

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

Reserved on: 06.03.2024

Pronounced on: 19.03.2024

WP(C) No.1324/2022

CM No.3163/2022

TASLEEM ARIF

...PETITIONER(S)

Through: - Mr. M. S. Reshi, Advocate.

Vs.

UT OF J&K & OTHERS

...RESPONDENT(S)

Through: - Mr. Raies-ud-din Ganai, Dy. AG.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) On the recommendation of then Minister for PHE, Irrigation, Flood Control and Tourism of the erstwhile State of J&K, the petitioner was engaged as consolidated worker vide order dated 12.04.2008. In the year 2009, the respondent No.3 vide order dated 01.01.2009 disengaged the petitioner from the service. The petitioner made a representation before the respondent No.3 for release of wages as his wages were withheld and on receipt of the said application, the respondent No.3 rescinded the disengagement order of the petitioner vide order dated 24.09.2010. The withheld wages of the petitioner were released in his favour but his subsequent wages were not released which constrained the petitioner to file a writ petition bearing SWP No.2768/2011 for release of wages and regularization of services in accordance with the provisions of the J&K Civil Services (Special

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Provisions) Act, 2010. The writ petition was disposed of vide order dated 28.12.2011 and the respondents therein were directed to consider the claim of the petitioner for regularization of his services in accordance with the Act (supra) and further the respondents therein were also directed to release the earned wages and till the decision was taken, the petitioner was allowed to continue in service provided he was in position on the post as on that date.

2) Pursuant to the aforesaid order, the wages of the petitioner were released but no consideration to his claim for regularization of his services was accorded by the respondents and the petitioner again filed a writ petition bearing SWP No.1525/2014 which was disposed of vide order dated 18.07.2014 with a direction to the respondents therein to accord consideration to the petitioner's claim in respect of the averments made in the writ petition but still the respondents did not consider the claim of the petitioner for regularization of his services.

3) It is averred in the petition that in the year 2015 the respondent No.3 vide communication dated 23.04.2015 addressed to the respondent No.2, recommended that the services of the petitioner be regularized but no decision was taken. Later a report was submitted by the Committee constituted by the Government vide order dated 07.07.2021, recommending that the appointments and regularizations (147 in MC Baramulla-Total 1481) since 2001 have been done by the office bearers who were not having the mandate to exercise that authority, so the Government may take an appropriate action in the

light of the report. It was simultaneously recommended in the said report that it should also be taken into consideration that if action against these employees is initiated, including their disengagement, then the functioning of these Municipal Councils/Committees will be hampered to a large extent as these employees form a substantial part of workforce in these councils/committees. It is further averred that the respondent No.2 vide order dated 25.05.2022 directed the respondent No.3 to disengage the petitioner by passing speaking order and on the basis of order dated 25.05.2022, the respondent No.3 issued an order dated 01.06.2022, stating that pursuant to the directions of the respondent No.2 and subsequent examination of the records pertaining to the case, the services of the petitioner are disengaged with immediate effect.

4) The petitioner has impugned the order dated 01.06.2022 on the ground that the order is illegal and the Government has not taken any decision on the report of the Committee and the order impugned has been passed just to defeat the order dated 28.12.2011 passed by this Court. It is also stated that even if it is admitted for the sake of arguments that the Executive Officer had no authority or competence to appoint any person in the respondent department, then he cannot be said to have competence to pass the order of disengagement of the petitioner. It is further urged that the petitioner having been appointed on consolidated wages is not holding any substantive post and right from the year 2008, the respondents have utilised his services for more

than fourteen years, therefore, they cannot be allowed to shun-out the petitioner in an illegal and arbitrary manner and that too without affording any opportunity of hearing to the petitioner.

5) The petitioner besides challenging the order impugned has also sought a direction upon the respondents to allow him to continue to work as Helper in the respondent department and pay him the wages attached to the said post.

6) The respondents have filed the response stating therein that a complaint was lodged by then elected councillors of Municipal Council, Baramulla, concerning the illegal appointments/engagements made in Municipal Council, Baramulla, in connivance with the officials of the council. It is further stated that the Vigilance Organization conducted the verification in the matter and forwarded its findings to the Secretary to Government, General Administration Department with a copy endorsed to Housing and Urban Development Department. The General Administrative Department vide communication dated 14.03.2014 forwarded the findings of the Vigilance Organization to the Administrative Department for initiating regular departmental action against the accused officers/officials strictly in accordance with J&K CCA Rules, 1956. The Administrative Department vide No.HUD/LSG/ULBK/55/2014 dated 26.05.2014 forwarded the findings of the Vigilance Organization along with a copy of OM of the General Administration Department and draft articles of charges and statement of imputation to the Directorate of Urban Local Bodies, Kashmir, for

getting the matter probed. The Vigilance Organization has made the following findings against the officers/officials of the Municipal Council, Baramulla:

