

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 2260/2022
CM No. 5650/2022

Reserved on: **07.12.2023**

Pronounced on: **16.12.2023**

01. Feroz Ahmed Sheikh, aged 35 years
S/O. Ghulam Mohammad Sheikh
R/O Upper Buchwara, near Masjid Dalgate Distt. Srinagar.
02. Maqbool Hussain, aged 43 years
S/O: Mohammad Azam Lekhan
R/O Lesana Surankot Distt. Poonch.
03. Hilal Qadir Malik, aged 31 years
S/O Late Ghulam Qadir Malik
R/O Buchwara Dalgate, Distt. Srinagar
04. Ghulam Hassan Rather, aged 43 years
S/O Ghulam Qadir Rather
R/O Buchwara (B) Dalgate, Distt. Srinagar
05. Abdul Majeed Koul, aged 44 years
S/O Ghulam Mohammad Koul
R/O Nishat Zeethyar, Distt. Srinagar
06. Younis Amin, aged 32 years
S/O Mohammad Amin Shora
R/O Ibrahim colony, Bemina, Distt. Srinagar
07. Mrs. Sakeena, aged 35 years
S/O Ghulam Ahmed Sheikh
R/O. 33-Nowhatta, Distt. Srinagar
08. Ms. Gousia Jan, aged 33 years
D/O Mohammad Maqbool Malik
R/O Buchwara, Dalgate, Distt. Srinagar
09. Mrs. Shaheena, aged 43 years
D/O Riyaz Ahmad
R/O Horzay, Distt. Leh Ladakh.
10. Javeed Shafi Magray, aged 44 years
S/O. Mohammad Shafi Magray
R/O Wa000, Distt. Kulgam
11. Mrs. Jyoti, aged 39 years
Wd/O. Late Prem Anand
R/O. Purmandal, Tehsil Brahmana, Distt Jammu

12. Syed Anzar Andrabi, aged 33 years
S/O. Syed Nimaz-ud-din Andrabi
R/O. Zadoora, Distt. Pulwama
 13. Mrs. Sameena, aged 36 years
Wd/O. Late Manzoor Ahmed Rather
R/O. Shalpora, Distt. Srinagar.
 14. Mrs. Richa Sawhney, aged 42 years
D/O. Shri Satvir Sawhney
R/O. Quarter No. 300. Rehari Colony Distt. Jammu
 15. Tahir Farooq, aged 38 years
S/O. Late Farooq Ahmed Sheikh
R/O. Munawar Abad, Distt. Srinagar
 16. Showkat Ahmed Lone, aged 34 years
S/O Abdul Razak Lone
R/O Humhama, Distt. Budgam.
 17. Hyder Ahmad Rather, aged 22 years
S/O Mohammad Munawar Rather
R/O DardeporaLolab Distt. Kupwara.
 18. Davood Mushtaq, aged 29 years
S/O Mushtaq Ahmad Mir
R/O Nishat Zeethyar, Distt. Srinagar.
- ...Appellant(s)

Through: Mr. Z.A.Qureshi, Sr.Advocate with
Ms. Monisa Manzoor, Advocate.

Vs.

01. Union Territory of J&K through
Commissioner/Secretary/
Additional chief Secretary,
Industries & commerce Department
Civil Secretariat Srinagar/Jammu
02. Additional Secretary
industries & Commerce Department
Civil Secretariat, Srinagar/Jammu
03. Committee constituted for examining the cases of
Consolidated/need basis/ contractual/re-engagement/contingencies
engaged in the J&K Handloom & Handicrafts Corporation through:
04. Principal Secretary to Government Industries & Commerce Department
Civil Secretariat Srinagar/Jammu
05. Director Finance Industries & Commerce Department Srinagar
06. Managing Director JKHHC Srinagar
07. Director Handicrafts & Handloom Kashmir, Srinagar
08. Director, Handicrafts & Handloom Jammu

**09. Managing Director
Handicrafts & Handloom Corporation
J&K, Srinagar, Jammu**

...Respondent(s)

Through: Mr. Abdul Rashid Malik, Sr.AAG with
Mr.Younis Hafiz, Assisting counsel.

