

Item No.2



Central Administrative Tribunal Jammu Bench, Jammu

O.A. No. 1184/2020

M.A. No.1585/2020

Monday, this the 17th day of May, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Tarun Shridhar, Member (A)

1. Manzoor Ahmad Mir, age 49 years
s/o Ghulam Qadir Mir
r/o Pampore District Pulwama
2. Reyaz Ahmad Shah, age 44 years
s/o Mohammad Ashraf Shah
r/o Batagund Tral Pulwama

..Applicants

(Mr. Bhat Fayaz Ahmad, Advocate)

VERSUS

1. Union Territory of Jammu & Kashmir
Through Commissioner/Secretary to
Food & Irrigation Department
Civil Secretariat, Jammu/Srinagar
2. Chief Engineer, Food & Irrigation Department
Kashmir Srinagar
3. Superintending Engineer, Food & Irrigation Department,
Kashmir Srinagar
4. Executive Engineer, Food & Irrigation Department,
Pulwama Kashmir

..Respondents

(Mr. Rajesh Thappa, Deputy Advocate General)

ORDER (ORAL)**Mr. Justice L. Narasimha Reddy:**

The applicants state that they were appointed in the year 1993 as Class IV employee in the Irrigation & Flood Control Department of Jammu & Kashmir. A detailed inquiry was conducted into the appointments said to have been made in the year 1994. An order was passed by the Government on 09.05.2011, holding that the applicants herein and some others were in fact not appointed at all and taking advantage of the fire accident in the office, they brought into existence some fake service record and were drawing salaries. Accordingly, their services were terminated.

2. The applicants filed SWP No. 1022/2011 before the Hon'ble High Court of Jammu & Kashmir, challenging the order 09.05.2011. The SWP was allowed vide order dated 29.09.2011 and the order dated 09.05.2011 was set aside. It was, however, directed that the respondents shall provide a copy of the inquiry report and then to indicate the proposed action; and thereafter to pass appropriate orders. Stating to be in compliance with that, the respondents issued a copy of the report and issued a charge memo dated 15.10.2011. It was mentioned that there did not exist any order of appointment at all and the applicants were working without any basis. The applicants submitted their representations to the charge memo. On consideration of the

same, the respondents passed an order dated 26.06.2020 holding that the alleged order of appointment dated 05.04.1994, where under the applicants said to have been appointed is cancelled *ab initio*.



3. This O.A. is filed challenging the order dated 26.06.2020. The applicants contend that the Hon'ble High Court examined the issue in detail in SWP No.1022/2011 and without complying with the directions issued therein, the respondents passed the impugned order. They further contend that after issuance of the charge memo, the Government appointed a Committee in 2017 and though the said Committee indicated the particular course of action, even that was not followed and the services were terminated. Various other grounds are also urged.

4. The respondents filed a detailed counter affidavit, opposing the O.A. It is stated that the applicants were not appointed at all and on the basis of the fake appointment orders and service registers, they were drawing the salary for the past several years. It is stated that the directions issued by the Hon'ble High Court to furnish a copy of the inquiry report was complied with and it was only after consideration of the representations made by the applicants in response to the charge memo, that the impugned order was passed. They contend that when there did not exist any

order of appointment, the question of continuing the applicants, or conducting departmental inquiry, does not arise.

5. We heard Mr. Bhat Fayaz Ahmad, learned counsel for applicants and Mr. Rajesh Thappa, learned Deputy Advocate General, at length.



6. In the ordinary situations, whenever any disciplinary action is to be taken against an employee, the concerned Rules provide for issuance of charge memo and conducting of detailed inquiry. In the case of the applicants, the situation is something different, if not extraordinary. After the detailed inquiry, the Government, came to know that there did not exist any appointment order at all in favour of the applicants. Therefore, it issued the order dated 09.05.2011, declaring that the applicants and others, named therein, are not entitled to be continued in service. Aggrieved by that, the applicants filed SWP No.1022/2011 before the Hon'ble High Court. It is brought to our notice that an inquiry was conducted even while the SWP was pending and a report was also submitted. The SWP was allowed on 29.09.2011 by setting aside the order dated 09.05.2011 and directing that the copy of the inquiry report, as also the charge memo, indicating the proposed action, shall be served upon the applicants therein and further steps shall be taken in accordance with law.

7. The charge memo was issued promptly enough on 15.10.2011. What happened thereafter is a matter of concern. Obviously because there was heavy pressure from the applicants



and other similarly situated persons, the matter was made to lay down even while they were being continued in service. To give a semblance of legality to this inaction, spread over a period more than half a decade, a Committee was constituted in the year 2017. That in turn, submitted a report by just observing that the steps indicated by the Hon'ble High Court must be carried forward, as though the implementation of judgment of Hon'ble High Court needed the approval or advice of the Committee. Ultimately, the impugned order was passed. Observations made in paragraphs 7, 8 & 9 read as under :

“7. Whereas, after serving charge sheet to you, you have failed to produce copy of your appointment order to substantiate your claim of appointment and;

8. Whereas, on perusal of the duplicate Service book no certificate has been found recorded, on whose authority the duplicate service book has been prepared; when as per rules the same requires the authority from the Head of department, but in your case no authority has been issued and;

9. Whereas, it has been found that you have been appointed without following transparent mechanism and on pick and choose basis by the then Superintending Engineer Hydraulic Circle Pulwama at his own level in violation of rules as he was not competent to make such appointment and.”

8. The applicants are not able to produce or place before us, any order through which they were appointed. There did not exist any service record. The reply of the applicants, for there not being the service record is, that there was a fire accident in the office. Even if that is true, it was mandatory that the competent

authority must permit the preparation of the duplicate service record. A clear finding is recorded to that effect that there does not exist any such permission, but a duplicate service register was brought into existence.



9. The minimum expected of an employee is that he possesses a copy of appointment order. In fact, that constitutes the basis for his relationship with the Department. The applicants did not place before the Hon'ble High Court or before us, orders of their appointment. The disciplinary authority has also recorded a finding that the applicants did not file any appointment order, nor was it found in the Department. The whole episode reflects a total unsatisfactory state of affairs. The Government offices are not run on such slippery and uncertain and fake records.

10. We do not find any merit in the O.A. It is accordingly dismissed. There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 17, 2021
/sunil/jyoti/dsn/sd/