

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

LPASW No. 158/2018

IA No. 01/2018

Reserved on: 27.11.2019

Pronounced on: 28.02.2020

J&K State Board of School Education.Appellant(s)/Petitioner(s)

Through: Mr. J. A. Kawoosa, Advocate

V/s

Mehraj-Ud-Din Bhat.Respondent(s)

Through: Mr. Shaqir Haqani, Advocate vice
Mr. A. Haqani, Advocate

Coram:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

J U D G M E N T

GITA MITTAL, CJ:

1. By way of the instant appeal, the appellant has assailed a judgment dated 10th November, 2017, whereby the learned Single Judge has accepted the SWP No. 1616/2013 filed by the respondent. In the writ petition, the writ petitioner has prayed for quashing of an order No.322-B of 2012 dated 6th June, 2012, by which the services of the petitioner had been dispensed with.

2. The facts giving rise to the instant appeal to the extent necessary for adjudication for the present appeal are not disputed and are hereby noted hereinafter.

3. The writ petitioner was appointed/engaged with the Jammu and Kashmir State Board of School Education by an order dated 10th November, 2011, as a consolidated worker. It is an admitted position that the writ

petitioner had joined on 12th November, 2011 on this basis. The services of the writ petitioner were continued and he was posted from one section of the Board to another.

4. Though the petitioner became entitled to permanent appointment with the respondents, his appointment was only extended from time to time on consolidated basis. The extension was by an order dated 24th April, 2012.

5. It appears that the respondents issued the impugned order dated 6th June, 2012 dispensing with the services of the petitioner with immediate effect. Aggrieved thereby, the writ petitioner (respondent herein) filed SWP No. 1256/2012 challenging the same. An ad interim order dated 14th June, 2012 was passed protecting the status of the writ petitioner during the pendency of the writ petition.

6. While the writ petition was pending, the appellant considered the regularization of consolidated workers. It is on record that by order No. 413-B of 2012 dated 20th July, 2012, services of the seventy-seven persons working on consolidated basis were regularized as orderlies in the Pay Band of Rs. 4440-7440 (IS) with grade pay of Rs. 1300/-. In this order, so far as the respondent was concerned, it is stated as follows:

“The regularization of M/s. Shazia D/o Mohammad Farooq and Mehraj-Ud-Din Bhat S/o Ghulam Rassol Bhat shall be decided after the withdrawal of Court case/s and receipt of final enquiry.”

7. In view of the above, the writ petitioner filed an application for withdrawal of SWP No. 1256/2012. This application was allowed by the Registrar Judicial by an order dated 26th July, 2012.

8. The services of one Ms. Sazia Farooq, another consolidated worker, had never been terminated. She had filed SWP No. 2810/2011 regarding her leave case which, in view of the above stand of the respondents, was later on withdrawn. Her services were regularized vide order No. 654-B of 2012 dated 19th October, 2012.

9. Though SWP No. 256/2012 of the petitioner was permitted to be withdrawn on 26th July, 2012 and the enquiries concluded finally without implicating the writ petitioner, the appellant did not take action for his regularization as stated in the order dated 20th July, 2012. The Appellants however regularized Shazia on 19th October, 2012 after she withdrew SWP No. 2810/2011.

10. Aggrieved by the failure of the appellant-authorities to treat him in the same manner as the other similarly situated persons had been treated and regularized by order dated 20th July, 2012, the respondent filed a second writ petition SWP No. 1616/2013, assailing the dispensation of his services by order dated 6th June, 2012 and sought a direction to the appellant to regularize his services in terms of order No. 413-B of 2012 dated 20th July, 2012 with all consequential benefits.

11. This writ petition was opposed by the appellant. After a detailed consideration, by the judgment dated 10th November, 2017, the learned Single

Judge accepted the writ petition, set aside the order dated 6th June, 2012 and directed the respondents to take back the respondent on duty treating him to be in continuous service with back wages. The appellant was directed to consider the respondent as per law with regard to his entitlement to regularization of service in terms of order No. 413-B of 2012 dated 20th July, 2012.

12. This judgment has been assailed by the appellant by way of the present appeal, submitting that the learned Single Judge had erred in failing to consider the fact that the services of the respondent herein stood dispensed with on account of his involvement in the above incident.

13. The appellant has also assailed the judgment by which the learned Single Judge has issued a direction to the appellant to consider the respondent for regularization, contending that no right of regularization accrued to the respondent for the reason that a person working on either consolidated wages or on need basis, has no right to seek regularization.

