

**HIGH COURT OF JAMMU AND KASHMIR  
SRINAGAR**

**Review (SWP). No. 21/2015 c/w  
SWP. No. 1134/2009**

Date of order: February 17, 2016

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Masarat Jan  
**Vs.**  
State and Ors.

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Whether to be reported?	Yes
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Coram:

**Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge**

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*Appearing counsel:*

For the petitioner(s)	: Mr. Nissar Ahmad Bhat, Adv.
For the respondent(s)	: Mr. M.A.Wani, AAG.

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(Oral)

Objections have not been filed.

Petitioner was appointed as constable in Jammu and Kashmir Police Department vide Order dated 1<sup>st</sup> November, 1999. The judgment under review would show that the petitioner had pleaded in the writ petition that after joining the service, she received phone call from unknown persons, informing her that in case she joins the Police Department, she along with her family will be killed. The judgment under review would further reveal that because of the threat perception, the petitioner was compelled to submit her resignation.

The Court, while disposing of the writ petition on 9<sup>th</sup> November, 2010, directed the respondent no. 2 to look into the matter and take a compassionate view after taking into consideration the facts and circumstances detailed in the representation filed by the petitioner.

It is submitted that after the judgment dated 9<sup>th</sup> November, 2010, the respondents have passed an

order, rejecting the claim of petitioner on the ground that she has resigned from the service.

The fact recorded in the judgment that the petitioner had submitted her resignation due to threat to her person and family members has not been disputed by the respondents and has attained finality.

Tendering resignation is a voluntary act. A document can be said to be a resignation only when it is shown that the person has tendered it out of her/his own free will and without there being any threat or duress. Tendering of resignation must have freedom of choice to do the same.

In the admitted fact of this case as is revealed by the judgment under review, the petitioner, even if, had submitted the resignation, the same was not voluntary but was tendered due to the threat to her person and family members. This would not constitute a resignation in law. It is held that in the facts and circumstances of this case there was no resignation in law tendered by the petitioner, though in fact resignation letter was submitted by her, which contention is also denied by her in the review petition.

Be that as it may. In view of the above stated declaration there was no resignation in existence and termination of the petitioner on the same is nullity in law. Guarantees contained in Article 14, 16 and 21 of the Constitution stand violated in this case.

The petitioner would be deemed to be continuing in service. However, she shall not be entitled to full monetary benefits for the period for which she remained out of service. She would be entitled for some

monitory benefits for which appropriate orders will be passed by the respondents.

For the above stated reasons this review petition is allowed and Judgment dt. 9<sup>th</sup> November, 2010 is recalled. The review petition as also writ petition is disposed of and it is provided that the petitioner would be deemed to be continuing in service. The respondents to allow the petitioner to resume her duty forthwith. The respondents to pass appropriate orders for releasing of some monitory benefits in her favour for the period she remained out of service.

**(Muzaffar Hussain Attar)**  
**Judge**

**SRINAGAR**  
**17/02/2016**  
*Shamim Ahmad*

