

**HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT
SRINAGAR**

Reserved on: 16.04.2025
Pronounced on: 31.05.2025

WP(C) No.2505/2023

MOHAMMAD AMIN GANIE & ORS. ...PETITIONER(S)

Through: Mr. Bhat Fayaz, Advocate.

Vs.

UT OF J&K AND OTHERS ...RESPONDENT(S)

Through: Mr. Mohsin Qadiri, Sr. AAG, with
Ms. Maha Majeed, Advocate, vice

CORAM:-

**HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

JUDGMENT

Per OSWAL 'J'

1. The petitioners came to be appointed as Class IV employees by the respondents and, as pleaded by the petitioners, they were recommended for appointment by the Selection Committee duly constituted vide Government Order No.235-FST of 1997 dated 23.04.1997. The petitioners 1,2,3 and 4 were appointed as Mali/Chowkidar vide Order Nos.69 of 1998 dated 03.06.1998, 769 of 1997 dated 09.08.1997, 205 of 1998 dated 04.08.1998 and 1235 of 1998 dated 19.03.1998 respectively.

2. A complaint was filed against the petitioners alleging that they had obtained appointment on the basis of fabricated orders, as a result of which an FIR was registered and after the conclusion of the investigation, the charge sheet was filed against the petitioners. It is stated by the

petitioners that they were put to trial and acquitted by the learned trial court but the respondents in a hot haste issued termination order against the petitioners without waiting for the outcome of the trial. The petitioners filed a writ petition bearing SWP No.451/2012 along with CMP No.681/2012 wherein, an order dated 12.03.2012 came to be passed by the Court, whereby the respondents were directed to consider the representation of the petitioners stated to have been filed by them.

3. In compliance to the order dated 12.03.2012, respondent No.2 issued consideration order wherein claim of the petitioners to allow them to resume their duties was rejected vide Forest Order No. 239 of 2012 dated 22.10.2012, which prompted the petitioners to file a writ petition bearing SWP No.616/2013, which was subsequently withdrawn and another writ petition bearing SWP No.741/2013 came to be preferred by the petitioners which was later transferred to the Central Administrative Tribunal, Srinagar Bench (for short “the Tribunal”) and was renumbered as TA No.62/2156 of 2021. The petitioners have impugned the Forest Order No. 239 of 2012 dated 22.10.2012 and have also sought the directions to the respondents to allow the petitioners to continue their services against the posts held by them and for release of pay and other service benefits.

4. The respondents had objected to the writ petition preferred by the petitioners by urging that in the year 1998, respondent No.5 came to know that the orders produced by the petitioners were fake and fabricated and, accordingly, he submitted all the appointment orders in original to

respondent No.3 for verification. During scrutiny of the orders submitted by the petitioners, the same were found to be fake and fabricated. The order produced by petitioner Mohammad Amin Ganai actually pertained to regularization of one Farooq Ahmad Lone S/o Mohammad Rustum Lone R/o Surigam Lolab as Mali, order No.769 of 1997 dated 07.04.1997 produced by petitioner Gulzar Ahmad Bhat pertained to the appointment of one Bashir Ahmad Najar S/o Muhammad Ramzan Najar R/o Doriwari Tehsil Chadoora as Watcher, order No.205 of 1998 dated 04.08.1998 produced by petitioner Shahnawaz Abid Sheikh actually pertained to the sanction of 28 days earned leave in favour of one Firdous Ahmad Bhat Watcher by the Chief Conservator of Forests, Kashmir and order No.1235 of 1998 dated 19.03.1998 produced by petitioner No.4 actually pertained to regularization of one Khurshid Ahmad Malik S/o Sarandaz Malik R/o Model Town Sopore, as Orderly. The stand of the respondents before the learned Tribunal was that no right is vested in the petitioners to be taken back in service as the orders of appointment produced by the petitioners were fake.

5. The learned Tribunal vide its order dated 13.06.2023 dismissed the TA preferred by the petitioners by observing that the petitioners have failed to prove the genuineness of the appointment letters, in terms of which they want to exercise their right to remain in government service. The learned Tribunal also observed that the Principal Chief Conservator of Forests, J&K, has passed a detailed and speaking order dated 22.10.2012.

6. The petitioners have impugned the order dated 13.06.2023 passed by the learned Tribunal and also the order dated 22.10.2012 passed by respondent No.2, primarily, on the ground that the allegations in respect of the forgery of the orders could not be proved against the petitioners during trial of criminal case and once the petitioners have earned acquittal, the learned Tribunal ought not to have dismissed the application filed by the petitioners. It is also urged by the petitioners that no opportunity of hearing was afforded to the petitioners and no termination order has been issued by the respondents.

7. The respondents have filed their response to the writ petition reiterating their stand that was taken by them before the learned Tribunal and have further stated that in compliance to the direction dated 03.05.2013 passed by this Court in SWP No.741/2013, contempt petition No.631/2013 and order dated 25.02.2016, the petitioners were allowed to resume their duties vide order dated 10.02.2018 subject to the condition that they will produce affidavits duly attested by the 1st Class Judicial Magistrate to the effect that the final outcome of their court case will be binding upon them. However, the salary of the petitioners has been stopped with effect from September, 2022 when the Government of the UT made uploading of appointment orders, service books and other details mandatory on the Human Resources Management System (HRMS) portal but due to non-availability of the service records of the petitioners, their salary could not be drawn from the month of September, 2022 and they have also stopped to perform their duties since October, 2022.

