



Item No.10
Regular List

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Pronounced on: 13.08.2026

Uploaded on: 17.08.2026

*Whether the operative part or full
judgment is pronounced: Full*

SWP No.977/2018

BASHIR AHMAD GANAI ...PETITIONER(S)/APPELLANT

Through: - Mr. I. Sofi, Advocate.

Vs.

STATE OF J&K AND ORS. ...RESPONDENT(S)

Through: - Mr. Shakir Haqani, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT(ORAL)

1) Through the medium of present writ petition, the petitioner has challenged Order No.JKSRTC/GMA/PS/J/993 dated 20.03.2018, to the extent it relates to the treatment of the period with effect from 21.10.2011 till the date of joining duties by him with the respondent-Corporation as 'dies non'. A further direction has been sought upon the respondents to treat the said period as on duty and to release all consequential service benefits in favour of the petitioner.

2) Briefly stated, the facts giving rise to the filing of the present writ petition are that, vide Order No.379/JKSRTC/EC-IV dated 03.06.2006, issued by the J&K State Road



Transport Corporation (hereinafter “the respondent Corporation”), services of the petitioner were terminated by the respondent Corporation. The said order came to be challenged by the petitioner before this Court by way of a writ petition bearing SWP No.2522/2011. The ground urged by the petitioner for challenging the order of his termination was that no enquiry had been conducted against him and that his absence from duty was neither wilful nor deliberate, but was occasioned on account of his serious ailment. The said writ petition was allowed by this Court in terms of judgment dated 20.12.2017 with the following directions:

- I. *By a writ of Certiorari, the impugned order bearing No.379JKSRTC/EUV dated 3rd of June, 2006 is quashed;*
- II. *By a writ of Mandamus, the respondents are directed to reinstate the petitioner in service as Conductor forthwith,*
- III. *The respondents shall be at liberty to conduct an enquiry against the petitioner vis-à-vis his alleged unauthorized absence. In the event, the respondents decide to conduct the enquiry against the petitioner same shall be conducted and concluded within a period of three months from the date the copy of this judgment is served on the respondents. It goes without saying that the petitioner shall be given an opportunity of hearing in the enquiry process.*
- IV. *The respondents are further directed to pay the petitioner the salary for the services rendered after his reinstatement/joining the service and the decision with reference to payment of consequential benefits vis-à-vis the period from November, 2004 till the decision in the writ petition, shall depend on the inquiry, if any, conducted; and*



V. *If no enquiry is conducted against the petitioner within the time granted, then the petitioner shall be entitled to all consequential benefits.*

3) Pursuant to the aforesaid directions, the petitioner was reinstated in service and an enquiry was held by the respondents and vide order No.JKSRTC/GMA/PS/J/651 dated 25.01.2018, the petitioner was reinstated in service and it was provided that the fate of the intervening period would be decided later on.

4) A charge sheet was served upon the petitioner, whereafter the enquiry was held and vide impugned Order No. JKSRPC/GMA/PS/J/993 dated 20.03.2018, the period of absence of the petitioner from service with effect from 01.11.2004 till his remission i.e. 20.10.2011, has been treated as leave of whatever kind due to him, whereas the period with effect from 21.10.2011 till date of his joining in the respondent Corporation has been treated as 'dies non'.

5) The petitioner has challenged the impugned order dated 20.03.2018 on the grounds that no enquiry was held against him after the service of charge sheet upon him, therefore, the period with effect from 20.10.2011 till joining of his duties in the respondent Corporation could not have been treated as 'dies non', which amounts to infliction of punishment upon him. It has been further contended that after filing of reply to



the charge sheet, no evidence was adduced by the respondent Corporation in support of the charges and even the petitioner was not given any opportunity to adduce evidence in support of his defence. It has also been contended that the petitioner adequately answered all the charges and it was submitted by the petitioner that he was suffering from serious ailment and that he had not remained absent from duty wilfully or intentionally. It has been further submitted that the petitioner had produced the medical certificate issued by Medical Superintendent, Government Psychiatric Disease Hospital, Srinagar, bearing No.PSY/MB/2016/237 dated 24.05.2016, which reveals that the petitioner had been a registered patient of the hospital under registration No.A-05030 because he was suffering from general anxiety disorder and was under treatment from 01.11.004 to 2010.2011. Photocopy of the said certificate has been annexed as Annexure-D to the writ petition.

6) The respondent-Corporation, in its reply, has submitted that in compliance to the judgment of the Court, fresh enquiry proceedings were initiated against the petitioner, whereafter the impugned order dated 20.03.2018 came to be issued. It has been submitted that the enquiry was held in due adherence to the rules and principles of natural justice and the petitioner was given full opportunity to submit his



defence. It has been submitted that during the course of enquiry, the petitioner produced medical certificate dated 24.04.2016 (supra), purported to have been issued from the office of Medical Superintendent, Government Psychiatric Disease Hospital, Srinagar, but recently, after the retirement of the petitioner from service, it came to the notice of the respondent-Corporation that the said certificate is forged and this fact has been verified by the concerned hospital vide communication No.Psy/MD/2018/491 dated 04.10.2018.

