

Item No.1

Central Administrative Tribunal Jammu Bench, Jammu

T.A. No.1093/2021
(SWP No.158/2019)

Wednesday, this the 3rd day of February, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Abdul Rashid Malik,
Aged about 37 years,
S/o Mohammad Subhan Malik,
R/o Soibugh, Budgam.

..Applicant

(Mr. R A Jan, Sr. Advocate assisted by Mr. Taha Khalil,
Advocate)

VERSUS

1. State of Jammu and Kashmir through,
Commissioner/Secretary to Government,
Industries and Commerce Department, Civil
Secretariat, Jammu/Srinagar.
2. Director,
Handicrafts Department,
Jammu/Srinagar.
3. Joint Director,
Handicrafts Kashmir, Srinagar.
4. Assistant Director,
Handicrafts Budgam.
5. Handicrafts Training Officer,
Budgam.

..Respondents

(Mr. Amit Gupta, Additional Advocate General)



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

The applicant was selected and appointed as Senior Craft Instructor (Silverware). Through an order dated 26.04.2018, he was permitted to join on production of certain certificates, mentioned therein. A clause was added to the effect that the salary of the appointees shall be drawn and disbursed to him, only after his character and antecedents report is received from the Additional Director General of CID. The applicant states that he joined the service soon after the order of appointment was received by him and ever since then, the respondents did not pay the salary at all. He contends that his certificates were verified and found to be genuine and there is nothing against him in character and antecedent also. The applicant filed SWP No. 158/2019 with a prayer to direct the respondents to release the salary.

2. The respondents filed a counter affidavit, stating that the applicant filed an affidavit while joining the duty, that he would abide by the conditions and would not claim the salary till his antecedents are verified and that it is not open for him to file SWP. They have also annexed an order dated 20.06.2019 addressed to the Director, Department of Handicrafts, J & K, Jammu by the Joint Director Handicrafts, Kashmir. It is to the effect that all the certificates, submitted by the applicant, were

found to be genuine and that the Additional District Magistrate has reported that the applicant is not involved in any subversive activities, except a criminal case under FIR No.252/2017 under Sections 341, 452, 354 of RPC.



3. The SWP has since been transferred to the Tribunal in view of the re-organization of the State of Jammu & Kashmir and re-numbered as T.A. No.1093/2021.

4. Today, we heard Mr. R A Jan, learned senior counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General, through video conferencing.

5. It is not uncommon that whenever a candidate is selected for appointment to a post in a public service, not only the verification of certificates is taken up, but also the antecedents of the candidate are examined. In certain cases, the verification of antecedents is undertaken after the candidate is permitted to join and in other cases, the verification is conducted before the candidate joins the service. In the instant case, it is not in dispute that the applicant was permitted to join, soon after the order of appointment was issued. However, his salary was not paid ever since then. An order of appointment contains a clause, which reads:-

“However, the salary of the appointee shall be drawn and disbursed to him only after his character and antecedent report is received from the Additional Director General CID.”



6. On the face of it, the condition cannot be sustained in law. Though the applicant did not challenge the same, clauses of that nature cannot find place in any establishment, governed by the rule of law. The withholding of salary, *albeit* awaiting the verification of antecedents, would be a clear case of exploitation of the gullible and innocent. Once the work is extracted, the remuneration therefor is required to be paid. Here itself, it can be mentioned that even where a prisoner, undergoing sentence, is made to work within prison or outside, he is paid for the work done by him. A person, who is appointed on selection, cannot be treated worse than that. It is a different matter that in case the verification reveals that the antecedents are so objectionable, that he cannot be continued in employment, necessary orders can be passed in that behalf, duly following the procedure prescribed under law. Till such time, there is no way, the respondents can deny the remuneration or the emoluments for the work extracted from the applicant or other similarly placed persons. It is hoped that the administration will bestow its attention to dispense with the conditions of this nature.

7. We, therefore, allow the T.A. directing that the respondents shall release the salary of the applicant for the period during which he worked ever since he joined the post, within a period of

four weeks from the receipt of copy of this order. There shall be no order as to costs.



(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 3, 2021
/sunil/jyoti/vb/ankit/