8. Mr. Bhat Fayaz, learned counsel for the petitioners, submitted that the petitioners were performing their duties with the respondents but when uploading of appointment orders on HRMS portal was made mandatory, the salary of the petitioners was stopped. He has further submitted that the petitioners have to be treated at par with other employees in whose cases the appointment orders were not uploaded, yet their salary was not stopped.

9. *Per contra*, Mr. Mohsin Qadiri, learned senior AAG, has argued that in case of the petitioners, the appointment orders were available but they were fake, therefore, the petitioners cannot draw parity qua the other employees whose appointment orders are not available/uploaded.

10. Heard and perused the record.

11. The petitioners have not been able to demonstrate before this Court that their appointment orders were genuine. The respondents, on the contrary, have categorically demonstrated that forged orders were produced by the petitioners for securing appointment. Any appointment obtained by an employee on the basis of fake/forged appointment order, is in fact, no appointment in the eyes of law and any such appointment would not vest any right in the employee to continue with the employment. The order dated 22.10.2012 issued by the respondent No.2 is self-explanatory, which clearly establishes that the appointment was obtained by the petitioners on the basis of fake/forged orders. Where appointment is obtained on the basis of fake/forged orders, no opportunity of hearing is required to be afforded to the delinquent employee and in

such cases, there is even no necessity of issuing any termination order, as in law there is no appointment.

12. In this context, it would be advantageous to take note of the judgment of the Hon'ble Apex Court in '**State of Manipur v. Y. Token Singh, (2007) 5 SCC 65**' wherein it has been observed and held as under:

16. The offers of appointment issued in favour of the respondents herein were cancelled inter alia on the premise that the same had been done without the knowledge of the Revenue Department of the State. No records therefor were available with the State. As noticed hereinbefore, an inquiry had been made wherein the said Shri Tayeng, the then Commissioner of Revenue stated that no such appointment had been made to his knowledge. The State proceeded on the said basis. The offers of appointment were cancelled not on the ground that some irregularities had been committed in the process of recruitment but on the ground that they had been non est in the eye of the law. The purported appointment letters were fake ones. They were not issued by any authority competent therefor.

17. If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to pay salaries to them from the State exchequer. Any action, which had not been taken by an authority competent therefor and in complete violation of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself had denied to have issued a letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State did not, thus, lack bona fides.

18. Moreover, it was for the respondents who had filed the writ petitions to prove existence of legal right in their favour. They had inter alia prayed for issuance of a writ of or in the nature of mandamus. It was, thus, for them to establish existence of a legal right in their favour and a corresponding legal duty in the respondents to continue to be employed. With a view to establish their legal rights to enable the High Court to issue a writ of mandamus, the respondents were obligated to establish that the appointments had been made upon following the constitutional mandate adumbrated in Articles 14 and 16 of the Constitution of India. They have not been able to show that any advertisement had been issued inviting applications from eligible candidates to fill up the

said posts. It has also not been shown that the vacancies had been notified to the employment exchange.

22. The respondents, therefore, in our opinion, were not entitled to hold the posts. In a case of this nature, where the facts are admitted, the principles of natural justice were not required to be complied with, particularly when the same would result in futility-----.

(emphasis added)

13. Merely the fact that the petitioners have earned acquittal in criminal case would not make the forged/fake appointment orders genuine. The finding of the criminal court is only with regard to the culpability of the accused in respect of commission of offence. A perusal of the judgment of acquittal dated 24.12.2010, recorded by the Principal Sessions Judge, Shopian, reveals that the learned trial court has observed that no witness has stated that he has seen the accused bringing the order and working in the Forest Department. The learned trial court has nowhere recorded the finding that the orders of appointment of the petitioners were genuine and more so, it appears that no stand was taken by the petitioners before the learned trial court that they were working with the Forest Department.

14. It is the categorical stand of the respondents that the petitioners have not worked after September, 2022 whereas the petitioners have placed on record two communications in respect of active-duty service for the months of April and June, 2023, allegedly issued by Block Forest Officer to the Range Officer, Forest Range, Shopian. However, the said communications do not bear any number and date and, as such, no reliance can be placed upon said communications, particularly when it is the categorical stand of the respondents that after September, 2022, the

petitioners have not worked with them. We agree with the submission made by Mr. Qadri, learned Senior AAG that the case of the petitioners is distinct and they cannot draw parity qua the other officials whose appointment orders are not available. Because in the case of the petitioners, the appointment orders were available, but were found to be fake.

15. We have examined the order passed by the learned Tribunal as well as the order passed by respondent No.2 and we do not find any illegality in the same, which would warrant indulgence by this Court.

16. In view of the above, the present petition is found to be bereft of any merit and is, accordingly, dismissed.

(MOHD. YOUSUF WANI)
JUDGE

(RAJNESH OSWAL)
JUDGE

Srinagar

31.05.2025

"Bhat Altaf-Secy"

Whether the order is reportable:

Yes/No