CORAM:

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. Aggrieved of the Order bearing No. 91-JKHC of 2022 dated 16.09.2022 issued by Managing Director of the J&K Handicrafts Corporation, whereby the petitioners, engaged on Consolidated / Need / Contractual / Contingency basis in the Corporation, have been disengaged, the petitioners have challenged the same through the medium of the instant Writ Petition.
2. It is pleaded in the petition that while the grievances of the petitioners with regard to their continuation and absorption in the Corporation was in process, the Managing Director of the Corporation, on the basis of 'Alert note' issued by the Anti Corruption Bureau (ACB), disengaged the services of the petitioners vide Order No. 91-JKHC of 2022 dated 16.09.2022, which is impugned in the instant petition, and through the medium of the present petition, the petitioners seek quashment of the same in terms whereof the petitioners have been disengaged; Alert Note No. 48/2022 dated 27.06.2022 issued by Anti Corruption Bureau Srinagar; and communication No. IC-HHC/30/2022-02 dated 07.09.2022 in terms whereof request

was made to the Managing Director Handicraft & Handloom Corporation to take action against the petitioners with regard to the Alert notice issued by ACB.

3. It has been further prayed to command the respondents to allow the petitioners to perform their duties attached to the posts as was assigned to them on being engaged on consolidated/need/contractual/contingency basis in the respondent-Corporation and grant all the service benefits including wages etc; to release the withheld salary of the petitioners from the date it has been stopped to them and a command be issued to the Committee so constituted by the Government vide Government order No. 234-JK(IND) of 2021 dated 22.11.2021 to examine the cases of the petitioners and also to examine the proposed policy submitted by the Managing Director on 08.01.2021.
4. The brief facts of the case giving rise to filing the instant petition are that the petitioners were engaged in the respondent-Corporation on consolidated/contractual/need/contingency basis from time to time against different posts and have been discharging their duties diligently; that the respondent-Corporation was in the process of formulating policy so as to decide the future of the contractual employees, which was under deliberation and for which the Corporation also constituted a Committee of officers; that on a complaint of some persons before the Anti Corruption Bureau against the then Managing Director, the ACB issued a communication,

recommending disengagement of the petitioners for the reasons that these engagements have been made by the abuse of authority by various Managing Directors of the Corporation.

5. Allegedly, without affording any opportunity of being heard to the petitioners, their services were disengaged on the recommendations of ACB, when it was incumbent upon the Managing Director to provide an opportunity of being heard to the petitioners by following the principle of natural justice and due course of law; that the fact of the matter is that on the recommendations, the Board of Directors of the respondent-Corporation have already constituted a Committee and proposed policy was initiated viz-a-viz the petitioners, which was forwarded to the Administrative Department for approval and thereafter 2nd and 3rd meetings were also held; that in the last meeting, on the recommendations of the Board of Directors, a Committee was constituted in November 2021; that the Managing Director was aware of the fact that a Committee had been constituted, therefore, he was legally bound to afford opportunity of hearing to the petitioners before disengaging them because of omission and commission committed by the then Managing Directors; that in other words, according to the petitioners, the petitioners were punished for the alleged acts of various Managing Directors; that the right of enquiry to the petitioners was violated, as such, Article 311 of the Constitution of India was also violated, hence the instant petition.

6. Pursuant to the notice, respondents have filed their objections

wherein it is stated that the petitioners have filed the instant petition without any cause of action against the respondents; that a complaint was lodged by one M. Jan and others (employees of JKHC) to Anti Corruption Bureau J&K Srinagar against Ishtiyaq Hussain Drabu, Ex-Managing Director J&K Handicrafts (S&E) Corporation, alleging therein the appointments of at least 15 persons made by him against financial consideration and without any advertisement, as well as, approval of competent authority; that the Anti Corruption Bureau vide No. ACB/Veri-SBG-08/2021-E-139867-12338-41 dated 27.06.2022 submitted its report to General Administration Department with various observations and one of the observation was *“all employees, so engaged in such pick and choose manner, may be recommended for disengagement in the Jammu and Kashmir Handicrafts Corporation as these have been engaged by abusing of authority by various Managing Directors citing exigency”*.

