

Serial No. 26
Advance List

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

LPA No. 197/2019
CM No. 5133/2019

Sarfaraz Ahmad Bhat

---Petitioner/Appellant(s)

Through: Ms. Asma Rashid, Adv.

V/s

State of JK & Ors.

---Respondent(s)

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RASHID ALI DAR, JUDGE

ORDER

31.07.2019

1. By way of the instant appeal, the appellant has assailed the order dated 22nd July 2019 passed by the learned Single Judge dismissing WP (C) No. 2397/2019 in limini.
2. It appears that by an order dated 1st July 2019, the disciplinary proceedings were contemplated against the appellant whereby the petitioner was charge sheeted with regard to matters relating to the affairs of the Municipal Council, Anantnag. The appellant was directed to submit his reply to the charges alleged in the said communication within a period of seven days and to explain why his case be not referred to the Administrative Department for taking an action against him in terms of J&K Civil Services (Classification, Control and Appeal) Rules 1956 with regard to the acts and omissions alleged therein.
3. The grievance of the appellant is that even before time granted for submitting his reply to the charge sheet came to an end, the official respondents issued a further order dated 4th July 2019 placing him under suspension with immediate effect pending further enquiry into the allegations.

4. Aggrieved thereby, the appellant filed WP (C) No. 2397/2019 seeking the following prayers:

- I. Issue an appropriate Writ, direction or order, including the one in the nature of writ of Certiorari quashing the Government Order No.153-HUD of 2019 dated 04.07.2019 issued by the respondent No.1, so far as it relates to the Petitioner;*
- II. ISSUE an appropriate Writ, direction or order, including the one in the nature of writ of Mandamus, commanding the respondents to reinstate the Petitioner into services and allow him to perform his duties;*
- III. ISSUE a Writ, direction or order, directing the respondent No.1 to keep in abeyance the impugned order till the reply of the WP (C) No. 2397/2019 CM No. 4564/2019 Page 2 of 10 Petitioner as sought by the Respondent No.3 vide communication dated 01.07.2019, is not considered.*
- IV. Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the attendant facts and circumstances of the case may be issued in favour of the Petitioner and against the respondents."*

5. This writ petition came to be listed before the learned Single Judge on 22nd July 2019. On that date, after hearing the counsel for the parties, the learned Single Judge referred to Rule 31 of the Jammu and Kashmir Civil Services (Classification Control & Appeal Rules), 1956 which is concerned with the placing of a government servant under suspension. Learned Single Judge took a view that the respondents were adequately empowered to place the government servant under suspension when an enquiry into his or her conduct is contemplated or is pending or a complaint against a government servant of any criminal offence was under investigation or trial.

6. So far as the case in hand is concerned, learned Single Judge has observed that the respondents were examining the allegations attributed to the appellant along-with others. In this backdrop, a prima facie view has been recorded that the respondents have followed the procedure in vogue in placing the appellant under suspension pending further enquiry into the allegations against him. In support of his conclusion, the learned Single Judge has placed reliance on the pronouncement of the Supreme Court reported at **(1996) II LLJ 164 SC R.P.Kapur vs. Union of India, (1993) II LLJ 958 SC U.P.Rajya Krish Utpadan Mandi Parishad & Ors. v. Sanjiv Rajan** and other precedents. Before us, it is contended by Ms. Asma Rashid, learned counsel

for the appellant that appellant ought not to have been placed under suspension without consideration of his reply to the charge sheet.

7. In our view, the action of the respondents cannot be faulted for this reason. It has been rightly observed by the learned Single Judge that suspension is not a punishment and also an employee cannot influence the proceedings in the enquiry in winning over witnesses or otherwise impede progress of the investigation or enquiry. We are also of the view that the respondents were not required to afford an opportunity of hearing in compliance with the principles of natural justice before passing the order of suspension. So far as the consideration of the reply of the appellant is concerned, it needs no elaboration that the respondents would take the same into consideration while proceeding in the matter. The respondents would take a considered view in any case, while dealing with the issue of extension of the period of suspension in accordance with law.

8. For all these reasons, we find no merit in this appeal which is hereby dismissed. It is made clear that nothing contained in the order of the learned Single Judge dated 22nd July 2019 or the order being recorded by us today shall be treated as an expression of opinion on the merits of the case.

(RASHID ALI DAR)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Srinagar
31.07.2019
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