to the intervening period.

6. Considering said period, Director School Education, Jammu has conveyed to the CEO, Jammu vide impugned communication dated 21.02.2017 to settle the intermediate period with effect from July 2015 to May 2016Â underÂ rulesÂ afterÂ verifyingÂ theÂ whereaboutsÂ ofÂ theÂ petitioner and to release his salary after checking all codal formalities.

In the communication it is also mentioned as under:-

â??Since the Master did not join his new place of posting after having relieved from the Govt. Middle School, Kachi

Chowni, vide order No. 369-DSEJ of 2015 dated 19.06.2015, the intermediate period cannot be treated as duty instead be treated as leave whatever kind due.â??

7. The grievance as projected by the petitioner is that he immediately after issue of transfer order dated 19.06.2015 has submitted representation which remained pending with the respondents constraining him to file SWP No. 2936/2015 which has been disposed of on 02.11.2015 where-under respondents were to have re-look on the representation, and it is the respondents who after a long gap took the decision on 04.06.2016. No fault or

default is attributable to the petitioner.Â

8. The petitioner, for the quite obvious health condition, could not join at Surianser, located in the hilly terrain, therefore, respondents were under legal

obligation at-least to consider his representation and to pass appropriate orders thereon which they initially failed to do giving rise to filing of writ

petition; then while disposing of the said writ petition on 02.11.2015 for re-looking the representation of the petitioner, it took them more than six

months in issuing the order dated 04.06.2016, means if the representation of the petitioner would have been decided in time he would have discharged

his duties; uncertainty has been created by the respondents by not addressing the grievance of the petitioner, even after a direction of the Court, they

have taken six months. Under such circumstances the intervening period from July 2015 to May 2016 could notÂ beÂ treatedÂ on leave whatever

kind due.Â

9. The communication dated 21.02.2015 issued by Director School Education, Jammu, impugned, is unjust in nature and not in conformity and in

consonance with the canons of justice, therefore, the said communication is quashed. Director, School Education, Jammu, is directed to accord

consideration to the intervening period i.e. with effect from July 2015 to May 2016 and to settle the same in-keeping with the facts, circumstances and

the position as referred to above and in accordance with the rules within a period of four weeks from today.

10. Petition succeeds shall stand disposed of accordingly along-with connected MP.