7. It has been further pleaded that the J&K Handicrafts Corporation, from 19.08.2009 to 05.02.2020 engaged 18 persons in different capacities on different wage components as per need, due to retirement of employees, by the then Managing Directors on the recommendations of the then Chairman of the Corporation; that the Agenda item No.3 regarding policy decision in favour of consolidated/need basis/contractual/re-engagement/contingency employees was placed before the Board of Directors in its 1st joint meeting of Corporation with the request to take a view and decide the

future policy to be adopted in these cases; that the Board took a decision and advised the Corporation that no future engagement shall be made without approval of the Board; that the Government vide Order No.234-JK(IND) of 2021 dated 22.11.2021 constituted a committee for examining the cases of consolidated/need basis/contractual/re-engagement/contingency employees in the JKHHC.

8. Mr. Z.A.Qureshi, learned senior counsel appearing for the petitioners, vehemently argued that disengagement of the petitioners herein from services on account of abuse of powers by appointing authority attaches a stigma to the petitioners and is punitive and cannot be done without holding a proper enquiry; that the petitioners were disengaged from service without affording any opportunity of being heard to them, that too on the recommendations of ACB, when it was incumbent upon the Managing Director to provide an opportunity of being heard to the petitioners by following the principle of natural justice and due course of law. The plea of the learned counsel for the petitioners is that the Managing Director was well aware of the fact that a Committee had been constituted for formulating the policy with regard to contractual staff appointments, therefore, he was legally bound to afford opportunity of hearing to the petitioners before disengaging them because of omission and commission committed by the then Managing Directors. Further plea of the petitioners is that without taking any decision on the proposed policy, petitioners were disengaged from their service. The stand of the petitioners is that their disengagement from

service, that too after rendering their service for almost two decades, was a result of punishment, thus, affecting their right of enquiry, as the said act of the respondents has violated Article 311 of the Constitution of India.

9. Mr. A.R.Malik, Sr.AAG ex-adversus, contended that the law is settled that the contractual employment has no vested right to continue and it is not open for the Courts to direct an employer to continue the contract or to change the status of the contractual employment in any manner, once the same has been accepted by consent of both the sides without any demur.

10. Learned Sr.AAG, has further argued that once the anti graft body -Anti Corruption Bureau (ACB), after holding enquiry, based on a complaint against former Managing Director of the Corporation, had observed that the contractual staff has been engaged by the then Managing Director without following due course of law, at his whims, arbitrarily. As such, based on the 'Alert notice' of ACB, the services of the petitioners, being illegal, were disengaged. The services of the petitioners, who were engaged on contractual basis, were disengaged without enquiry or affording an opportunity of being heard. Therefore, there was no illegality in passing the impugned disengagement order. He referred and relied upon a judgment of the Apex Court passed in **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors. 2006(4) SCC 1**, to buttress his arguments. The petition, is, misconceived and is liable to be rejected.

11. Heard, perused and considered.

- 12.** In essence, the case of the petitioners is that the petitioners were engaged in the respondent -Corporation on consolidated / contractual / need / contingency basis from time to time against different posts and have been discharging their duties diligently. The respondent-Corporation was in the process of formulating policy, so as to decide the future of the contractual employees, which was under active consideration. A Committee of officers was also constituted in this behalf, however, on a complaint of some persons before the Anti Corruption Bureau against the then Managing Director, the ACB issued a communication, recommending disengagement of the petitioners for the reasons that these engagements have been made by the abuse of authority by various Managing Directors of the Corporation.
- 13.** It is true that the order of disengagement has been passed on account of abuse of powers by the appointing authority, however, without holding a proper enquiry in the matter. The whole issue revolves around a complaint of some persons before the Anti Corruption Bureau against the then Managing Director, and based on some enquiry, the ACB issued a communication recommending disengagement of the petitioners for the reasons that these engagements have been made by the abuse of authority by various Managing Directors of the Corporation.
- 14.** Admittedly, no enquiry has been conducted in the matter and the petitioners were disengaged from service vide Order No. 91-JKHC of 2022 dated 16.09.2022, impugned herein, issued by Managing Director of the J&K Handicrafts Corporation, without affording an opportunity of hearing to the petitioners. There is

also no reason recorded in the said impugned order, while disengaging the services of the petitioners.