7) In view of the stand taken by the respondent-Corporation about genuineness of certificate dated 24.05.2016 as produced by the petitioner during the course of enquiry and even before this Court as Annexure-D to the writ petition, an order came to be passed by this Court on 12.09.2023, whereby Deputy Director, Health Services, Kashmir, and Medical Superintendent, Government Psychiatric Diseases Hospital, Srinagar, were directed to file detailed report in respect of the authenticity of certificate bearing No.PSY/MB/2016/237 dated 24.05.2016.

8) Pursuant to the aforesaid direction, compliance report came to be filed by aforesaid authorities. In the compliance report, Deputy Director, Health Services, Kashmir, has reported that that certificate has been found to be 'not



genuine'. To support this claim, the copies of correspondence exchanged between Medical Superintendent, Government Psychiatric Diseases Hospital, Srinagar, with Director Health Services, Kashmir, have been placed on record. Medical Superintendent, Government Psychiatric Diseases Hospital, Srinagar has also addressed a communication to this Court on 07.10.20923, giving full details about the matter.

9) As per the aforesaid communication dated 07.10.2023, the petitioner had approached Medical Superintendent for issuance of a medical certificate for departmental purposes in May 2006. In response to application of the petitioner, a Board of Doctors examined him and issued a medical certificate vide No.PSY/MB/2016/237 dated 24.05.2016, which reads as under.

"It is hereby certify that patient namely Bashir Ahmad Ganai S/o Gh. Nabi Ganai R/o Kanispora Baramulla is registered patient of this hospital under registration No. A-05030. On the basis of history, mental status examination done and previous records checked in medical board today. It is hereby certified that patient was suffering from General Anxiety disorder and is currently in full remission".

10) It has been submitted that regarding verification of the aforesaid certificate, communication dated 12.03.2018 was received from the Directorate of Health Services and in response thereto, original medical certificate was sought. Thereafter, vide communication dated 28.03.2018, the



original medical certificate was sent by the Director Health Services, Kashmir, to Medical Superintendent, Government Psychiatric Diseases Hospital, Srinagar. It has been submitted that the said medical certificate was verified by the signatories and it was reported that there is tampering of the signatures and, as such, the certificate is not genuine. It has further been submitted that in the year 2019, another communication was received from the Directorate of Health Services, Kashmir, with regard to verification of the same certificate. In response to the said communication, it was again reported that, after verification of the certificate by the signatories, the same has been declared as not genuine.

11) After the filing of the compliance report by the officers of Directorate of Health Services and Medical Superintendent concerned, the petitioner was afforded the opportunity of filing his response thereto. In his response, it has been pleaded by the petitioner that vide communication dated 19.03.2018, Medical Superintendent had admitted that the records pertaining to the case are not traceable, therefore, the certificate in question could not have been termed as fake. It has been further contended that in response to an RTI query, the Public Information Officer of the office of Medical Superintendent, Government Psychiatric Diseases Hospital,



Srinagar, has admitted that the office copy of certificate dated 24.05.2016 is not traceable. The petitioner has also placed on record copy of medical record to show that he had undergone treatment in Government Psychiatric Diseases Hospital, Srinagar, under registration No.A-05030, showing the date of admission as 23.04.2011.

12) I have heard learned counsel for the parties and perused record of the case.

13) Learned counsel for the respondents has raised preliminary objection to the maintainability of the writ petition on the ground that discretionary writ jurisdiction cannot be exercised in favour of a litigant who has not come to the Court with clean hands and who has produced a forged certificate along with his writ petition.

14) Before dealing with the aforesaid contention of learned counsel appearing for the respondents, it has to be ascertained as to whether or not the certificate annexed as Annexure-D to the writ petition is forged. As already stated, the Medical Superintendent concerned has, vide his communication dated 07.10.2023, admitted that the medical certificate was issued in favour of the petitioner when he approached the said hospital in May 2016 and the certificate was issued vide No.PSY/MB/2016/237 dated 24.05.2016.



The contents of the said certificate have been reproduced hereinbefore. It would be apt to notice the contents of the certificate annexed as Annexure-D to the writ petition, which bears the same dispatch number and date as has been mentioned in communication dated 07.10.2023 (supra) of Medical Superintendent. The certificate produced by the petitioner before this Court reads as under:

“It is hereby certify that patient namely Bashir Ahmad Ganai S/o Gh Nabi Ganai R/o Kanispora Baramulla is registered patient of this hospital under registration No. A-05030. On the basis of history, mental status examination done and previous records checked in medical board today, it is hereby certified that patient was suffering from General Anxiety disorder and is currently in full remission. The patient was under treatment since 01-11-2004 to 20-10-2011 in OPD basis. The attested passport size photograph of the patient is appended herewith.”

