

IN THE HIGH COURT OF JAMMU AND KASHMIR
TIRUPATI

SWP no. 2227/2016

Reserved on 17.10.19
Pronounced on 23.10.2019

Manzoor Ahmad Bhat

....Petitioner.

Through: Ms. Asma Rashid, Advocate

v/s

State and others

...Respondents.

Through: Mr D. C. Raina, Advocate General with
Mr Rais-ud-din Ganai, G

CORAM:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Whether approved for reporting : Yes

JUDGMENT

01. By the present writ petition, the petitioner seeks a twofold relief; one is that the Government Order No. Finance 229-F of 2016 dated 19. 10.2016, for short impugned order, be declared to be *non-est* in law, therefore, not to be given an effect, thereby allowing the petitioner to continue in service and the second is that the order impugned be quashed.

02. To understand the controversy, as raised in the writ petition in hand, a brief look at the events leading to the filing of the writ petition would be desirable, thus:

03. The petitioner before the Court is stated to have been working as Assistant Accounts Officer in the Accounts Subordinate Service and in his capacity as such he was served with a Government Order No. Finance 229-F of 2016 dated 19.10.2016, impugned herein, by virtue of which the petitioner

has been dismissed from service by invoking the clause (b) of Proviso to SWP no. 2227 of 2016

Section 126 (2) of the Constitution of Jammu and Kashmir that corresponds to Article 311 (2) of the Constitution of India. The inquiry, in the matter has also been found to be impracticable in the circumstances, therefore, has been dispensed with. The order of dismissal of the petitioner has been issued for his alleged misconduct, subversion and anti-national activities.

04. The impugned order of dismissal is questioned in the writ petition in hand *in te alia* on the grounds that the constitutional provision taken recourse of by the respondents in dismissing the services of the petitioner must conform to the parameters laid down by the Hon'ble Supreme Court that the conduct of the delinquent employee justifies the dismissal/ removal or reduction in rank; to record satisfaction that holding of enquiry was impracticable on the basis of material and the third parameter is that the competent authority must record the reasons of the requisite satisfaction in writing; the order impugned does not conform to the said parameters, rendering the order impugned arbitrary and colourable exercise of power based on extraneous considerations; that basing the impugned order on the contents of FIR no. 39 of 2016 registered in Police Station Chrare Sharief, on 5th August, 2016, the invoking of the provisions of clause (b) of Proviso to Section 126 (2) of the Constitution of Jammu and Kashmir gets vitiated in law; that the name of the petitioner does not figure in the FIR no. 39/2016, therefore, the impugned order is mechanically issued; that there were no reasons for dispensing the enquiry in the matter; issuance of the impugned order is misuse of the authority of respondent no. 1. Etcetera.

05. Upon notice, the respondents appeared and reply on behalf of respondent no. 1 was filed.

06. Heard learned counsel for the parties, and perused the material made available.

07. The Court, in terms of order dated 10.10.2019, in view of the submission made by the learned counsel for the petitioner that petitioner's name does not figure as an accused in case FIR no. 39/2016 registered at Police Station, Chrar-e-Sharief which formed the basis for issuing the impugned order, asked the learned State Counsel to ascertain from the police concerned the status of the FIR vis-à-vis the figuring or otherwise of the petitioner in the FIR no. 39/2016 of Police Station Chrar-e-Sharief.

08. Learned State Counsel sought and was granted permission to file the status report in the open Court in compliance to the order dated 10.10.2019 and accordingly the status report was taken on record. Perusal of the status report would reveal that the name of the petitioner does figure in the FIR no. 39/2016, therefore, the plea taken by the petitioner that he does not figure in the FIR does not survive.

09. The learned counsel for the petitioner, while reiterating the grounds of challenge, submits that the impugned order is bad in law as it does not reflect anywhere as to how the satisfaction was derived by the competent authority to dispense with the enquiry in the matter.

10. On the other hand, Mr D. C. Raina learned Advocate General, submits that the petitioner has indulged in subversive activities which were detrimental for the peace and public order, therefore, the impugned order was very much warranted and the competent authority is vested with a power to put an end to

the anti-national activities of a Government Employee and the recourse, in that view of the matter, taken to the constitutional provision by the respondents is justified in dispensation of the enquiry. He further submits that there is no legal obligation upon the respondents to conduct an inquiry, put him to notice and give him the reasonable opportunity of being heard while exercising the powers conferred under Clause (b) of sub-section 2 of Section 126 of the Constitution of Jammu & Kashmir.

