

(2018) 07 J&K CK 0007

Jammu & Kashmir High Court

Case No: Service Writ Petition No.2666 Of 2016

Chamel Singh
@APPELLANT@Hash
State Of Jammu &
Kashmir And Others

APPELLANT

Vs

RESPONDENT

Date of Decision: July 2, 2018

Acts Referred:

- Jammu and Kashmir State Ranbir Penal Code, 1989 - Section 120B, 409, 420, 467, 468, 471
- Prevention of Corruption Act, 1988 - Section 2, 5
- Jammu and Kashmir Civil Services Regulations, 1956 - Article 226(2)

Citation: (2018) 07 J&K CK 0007

Hon'ble Judges: Sanjeev Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

1. Petitioner in this writ petition seeks quashing of Government Order No.1269-GAD of 2016 dated 21.11.2016 with a direction to the respondents to

allow him in the service till he attains the age of superannuation along with consequential benefits.Ã,

2. Briefly stated, the facts giving rise to the filing of this writ petition are that consequent upon his appointment as Chowkidar in the year 1984, the

petitioner joined his services in the CAPD department of the State. The petitioner was promoted as Junior Assistant in the grade of Rs.745-1025 in

the year 1989 and was upgraded in the pay scale of Rs.800-1500 in the year 1990. Vide SRO 18 dated 19.01.1998 the pay of the petitioner was

revised in the pay scale of Rs.3050-4590. Consequent upon registration of FIR No.75/1999 under Section 5/2 PC Act read with Section 409 RPC by

the Vigilance Organization, Jammu, the petitioner was placed under suspension vide order No.294-CAPD of 2004 dated 23.08.2004. Investigation of

the FIR ultimately culminated into presentation of challan before the Court. While the challan was sub-judice, vide order No.36-CAPD of 2007 dated

23.02.2007 the petitioner was reinstated in service but the intervening period remained unsettled. Petitioner submits that after full-fledged trial, he was

acquitted of the charges framed against him vide judgment dated 10.02.2014.

Ã, Since the petitioner was not getting full salary, he filed SWP No.796/2014 seeking direction to the respondents to pay back the amount which had

been illegally recovered from his salary and not to effect any further recovery from the petitioner regarding pilferage of Sar-Bagga store. This Court

vide interim order dated 26.08.2014 directed that recovery from the petitioner shall not be effected and the respondents were further directed to

consider release of service benefits in favour of the petitioner.

3. It appears that on some general complaint with respect to misappropriation of food-grains in District Udhampur, FIR No.22/2009 also came to be

registered at Police Station Crime Branch, Jammu under Section 409, 420, 467, 468, 471 & 120-B RPC read with Section 5/2 P.C Act, Svt. 2006.

After investigation, the challan was presented in the Court of Additional Sessions Judge, Udhampur against the petitioner along with six others. The

trial Court framed the charges against which a Criminal revision No.40/2016 has been preferred and is stated to be pending in this Court. It is

submitted that in the month of May, 2016 the petitioner proceeded on three daysÃ¢â¬â, casual leave with the permission of Assistant Director, CAPD,

Reasi. On 12.05.2016, the petitioner requested for extension of leave till he recovers from illness. The Assistant Director, CAPD, Reasi requested

respondent No.3 for providing suitable incumbent for Arnas/Dharmari as the Incharge TSO, Mahore was not in a position to attend the duty at two

stations. On receipt of said communication of the Assistant Director, CAPD, respondent No.3 placed the petitioner under suspension vide Order

No.191CDAPDJ of 2016 dated 15.07.2016 treating the petitioner as unauthorized absent from duties. Feeling aggrieved, the petitioner approached

this Court by filing SWP No.2177/2016. This Court vide interim order dated 06.10.2016 directed the Director, CAPD to reconsider the matter. In the

meantime, Government Order No.1269-GAD of 2016 dated 21.11.2016 came to be issued by respondent No.1 whereby the petitioner was retired

prematurely from service.Ã, According to the petitioner, on the basis of aforesaid FIRs and for extraneous considerations, the petitioner, having

attained 51 years of age only was directed to retire prematurely; w.e.f., 22.11.2016 vide order impugned in this petition