14. We have heard Mr. J. A. Kawoosa, learned counsel for the appellant-authority and Mr. Shaqir Haqani, learned counsel for the respondent at length and perused the available record.

Enquiries against the petitioner:

15. So far as the reference to enquiries in the order dated 20th July, 2012 is concerned, it appears that an enquiry committee stood constituted by the respondents on 21st April, 2012 to investigate the episode of tampering

with the sealed parcel of the answer books of the Business Studies-“B” paper by the officials working in the Transit Section (Secrecy Store Unit –III KD).

16. Apart from the respondent herein, other officials posted in the same Transit Section including one Khurshid Ahmad Shah, posted as Dealing Assistant and Nisar Ahmad Sofi, Orderly were alleged to be involved in this illegality.

17. The Enquiry Committee submitted its report vide letter No. F (Enq-Secy-III) B/KD/12 dated 26th May, 2012. It was alleged that on 7th April, 2012, an answer book of a candidate for the examination in the Accountancy paper-“B” of the Higher Secondary Part–II Annual/Private-2011, held on 4th April, 2012, which was missing from the sealed packet of answer sheets of candidates in the examination was placed with the other answer books and subsequently resealed with another brass seal which was lying in the Transit Section.

18. The report of the committee has been placed on record.

19. The Enquiry Committee recorded the statement of the respondent that he was innocent. Based on the examination of the records, the committee had recommended as follows:

“1. That the sealed packet of answer books of centre No:- 806 pertaining to HSE, PRT-II Annual-Private 2011 in business studies B has been operated upon by the officials working in the secrecy store Unit-III which was held on 07-04-2012 and the answer book of the candidate bearing Roll No:- 806500 in Accountancy-B has been placed in the said packet, the

examination which was conducted on 04-04-2012 and resealed with another brass seal reportedly lying in the said store as reported by Mr. Nisar Ahmad Sofi Orderly (statement of the said official is enclosed) in a suspicious condition and concerned Code Officer has failed to detect the same. It may also be recorded there sealed answer book packet of Centre No:-806 in Accountancy-B of the said examination has opened by the code officer concerned and reported that one Answer script of the candidate bearing Roll No:-806500 is missing in the sealed packet. Assistant Secretary Secrecy-III KD (Statement copy Enclosed). The Superintendent/ Deputy Superintendent in there reports states that the answer book of the candidate has collected and sealed in the packet on the date of examination on 04.04.2012 for handing over the same to Secrecy section Lal mandi.

3. *The statement given by One Mr. Mehraj-Ud Din Bhat Consolidated Worker (Copy Enclosed) who has been working in the secrecy section unit-III states that he is discharging his duties in the said section under pressure and not committed has guilty in the said episode. The circumstantial focus lies to the said consolidated worker.*

(A) To find the actual culprit it will in the fitness of the things to refer the case to the crime branch as is a serious nature crime and prestigious and sanctity of the secrecy.

(B) Meanwhile the concerned persons of Secrecy Unit III be transferred forthwith.

(C) The entire supervisory staff of the centre no:- 806 HSE-II Annual-Private 2011 be not engaged in further board assignments.”

20. The Committee had noted the statement of the Store Keeper attempting to shift the entire blame for the incident on the consolidated workers.

21. So far as the action taken by the appellant on this report is concerned, the authorities not only took action to dispense with the services of the respondent with immediate effect but two senior colleagues namely, Khurshid Ahmad Shah, Senior Assistant and Nisar Ahmad Sofi, Orderly who were also posted in the same section were placed under suspension vide order No. 320-B of 2012 and No. 321-B of 2012 dated 6th June, 2012.

22. It is not disputed that despite the recommendation of the Committee, the matter was not referred to the Crime Branch. Instead, vide an order No. 543-B of 2012 dated 11th September, 2012, another three member committee was constituted by the appellant. This Committee submitted a report under cover of the letter No. F. Rep (Neg-B)12/KD dated 19th September, 2012 giving the following observations:

“01. That the reports of the previous committees are based on mere assumptions without having any substantial evidence against the person in question or the employees placed under suspension.

02. That the reports furnished by the previously constituted committees are incomplete as they have failed to taken into account the involvement of a foreign hand in the mishap and have also failed to look into the other aspects of the case, as in such nature of cases.

03. That the previous committees have also failed even to establish a simple reason for this grave mishandling of affairs by Mr. Mehraj-ud-Din and others. Commissioning of error by Mr. Mehraj ud Din who is on consolidate establishment of the BOSE.