11. Considered the submissions made.

12. The petitioner, Assistant Accounts Officer, in the Sericulture Department stands dismissed from service in terms of the impugned order which reads as under:

“Whereas, Shri Manzoor Ahmad Bhat, is presently posted as Asst. Accounts Officer in the Sericulture department; and

Whereas, DGP CID vide his above referred to letter has forwarded a copy of dossier and other related documents in respect of Shri Manzoor Ahmad Bhat and reported adversely about his activities; and

Whereas, on perusal of the dossier and other related documents, it transpires that the subject has been found involved in anti-national activities which include, taking active part in causing disturbance and disorder to the public peace, intimidation to general public/ shopkeepers to observe shutdown amid calls

given by separatists and instigating the youth to indulge in stone pelting; and

Whereas, it has been reported that on 05.08.2016, Shri Manzoor Ahmad Bhat along with other anti-social/ anti-national elements with the intention of creating law and order situation and exposing human life to threat, pelted stones upon the Police as well as CRPF personnel at Lamdar Colony near P/S Charar-e-Sharief; as a result of which, Police officers/ officials and CRPF personnel sustained injuries and Government property got damaged; and

Whereas, a case FIR No. 39/2016 under sections 147, 148, 149, 336, 332 and 427 RPC stands registered against him in Police station, Charar-e-Sharief; and

Whereas, being a Government employee, Shri Manzoor Ahmad Bhat was not expected to indulge in the aforesaid activities and instead was supposed to maintain absolute integrity, devotion to duty and do nothing which is unbecoming of a Government employee; and

Whereas, the aforesaid activities of Shri Manzoor Ahmad Bhat are not only aimed at questioning the Sovereignty and Integrity of India but are also violative of rule 14 and 20 of the Jammu and Kashmir Government Employees (conduct) Rules, 1971. The continuation in service of Shri Manzoor Ahmad Bhat

will not only set a bad precedent but would tantamount to putting a premium on including in misconduct, subversion and anti-national activities; and

Whereas, any delay in proceeding against Shri Manzoor Ahmad Bhat will provide him an opportunity to further carry out his anti-national activities which endanger the sovereignty and security of the State. Moreover, in the prevailing situation and keeping in view the charged atmosphere including threat perception to witnesses, it would not be feasible for the witnesses to depose in case of an inquiry; and

Whereas, for the reasons stated hereinabove, I am satisfied to dispense with the inquiry, as the holding of inquiry against the official is not practicable in the given circumstances.

Now, therefore, in exercise of powers conferred under clause (b) of sub-section (2) of section 126 of the Constitution of Jammu and Kashmir, it is hereby ordered that Shri. Manzoor Ahmad Bhat, presently posted as Asst. Accounts Officer in the Sericulture Department is dismissed from service with immediate effect.”

13. The validity of the impugned order of dismissal is challenged primarily on the ground that the dispensation of inquiry was unreasonable, therefore, the court would look into the tenability or otherwise of the impugned order on the touchstone of law.

14. In the reply filed by the respondent no. 1, it is stated that because of the involvement of the petitioner in subversive activities his continuation in the government service was not thought feasible and because of the reasons recorded in the impugned order the holding of enquiry was impracticable.

15. The submission of the learned counsel for the petitioner that the impugned order is bad in law because no reasons are given for dispensing with the inquiry is erroneous because the respondents have very clearly indicated in the impugned order that the holding of inquiry was impracticable because of the “prevailing situation and keeping in view the charged atmosphere including threat perception to witnesses, it would not be feasible for the witnesses to depose in case of an inquiry”. Thus, in that view of the matter the submission that the enquiry was dispensed with unreasonably does not survive. The court hastens to add here that the court will not, however, sit in judgment, over the relevancy of reasons for reaching to such conclusion like a court of first appeal. Records reveal that satisfaction with regard to dispensing with the inquiry stand recorded on the material available before the authorities, therefore, the court is satisfied with the compliance of mandate of law. The sealed envelope containing certain record was perused and be returned to the learned Advocate General after resealing the same.

