

**HIGH COURT OF JAMMU & KASHMIR
TRINAGAR**

**WP(C) 2676/2022
CM(6771/2022)**

Muheet Ahmad Butt

... Petitioner/ Applicant(s)

Through: Mr. Salih Pirzada, Advocate

V/s

UT of J&K and others

Through: Mr. Mohsin Qadiri, Sr. Advocate

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL, JUDGE

ORDER
02-12-2022

1. The case set up by the petitioner in the instant petition is that the petitioner came to be appointed in the respondent University of Kashmir as Scientist-B/Information Officer in the pay scale of Rs. 8000-275-39,500 w.e.f. 13.3.2004, and, thereafter on 8.10.2012 the petitioner came to be appointed as Scientist-D in the department of Computer Sciences of the respondent university after having served the university as a Contractual Lecturer from June 2000 to May 2002 as also from January 2004 as Trainee Engineer having been deputed for undergoing training at Bangalore. The petitioner in essence states to have an immaculate service career and not being involved in any activity prejudicial to the interest of the state.

2. The service of the petitioner is stated to have been terminated by the respondent no. 1 in terms of order no. 929-JK(G D) of 2022 dated 13.8.2022 by order of the **Lieutenant Governor** under and in terms of article 311 (2) (c) Constitution of India.
3. Mr. Salih Pirzada, learned counsel for the petitioner, contends that the impugned order has been issued without any competence and jurisdiction by the respondent no. 1, in that, the University of Kashmir is an autonomous body wherein the service conditions of its employees and teachers are governed by the provisions of Kashmir University Act 1969 and that the provisions of article 311 (2) (c) have been invoked by the respondent no. 1 without drawing objective satisfaction inasmuch as arbitrarily and in breach and violation of legal, statutory, fundamental rights of the petitioner. The counsel for the petitioner, thus, would insist for staying of the impugned order at this stage on the aforesaid premise as well as that the petitioner has a strong *prima facie* case in his favour as also the balance of convenience and that the withholding of the interim relief would result in perpetuation of irreparable injury upon the petitioner.
4. Mr. Mohsin Qadiri, senior G, appearing counsel for respondent no. 1, however, would controvert the submissions made by the learned counsel for the petitioner and would oppose the grant of interim relief as prayed by the counsel for the petitioner on the ground that the grant of interim relief at this stage would amount to grant of final relief to the petitioner,

which having regard to the facts and circumstances of the case is not legally permissible.

5. Heard learned counsel for the parties.

6. There is a long line of decisions rendered by the apex Court categorising and classifying the cases wherein the interim relief having the colour and texture of a final relief could be granted at the interim stage. It is laid down by the apex Court that an order of dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant cannot be stayed at an interim stage on the premise that the same would result in wrong usurpation of the office by the employee during the operation of the interim order if later on such order of dismissal, removal, reduction in rank, termination, compulsory retirement or reversion, is upheld at the final stage, as the said act becomes irreversible and the employer cannot suitably be compensated by moulding the relief at the final stage. However, it is also settled law that **in extreme and rare cases** where the order is *prima facie* on the face of it *mala fide* or bad in law, then the court may grant such an interim relief at the interim stage. However, in such a case there must be the availability of a very strong *prima facie* case — of a standard much higher than just a *prima facie* case and the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant. Thus the *sine qua non* for grant of such an interim

relief at an interim stage has to be that the case must be a **rare and exceptional one**.

7. Reverting back to the case in hand and having regard to the aforesaid legal principles, the petitioner admittedly has been dismissed from the service by the respondent no. 1 by order of the Lieutenant Governor in terms of impugned order dated 13.8.2022 while invoking article 311 (2) (C) of the Constitution of India. It is also an admitted fact that the respondents have yet to file the response/reply to the writ petition and to place their case before this court in a response to the case set up by the petitioner.

8. Perusal of the application for interim relief would reveal that the petitioner has not averred either in the writ petition or in the application that he has a very strong *prima facie case* or else that withholding of an interim relief would cause an irreparable injury to him. Thus, in view of the above, the interim relief seeking staying of the impugned termination order by the petitioner in the application for interim relief, which in essence would have colour and texture of grant of final relief, cannot be granted at this stage in favour of the petitioner. Even otherwise, having regard to the facts and circumstances of the case, notwithstanding the failure of the petitioner to have pleaded the existence of a very strong *prima facie case* in his favour or else that the petitioner would suffer and irreparable loss and injury in the event interim relief is not granted, the case of the petitioner is not found to be a rare and

exceptional one warranting grant of an interim relief by way of staying the operation of the impugned dismissal order at this stage.

9. For the foregoing reasons, the prayer made in the application is declined at this stage. However, in order to maintain scales of balance evenly, it would be appropriate to direct the respondents not to undertake any process for filling up on regular basis the post of Scientist-D, i.e. the post the petitioner was holding prior to the issuance of the impugned termination order.

10. Modification, vacation, alteration on motion.

11. List on 14.2.2023.

Srinagar
02-12-2022
N. Imad



(J. VED IQB. L. W. NI)
JUDGE