04. *That the negligence committed is very serious and grave, all possible measures should have been taken to curb such practices, but no measures were suggested by the earlier committees.*

05. *That the previous reports are inconclusive as they have not been able to suggest the measures to overcome the menace, further, it is established by records & reports that even after removing Mr. Mehraj ud Din from the job and putting few other under suspension, the commission of error in the Sealed Answer Script parcels didn't stop and the unfair practice continued, which is a sufficient ground to notice the others involvement and a foreign hand can not be ruled out, which the previous constituted committees have failed to address.*

06. *That forwarding this case, at this stage, to some foreign agency for probe won't be appropriate and will be a measure against the interests of the office, besides, this could bring disrupte to the organization and could cause a mistrust among the society.*

07. *That a committee comprising renowned officers & Officials should be constituted to probe in-depth in the whole affair so that the reality comes to surface, leaving this case to the crime branch or any other agency without making serious efforts at the office level is not an appropriate follow-up in this case.*

Conclusively, we do not endorse the recommendations of the previous committee as such recommended;

That the position of Mr. Mehraj Ud din be restored respectively with one day break by his re-engagement, besides the reinstating of other officials."

(Emphasis supplied)

23. Significantly, this report points out that even after dispensation with the services of the writ petitioner by the order dated 6th June, 2012, the commission of errors in the sealed answer script parcel had continued which sufficiently indicated other interventions.

24. This Committee had made the positive observation that the position of the respondent-Mehraj-Ud-Din be restored respectively with one day break by his re-engagement, besides reinstating of other officials.

25. It appears that the appellants were not satisfied with even the findings of the second committee. Instead of complying with the same, the third Committee was constituted vide order No. 773-B of 2012 dated 20th December, 2012.

26. This third Committee also submitted its report to the Board under cover of the letter No. F(JSE-BOSE) KD/13 dated 21st February, 2013.

27. So far as its opinion is concerned, the third Committee has opined as follows:

“This committee is of the opinion that the issue is to be addressed in a manner that will help to surface the real culprit of the crime and that the crime could not have happened without the connivance of students involved, supervisory staff of the centre and person on duty of the store. To have a comprehensive investigation of the issue only an independent agency like crime branch can do the job whole hog. It has been also observed by the committee that the person on duty to store have displayed acute irresponsible behavior amounting to dereliction of duty to the extent that they also fall within the ambit of suspicion. To remind them of the seriousness of their duty and to avoid any future occurrence of such incident it is imperative that some kind of penalty may be imposed on their either in terms of withholding their increment or any such thing. However, as the guilt has not been established against them on factual grounds the suspension from duty seems to be a harsher step as opined by the Deputy Secretary Legal (KD) and needs a reconsideration on merit. One daily wager who has been terminated may be engaged only if the authorities are well satisfied that his involvement in the case is Zero.

To conclude the matter it is obligatory that necessary steps may be taken to avoid such an occurrence in future and there need to be individual fixing of responsibility to ensure sanctity and sacredness of the secrecy that is hall mark of the section.”

(Emphasis supplied)

28. The report of this Committee shows that the opinion had been accorded by the Deputy Secretary Legal that imposition of any penalty could be effected only after the guilt is established.

29. It is apparent from the above that there was no material before the appellants at all which even suggests the culpability of the respondent/writ petitioner in the alleged illegalities.

Reason for dispensation of services of the writ petitioner/respondent herein.

30. It, therefore, becomes necessary to examine the record to ascertain the circumstances and reasons for the dispensation of the services of the respondent.

31. A scrutiny of the order dated 6th June, 2012 whereby the services of the respondent were dispensed with would show that the order discloses no reason for the dispensation which was with immediate effect. No ground at all is mentioned therein.

32. We find that it is only in the objections filed by the appellant before the writ court as well as in the memo of the present appeal, in para 2 (b), that the appellant has propounded a reason and categorically submitted that *“the services of the respondent were dispensed with in view of his involvement in the said episode stated herein above. The respondent has been*

involved in such fraud/episode when he was not even working on the permanent establishment of the Organization.”

33. However, this view is not supported by any material at all. In fact three consecutive Committees have found to the contrary. The appellants have acted against the writ petitioner only on the basis of suspicion and conjecture. The order of dispensation is clearly based on no material and cannot be legally sustained.