16. The Hon’ble Supreme Court as also this court has rendered decisions in number of cases of similar nature. The Apex Court in case titled *Kuldeep Singh v. State of Punjab* reported as (1996) 10 SCC 659 has taken the same view. This Court, while referring to the decision *supra* of the Hon’ble Apex Court, in case titled *Barkat Hussain v. State of J&K* reported as 1998 SLJ 328 extracted the relevant portion of the Apex court judgment upheld the order of dismissal. The relevant portion is taken note of as follows:

“It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the government servant concerned is or is not a party to bringing about such an atmosphere. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of article 311 makes the decision of the disciplinary authority on this question final... The finality given to the decision of the disciplinary authority by article 311 (3) is not binding upon the court so far as its power of judicial review is concerned....

Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under article 226 or this Court under article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not... In examining the relevancy of the reasons, the court will consider the situation which

according to the disciplinary authority made it come to the conclusion that all was not reasonably practicable to hold the inquiry.... In considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment, over them like a court of first appeal.”

17. The Division Bench of this Court in case titled *Farooq Ahmad Mir v. State of J&K and others reported as 2005 (1) JKJ 181* has, while referring to the law laid down by the Constitution Bench of the Apex Court in case titled *Union of India v. Tulsiram Patel*, taken a similar view. The court while framing its opinion has extracted the relevant observations of the Constitution Bench which are extracted as under:

“The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that ‘it is not reasonably practicable to hold’ the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are ‘not reasonably practicable’ and not ‘impracticable’.... Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of the reasonable man taking a reasonable view of the prevailing situation...The reasonable practicability of holding an

inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of article 311 makes the decision of the disciplinary authority on this question final....

.....

In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was

deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

18. In yet another case titled *State of J&K and anr. V. Shabir Ahmad Bhat* reported as 2007 (1) JKJ 33, the Division Bench of this Court has held that the truth or correctness of the material before the Governor cannot be questioned by the court nor will it go into the adequacy of the material for substituting its opinion for that of the Governor. Paragraph no. 16 of the judgment is extracted hereunder:

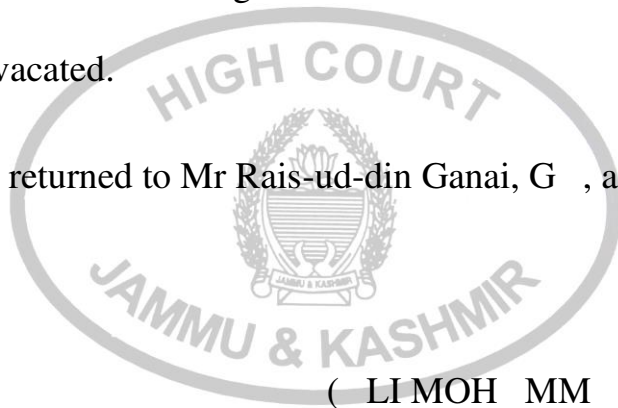
“16. In view of the law laid down by the Supreme Court of India, as extracted hereinabove, we would like take the view that although Court cannot sit in appeal over the order or substitute its own satisfaction for the satisfaction, of the Governor, when he acts under Section 26 (2) of Constitution of J&K, yet it would be within the limits of its jurisdiction of judicial review to see as to whether or not there was any material before the Governor which may be relevant for arriving at his satisfaction as to the action, taken against him under Section 126 (2) (c) of the Constitution of J&K. The truth or correctness of the material before the Governor cannot be questioned by the Court nor will it go into the adequacy of the material for substituting its opinion for that of the Governor. This was as regards the sufficiency

*or otherwise of the material on the basis whereof the
action was taken by the Governor.”*

19. Having regard to above narration the Court is of the firm opinion that the respondents have exercised the power under section 126 (2) (b) of the Constitution of J&K, reasonably and that the satisfaction, vis-à-vis dispensing with the inquiry, has been arrived at, in view of the then prevailing circumstances and based on the fact that there was a threat perception to the witnesses to depose in the inquiry. The inquiry, therefore, is held to have been rightly dispensed with.

20. In the above background, the writ petition is held to be without any merit, therefore, dismissed along with connected CMs. Interim direction, if any, shall stand vacated.

21. Record be returned to Mr Rais-ud-din Ganai, G , against receipt.



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JUDGE

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