- (i) Shri Bashir Ahmad Mir, the Executive Officer, Municipal Council Baramulla in league with his subordinate staff has engaged his son as Computer Assistant and sons of Secretary and Secretary -Cum- Clerk as Daily Wager and Sanitary Supervisor respectively in violation of the norms and laid down procedure.
- (ii) Among the appointees, Tasleem Arif Lone S/o Gh. Nabi Lone R/o Ushkara Baramulla (Petitioner herein) has surfaced to be brother of Zahoor Ahmad Lone, the Senior Assistant of Municipal Committee Baramulla. Junaid Hussain Mir appointed as Computer Assistant happens to be the son of Bashir Ahmad Mir, then Executive Officer and Ali Mohammad Ganie Appointed as Sanitary Supervisor happens to be brothers of Secretary-cum- Clerk, Gh. Ahmad Ganie.
- (iii) All the appointees/engages had been disengaged by the then Executive Officers vide order dated: 01.01.2009.
- (iv) Shri Gh. Mohd Lone, the then Executive Officer during his posting in Municipal Council Baramulla with malafide intention has incorporated the name of Tasleem Arif Lone (Petitioner) in pay rolls of Municipal Council Baramulla and has facilitated the drawal of salary from the month of September 2011 to March 2012).

It is further averred that the public employment is a national wealth and all eligible candidates have a right of consideration for being selected/appointed. An equal opportunity for competing for employment is guaranteed by the constitutional scheme as mandated in terms of Articles 14 and 16 of the Constitution of India. It is further stated that the impugned order was issued pursuant to the communication dated 25.05.2022 after examining the records pertaining to the case.

7) Precisely, the stand of the respondents in their response is that the petitioner has managed his engagement and continuance in connivance with then Executive Officer who also facilitated drawal of salary of the petitioner and because of the same, the Government decided to retire the then Executive Officer prematurely. It is also averred that the engagement of the petitioner was initially on consolidated wages and he continued to work on an extension basis.

8) Learned counsel for the petitioner submitted that a valid engagement order was issued in favour of the petitioner and he has been condemned unheard. He further submitted that the order impugned has been passed in order to defeat the earlier orders passed by this Court in the writ petitions preferred by the petitioner.

9) *Per contra*, Mr. Raies-ud-din Ganai, Dy. AG, submitted that the petitioner was, in fact, a backdoor appointee and he was engaged just on the recommendation of then Minister, which has resulted into denial of opportunity of participation in selection process for engagement to the other eligible candidates. He further submitted that once the officer who engaged the petitioner was not having competence to engage the petitioner, the petitioner cannot claim any right to continue at the said post and the order impugned has been rightly passed by the respondents.

10) Heard and perused the record.

11) The perusal of the record reveals that the petitioner was

engaged on consolidated basis vide order dated 12.04.2008 on the recommendations made by then Minister of the erstwhile State of J&K. In terms of Section 307 of the Jammu and Kashmir Municipal Act, 2000, the municipality may with the previous approval of the Government or any other officer authorized in that behalf, appoint such officers and servants as it considers necessary for the efficient discharge of its duties. Learned counsel for the petitioner has not been able to establish before this Court that the respondent No.3 was competent to engage the petitioner even on consolidated basis. In view of the admitted facts, the denial of opportunity of hearing to the petitioner by the respondents before passing the order impugned is inconsequential, as if the same had been granted, the result would have been the same. It would be profitable to take note of the judgment of Apex Court in **State of Uttar Pradesh v. Sudhir Kumar Singh, 2020 SCC Online SC 847**, wherein Apex Court considered the scope of ‘Audi Alteram Partem’ and has observed as under:

39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the along with connected matters Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

12) There is substance in the submissions made by learned counsel for the respondents that the engagement of the petitioner even on consolidated basis has resulted into denial of opportunity of participation in the selection process to other eligible candidates. There is not even an iota of doubt that the petitioner has been engaged just on the recommendations of then Minister without any selection process. Otherwise also, it is settled law that once the initial engagement of a candidate is not by the competent authority, his services cannot be regularized (See **Secretary, State of Karnataka and Ors. v. Umadevi and Ors. (2006) 4 SCC 1**). Once this Court has come to the conclusion that the initial engagement of the petitioner was not in accordance with law, he cannot be allowed to continue to work with the respondents. There is not illegality in the impugned

order passed by the respondents. Rather the respondents have been categorical in their response that they have taken action against the officers/officials who made the backdoor engagements.

13) Viewed thus, there is no merit in the present petition and the same is, accordingly, dismissed.

14) Record be returned to learned counsel for the respondents.

(Rajnish Oswal)
Judge

SRINAGAR
19.03.2024
"Bhat Altaf-Secy"

Whether the order is reportable: YES/NO