34. We may here also advert to the principle laid down in *Mohinder Singh Gill v. Chief Election Commissioner & Others*; AIR 1978 SC 851. The impugned order which discloses no ground or basis cannot be supported by reasons set out in the counter affidavit or in the grounds of appeal.

Whether the writ petitioner was entitled to regularization?

35. It appears that on 9th April, 2012, an item was moved in the Board of Governors' meeting to consider regularization of seventy-nine consolidated workers as orderlies in the Pay Band of Rs. 4440-7440 (IS) with grade pay of Rs. 1300/-, who were engaged on need basis in the appellant-Organization from time to time. The Board of Governors resolved that the consolidated workers be regularized to the extent of seventy-eight as orderlies in the Pay Band as proposed against the posts that were created in the same Board of Governors' meeting vide item Nos. XI, XII and XIV. Subsequently, the order No. 413-B of 2012 dated 20th July, 2012 as detailed above was passed whereby the services of the seventy seven consolidated workers were regularized.

36. As noted above, the respondent was not considered for this regularization. Instead it was recorded that the regularization of Shazia and Mehraj-Ud-Din (present respondent) “*shall be decided after the withdrawal of court case/s and receipt of final report*”

37. We find that there is no dispute to the fact that the respondent was engaged as consolidated worker by the order dated 10th November 2001. It is admitted position that the respondent had continued to work till his services were dispensed with by the order dated 6th June, 2012, which gave no reason at all. The learned Single Judge has noted that in the objections filed by the appellant to the writ petition, it was stated that the impugned order had been passed on the ground that in the three member Committee report dated 26th May, 2012, the Committee had stated that focus lay on the respondent.

38. On this basis, the learned Single Judge was of the view that the appellant had failed to comply with the principles of natural justice in terminating the services of the respondent without giving him any opportunity of hearing before dispensing his service after finding him culpable and complicit in illegal conduct. The learned Single Judge was of the view that the action of the appellant was unfair and did not secure justice to the respondent. In so concluding, the learned Single Judge has placed reliance on the reports of the three Committees which did not find anything incriminating against the respondent.

39. In support of his submissions, Mr. Haqani, learned counsel for the respondent has placed reliance on the pronouncements of the Supreme Court in Nar Singh Pal v. Union of India, (2000)3 SCC 588 (Paras 6, 8, 9 and

10), Canara Bank v. Shri Debasis Dass, AIR 2003 SC 2041 (Paras 13,14, 15 and 16).

40. We also find that there is no dispute to the fact that the respondent, even as a casual employee, has performed duty continuously for a long duration without any adverse remarks during the period.

41. The learned Single Judge has also observed the fact that two other employees, Khurshid Ahmad Shah, Dealing Assistant whose conduct was also examined by the Committee along with the respondent, and were situated in similar circumstances, stood reinstated with full wages.

42. The appellants had thus accepted the finding of the Committees that fault for the illegality could not be pinned upon the three including the writ petitioner whose role was examined.

43. In this background, the learned Single Judge has recorded his satisfaction that the respondent could not be treated differently from the employees on the same set of the report of the Committees, especially when the Committees recommended his reinstatement. The challenge by the respondent/writ petitioner has found favour with the learned Single Judge and the order of dispensation of the services of the respondent by order dated 6th June, 2012 was therefore set aside.

44. As noted above, before us, the judgment of the learned Single Judge has been assailed by the appellant contending that the respondent had been found complicit in the alleged incident. We have extracted the above observations of the three committees. There is nothing in the reports of the

three committees which supports the submission made on behalf of the appellant that the respondent had been found culpable in any manner.

45. The statement of the appellants in the grounds of appeal (as also stated in the response in the writ petition) explaining the disengagement of the respondent in the present case shows that it was not termination simpliciter but was stigmatic.

46. The report of the Committee established that the order was completely unjustified and without any basis.

47. In view of the above discussion, findings of the learned Single Judge that the order dated 6th June, 2012 was unsustainable, has to be upheld.

48. As a consequence of the order being set aside, the respondent is entitled to be restored to his original position.

49. We now come to examination of the challenge to the directions made by the learned Single Judge to the appellant to consider the respondent for regularization.

50. Again, an admitted position before us is that the other persons who had been similarly placed as consolidated workers with the appellant-Organization were considered for regularization in terms of the Resolution dated 9th May, 2012 and by an order dated 20th July, 2012, the services of seventy seven such consolidated workers were regularized.

51. There is no dispute at all that if the respondent had not been implicated in the said incident and the order dated 6th June, 2012 passed

against him, the respondent would also have been considered for regularization along with these consolidated workers.

