

## HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1792/2009

Date of Decision: 29.08.2011

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Zakir Hussain.

v.

State of J&K & ors.

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### Coram:

**Mr. Justice J. P. Singh.**

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### Appearing Counsel:

For Petitioner(s) : Mr. A. M. Malik, Advocate.

For Respondent (s) : Mrs. Neeru Goswami, Dy. A. G.

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| i)  | Whether approved for reporting in Press/Journal/Media | : | <b>Yes/No</b> |
| ii) | Whether to be reported in Digest/Journal              | : | <b>Yes/No</b> |
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The petitioner-Zakir Hussain was engaged as Rehbar-e-Taleem in Government Middle School, Barakund-Gool in October 2004 on consolidated pay of Rs. 1500/- per month. The initial tenure of the engagement was two years, which on good performance was extendable to further three years.

The petitioner was arrested in FIR No. 41/2006 registered at Police Station, Gool under Sections 306/342 and 305 R.P.C., before the expiry of the initial period of his engagement. He was placed under suspension in August 2006. As he continued to remain in police custody, his services were terminated pursuant to the Orders of the Chief Education Officer, Udhampur passed in September, 2006.

A fresh Advertisement Notice for engagement of Rehbar-e-Taleem in his place was issued and pursuant to the selection

carried thereunder, Mohd Nadeem, respondent No. 6 was selected and appointed as Rehbar-e-Taleem.

On culmination of the trial, the petitioner was acquitted of the Charge on 14.03.2008.

He approached this Court in October 2009 seeking quashing of, his termination order, besides the engagement of Mohd Nadeem, respondent No. 6.

Heard learned counsel for the parties and considered the judgments cited at the Bar.

The undisputed facts which arise out of the pleadings of the parties are that the petitioner discontinued his engagement as Rehbar-e-Taleem within the initial period of his engagement of two years. A fresh selection process to fill up the post vacated by the petitioner was undertaken by the State-respondents, pursuant where to, Mohd. Nadeem-Respondent No. 6 was selected and appointed as Rehbar-e-Taleem in Government Middle School, Barakund.

The question that arises for consideration in the Writ Petition, is as to whether the petitioner's services could be terminated without issuing him Show Cause Notice and whether he was entitled to seek restoration of his engagement despite his absence for such a long period.

The petitioner's engagement as Rehbar-e-Taleem was a contractual engagement under the Serva Shiksha Abhiyan which required continued presence of the Rehbar-e-Taleem in

the village so that residents of Rural Areas were allowed regular opportunity to receive education. With the arrest of the petitioner, he was disabled to serve the School to carry out the purpose of the Scheme. With the expiry of the initial period of his tenure, he lost his right to consideration for continuance as Rehbar-e-Taleem for another three years because continuance after the expiry of initial tenure of engagement was dependent on successful completion of the initial engagement. The engagement, being purely temporary and the petitioner having not completed successfully the period of his initial engagement, deprives him of his right to consideration for continuation as Rehbar-e-Taleem for another three years. The initial engagement of the petitioner having otherwise expired with the efflux of time, the petitioner would have no right to question his termination, in that, occasion to challenge the termination would arise only if the engagement would have otherwise survived but for termination.

The petitioner's plea that his termination was bad in law as he was not heard by the respondents before termination of his engagement, may not be tenable, in that, even in the event of issuance of notice, which was otherwise unnecessary as his temporary engagement could be withdrawn for his absence, the petitioner would have nothing to say in the matter because of his disability to serve as Rehbar-e-Taleem, being in police custody. No notice, in the circumstances, was, therefore,

required to be served on the petitioner before termination of his engagement.

This apart, the Sarva Shiksha Abhiyan Scheme does not contemplate keeping the position of Rehbar-e-Taleem vacant awaiting joining of those engaged as Rehbar-e-Taleem for such a long period because such a course would adversely affect the Scheme and the intention underlying therein. Even otherwise, the belated approach of the petitioner to this Court disentitles him to question his disengagement.

I am supported in taking the above view by a Division Bench judgment of this Court in ***Abdul Aziz v. State and ors.***, LPA (SWP) no. 138/2008, decided on May 03, 2011.

For all what has been said above, there is no merit in this Petition, which is, accordingly, dismissed.

**(J. P. Singh)**  
**Judge**

**JAMMU:**  
29.08.2011  
Tilak, Secy.