15) There is a marked difference between the two certificates, inasmuch as the certificate dated 24.05.2016, which the Medical Superintendent has reproduced in his letter dated 07.10.2023, the last two sentences underlined hereinbefore, which are part of the Medical Certificate annexed as Annexure-D to the writ petition do not find mention. In the certificate referred to by the Medical Superintendent, it is nowhere mentioned that the patient was under treatment since 01.11.2004 to 20.10.2011 on OPD basis and it is also not mentioned that the attested passport size photograph of the patient is appended herewith. These



two sentences, it seems, have been incorporated by the petitioner by preparing another certificate with more or less same language as is mentioned in the actual certificate, the reference whereof has been made by the Medical Superintendent. The addition of last two sentences, it appears, has been effected with a definite purpose. It appears that the petitioner, in order to justify his absence from duty from 01.11.2004 to 20.10.2011, has incorporated these sentences in the certificate, which does not find mention in the certificate actually issued by Medical Superintendent, Government Psychiatric Diseases Hospital, Srinagar. It has been categorically stated by the issuing authority that the signatures appearing on the certificate produced by the petitioner before this Court do not pertain to the actual signatories.

16) While it may be correct that the petitioner has been a patient undergoing treatment with Government Psychiatric Diseases Hospital, Srinagar, but he has produced a forged certificate before this Court with a view to explain his unauthorized absence from 01.11.2004 to 20.10.2011 by incorporating the last two sentences in the certificate annexed as Annexure-D to the writ petition. The contention of the petitioner, that the hospital authorities have admitted that the record is not traceable, would not alter the situation



because the certificate on which he is relying is not genuine and there could be any record corresponding to the contents of the said certificate available with the concerned hospital. So far as the medical record produced by the petitioner is concerned, the same reflects that he had been admitted to Psychiatric Hospital on 23.04.2011. The record is not pertaining to the period during which the petitioner claims to have been under treatment in the said hospital i.e. from 2004 to 2011. Therefore, the contention raised by the petitioner on the basis of record/communications produced by him would not come to aid of his case.

17) Once it has been found that the petitioner has produced a forged certificate before this Court, it would not be permissible for this Court to exercise its discretionary writ jurisdiction under Article 226 of the Constitution in favour of petitioner. The legal position in this regard is well settled. The Supreme Court has, in the case of **Prestige Lights Ltd v. SBI**, (2007) 8 SCC 449, held that in exercising power under Article 226 of the Constitution of India, the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. The Supreme Court further held that if there is suppression of material facts or twisted



facts have been placed before the High Court, then it will be fully justified in refusing to entertain a petition under Article 226 of the Constitution. The Court further held that in exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. This rule has been evolved in larger public interest to deter unscrupulous litigants from abusing process of court by deceiving it.

18) Again, the Supreme Court has, in the case of **A. V. Papayya Sastri and others v. Govt. of A. P. and others**, (2007) 4 SCC 221, observed as under:

21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

"Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

19) From the foregoing analysis of the legal position, it is clear that if the very basis of a writ petition rests on a fraudulent document or twisted facts, then a Writ Court



would be justified in throwing out the case of such a litigant without going to the merits of the case.

20) In the present case, it has been established that the petitioner has produced a forged certificate before this Court, which has been annexed as Annexure-D to the writ petition. Therefore, without going into the merits of the writ petition, the same is liable to be dismissed.

21) However, while dismissing the writ petition, the petitioner cannot be allowed to go scot-free. There is material on record to *prima face* disclose commission of forgery and allied offences. Section 336 of BNS makes an offence of forgery punishable and it provides that whoever makes any false document, *inter- alia*, to support any claim or title with intent to commit fraud, commits forgery. Similarly, Section 340 of BNS makes the act of using as genuine any document which he knows or has reason to believe to be a forged document, punishable. Both these offences, *prima facie*, seem to have been committed by the petitioner, as such, he deserves to be prosecuted in accordance with law.

22) Section 215 of BNSS provides the procedure for prosecuting a person for commission of offences punishable under Section 336 or Section 340 of BNS. It provides that except on complaint in writing of the Court or such officer of



the Court as the Court may authorize in writing in this behalf, the Court cannot take cognizance of the aforesaid offences, if the same are committed in relation to proceedings before a Court.

23) In view of the aforesaid legal position and having regard to the fact that the petitioner is required to be prosecuted for having used a forged document to support his claim before this Court, a direction is issued for filing of a complaint against him before the Court of learned Chief Judicial Magistrate, Srinagar. The Registrar Judicial, Srinagar, is authorized to file the complaint against the petitioner before the learned Chief Judicial Magistrate, Srinagar, on behalf of this Court.

24) In view of what has been discussed herein before, the writ petition is dismissed with a direction to the Registrar Judicial, Srinagar to file a criminal complaint against the petitioner before the Court of learned Chief Judicial Magistrate, Srinagar, for his prosecution in accordance with law.

(Sanjay Dhar)
Judge

SRINAGAR

13.08.2026

“Bhat Altaf-Secy”

Whether the **judgment** is reportable: **YES/NO**