52. As noted above, Ms. Shazia Farooq was also regularized by the order dated 19th October, 2012.

53. It is also noteworthy that order dated 20th July, 2012 according sanction to the regularization of seventy-seven consolidated workers on their appointment as orderlies records that the regularization of Mehraj-Ud-Din, respondent herein shall be decided “*after withdrawal of court case/s and receipt of final enquiry report*”. Implicit therein is an admission of the entitlement of the writ petitioner to the regularization. The appellants were only awaiting completion of the enquiries and withdrawal of the writ petition.

54. In the present case, three enquiry reports stand received wherein no complicity of the respondent in the alleged incident has been established. In accordance with the requirements stipulated in the order dated 20th July, 2012, the respondent has withdrawn his earlier writ petition being SWP No. 1256/2012. Thus the writ petitioner was entitled consideration of the case for regularization.

55. It is also noteworthy that the appellant has relied upon the reports dated 26th May, 2012, 19th September, 2012 and 20th December, 2012 for revoking the suspension of the two other employees and also accorded them restoration of the services. Only the respondent herein has been discriminated against and deprived the benefits.

56. The noting on the order dated 20th July, 2012 regarding the respondent, in fact is an admission by the respondents of the fact that the respondent having completed more than seven years of service since his appointment on 10th November, 2001, had attained the right of regularization. We find that, therefore, the present appeal tantamount to a challenge is to a direction issued by the learned Single Judge for consideration of the respondent in terms of the stipulations made by the appellant itself in its order dated 20th July, 2012.

57. So far as the challenge to the direction to reinstate the respondent in service with continuity and back wages is concerned, we find the objections completely misconceived. The present case is not one where any fault can be attributed to the respondent for not having performed his duties. The respondent has been agitating against dispensation of his services immediately thereafter. He had filed SWP No. 1256/2012 which he was persuaded to withdraw the same in view of the stipulations made by the appellant in the order dated 20th July, 2012, whereby they had clearly committed that he would be considered for regularization if he withdraws the writ petition. This did not happen for no fault of the respondent.

58. The respondent was compelled thereafter to file SWP No. 1616/2013 agitating his challenge to the order dated 6th June, 2012 as also the failure of the appellant to regularize him. This writ petition remained pending till it was decided in favour of the respondent herein by the judgment dated 10th November, 2017. Even this judgment did not bring solace of justice to

the respondent for the reason that the appellant has assailed the same by way of the instant Letters Patent Appeal.

59. It is not the contention of the appellant that the respondent has been engaged in any beneficial employment during this period.

60. Mr. Haqani, learned counsel for the respondent, in support of respondent's entitlement for consequential and back wages, has placed reliance on the pronouncements of the Supreme Court in *Union of India v. K. V. Jankiraman etc. etc.*; (1991) 4 SCC 109, *Mohd Ahmed v. Nizam Sugar Factory & Others*; (2004) 11 SCC 210 and *State of Kerala & Others v. E. K. Bhaskaran Pillai*, Judgment today 2007 (6) SC 83.

61. On this aspect in *AIR 1991 SC 2010, Union of India etc. etc. vs. K.V. Jankiraman etc. etc.*, it was held as follows:

"7. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blame worthy in the least, he should not be deprived of any benefits including the salary of the promotional post.

The normal rule of "no work no pay" is not applicable to cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his.

...When an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings'.

(Emphasis supplied)

62. In *J.T. 2007 (6) SC 83, State of Kerala and others vs. E. K. Bhaskaran Pillai* also the Supreme Court has held that if the administration has wrongly denied his due, then he should be given full benefits. We extract hereunder the relevant observations of the court which read thus:

“4. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by given benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. **The principle ‘no work no pay’ cannot be accepted as a rule of thumb. There are exceptions where courts have granted benefits also.**”

(Emphasis by us)

63. It is therefore well settled that the back wages would not be denied to an employee (the respondent herein) when he has been prevented from rendering service with the authority which is the appellant, as in the present case.

64. For all these reasons, the challenge laid by the appellant is completely misconceived and untenable.

The appeal is dismissed accordingly.

(SANJEEV KUMAR)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Date: 28.02.2020

Tilak

Whether the order is speaking: Yes
Whether the order is reportable: Yes



Judgment is pronounced by me today in terms of Rule 138 (4) of the
Jammu and Kashmir High Court Rules, 1999.

(GITA MITTAL)
CHIEF JUSTICE

28.02.2020
Srinagar