4. Although, the respondents have not filed any objection/counter affidavit, yet learned counsel appearing for the respondents submitted that the

committee after considering the material placed before it, came to the conclusion that due to his persistent misconduct, the petitioner was generally

known to have bad reputation in the public and the overall perception of the general public was that he was a corrupt official and was involved in

misappropriation of the Government money and therefore, recommended retirement of the petitioner under Article 226(2) of J&K Civil Services

Regulations, 1956.Ã,

5. Learned senior counsel appearing for the petitioner, submits that the order impugned whereby the petitioner has been retired compulsorily is

outcome of mala fide and extraneous considerations. He further submits that the relevant material, including the APRs and other service record

which was required to be considered by the Committee for considering the case of the petitioner for compulsory retirement has either not been placed

before the Committee or has not been considered while coming to the conclusion that the petitioner is generally known to have bad reputation and his

continuance in service may not be in the larger interest of the public. He, therefore, sought quashing of the order impugned.~

6. On the other hand, learned counsel appearing for the State-respondents justified the compulsory retirement of the petitioner by submitting that in

view of the involvement of the petitioner in corruption cases registered against him, his integrity has become doubtful and his continuance in service is

highly pre-judicial to public interest and efficiency in administration. Learned counsel further submits that apart from his involvement in criminal cases

of corruption, Committee has observed that the petitioner did not enjoy good reputation due to his consistent conduct over a period of time; therefore,

his continuance in service was not in public interest.~

7. Considered the submissions made by the learned counsel for the parties and perused the record.

8. The issues which have been raised in the instant writ petition were considered threadbare, discussed and decided by a Division Bench of this Court

in the case of State of J&K and others v. Abdul Majid Wani (LPA No.95/2017) decided on 06.10.2017 and after considering the relevant Rules,

Guidelines, Govt. Instructions and law on the subject held that an employee who is found to have indulged in corrupt practices, has to be dealt with

iron hands. Such a public servant, if found guilty, has to be punished and shown the door and not compulsorily retired, allowing him to get away with

all the retiral benefits. The compulsory retirement provision has been enacted to achieve a different purpose, i.e., to weed out inefficient and corrupt

public servants whose continuance in service is prejudicial to public interest. This, however, has to be adjudged upon on the basis of the work and

conduct of the employee during his whole service career, though attaching more importance to his work and conduct during last some years preceding

his compulsory retirement. This power based on the pleasure doctrine of the sovereign should not be used for collateral purpose.~

9. From a perusal of the minutes of the meeting of the Committee, which recommended compulsory retirement of the petitioner, it is abundantly clear

that decision to compulsorily retire the petitioner was taken only in view of the registration of FIR No.75/1999 by the Vigilance Organization, Jammu

and FIR No.22/2009 registered at Crime Branch, Jammu and apart from the aforesaid two FIRs no other record was either placed before the

Committee or the Competent Authority. FIR No.75/1999, as stated above, has ended in acquittal of the petitioner and other is pending trial.

10. As a matter of fact, APRs/ACRs of the petitioner were not considered by the Committee on the plea that these were not available. This itself

speaks about the non-application of mind by the Establishment Committee which apparently arrived at the conclusion without looking into the relevant

record. The petitioner has placed on record copies of the APRs and the same have not been denied by the respondent by filing any reply affidavit.

There is, however, a statement in the minutes of the meeting of the Committee, upon which much stress was laid by the learned counsel for the

respondent. The statement needs to be noticed and reads thus:- “Due to his persistent misconduct, the employee does not enjoy a good reputation

in the public and the overall perception of the general public is that he is a corrupt and delinquent official. There was no material available with the

Committee or before the competent authority to come to such a conclusion nor is there any indication in the minutes of the meeting of the Committee

as to how the Committee arrived at the aforesaid opinion.

11. That being the position, it is evident that the APRs/ACRs of the petitioner as also his other service record like service book were not placed

before the Establishment Committee which arrived at the conclusion for retiring the petitioner prematurely on the basis of aforesaid two FIRs and that

the general reputation of the petitioner was not good. The case of the petitioner is, therefore, fully covered by the judgment in the case of Abdul Majid

Wani's case (supra). Accordingly, the writ petition is allowed and the order impugned is set aside. Respondents to re-instate the petitioner

forthwith along with all consequential benefits.