15. A similar question came up before the Apex Court, in a case '**Director General of Police & Ors. Vs. Mrityunjoy Sarkar & Ors.**' reported as (1996) 8 SCC 280, and on consideration of the issue, the Apex Court held as under:-

"In the discharge order, it was stated that the respondents had exercised the power under Rule 34 [b] of the West Bengal Service Regulations [Part I] and the instructions contained in Memo No.4145[2] dated November 22, 1985 of the Assistant Inspector General of Police, West Bengal. It is not in dispute that the Commissioner of Labour in his letter dated September 5/7, 1985 had informed the appellants that the list of the names forwarded by the Employment Exchange was fake one and their names were fabricated as they do not correspond to the entries in the Employment Exchange. Consequently, he directed the appellants to take action according to rules. It would thus be clear that the foundation for discharge is production of fake list of persons from employment exchange for recruitment as Armed Reserved Constables. If that is accepted, then it would cause a stigma on the respondents for future recruitment as they have produced fictitious record to secure employment. Principles of natural justice require that they should be given reasonable opportunity of representation in the enquiry to be conducted and appropriate orders with reasons in support thereof need to be passed. It is settled legal position and the said procedure has not been followed. Under these circumstances, the High Court had not committed any error in dismissing

the appeal. It would be open to the appellants to issue notice to all the respondents and consider their case and then pass appropriate orders with reasons, however brief they may be, in support thereof within a period of six weeks from the date of the receipt of this order. The said notice shall be given to the respondents stating the grounds on which they seek to discharge them and the respondents are directed to submit their objections, if any, and the material in support thereof within one month thereafter. After receipt of the objections, the appellants are directed to consider the objections and pass appropriate orders within six weeks thereafter and to communicate the same to all the respondents with acknowledgement due. The order, as stated earlier, should contain concise reasons in support of their conclusions.

16. The Hon'ble Supreme Court of India, in "**K.C. Joshi v. Union of India & Ors**", reported as (1985) 3 SCC 153, held that contract of service has to be in tune with Articles 14 and 16 of the Constitution of India and if it is to be suggested that one can dismiss anyone without a semblance of inquiry or whisper of principles of natural justice, such an approach overlooks the well-settled principle that if State action affects livelihood or attaches stigma, punitive action can be taken only after an inquiry, in keeping with the principles of natural justice.
17. In '**Mangal Singh v. Chairman, National Research Development Corporation & Ors.**', 2009 SCC OnLine Del 2345, the petitioner was an appointee on contractual basis and his services were terminated by what he alleged was a punitive and

stigmatic order, without a departmental enquiry. The Court came to the conclusion that the termination order was not a discharge simplicitor but stigmatic and punitive in character and misconduct was the foundation of the order of termination and not merely a motive. The Court observed as follows:-

"19. No doubt, it has been urged by the Respondent-Corporation that the order of termination was owing to the coming to an end of the Petitioner's fixed period of service under the contract, but it seems to me that when the Petitioner was terminated, the impugned order dated 4th June, 2004 clearly finds him guilty of misconduct, thereby casting a stigma on the Petitioner, and in that sense must be held to be an order of dismissal and not a mere order of discharge. It further seems that anyone who reads the order in a reasonable way, would naturally conclude that the Petitioner was found guilty of misconduct, and that must necessarily import an element of punishment which is the basis of the order and is its integral part.

20. It is trite to say, that when an authority wants to terminate the services of a temporary employee, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it becomes idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast aspersion or attach stigma to the officer when it

purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal.

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23. In India Literacy Board (supra) the Supreme Court was hearing an appeal against an interim order passed by the Allahabad High Court and issued an order to the Single Judge before whom the writ petition was posted to take up the matter on a priority basis and dispose of the same in accordance with law. It was not a matter that related to termination of services of a temporary employee, but rather to the issue whether in the case of contractual employment for a fixed term, mandamus can be issued continuing the employees in service. Surendra Prasad Tewari's case (supra) was again a case relating to regularization of services in public employment and the Supreme Court followed the ratio of the earlier Constitution Bench decision in Secretary of State, Karnataka (supra) and held that it would be improper for the Courts to give directions for regularization of services of persons working as daily-wager, ad hoc employee, probationers, temporary or contract employee, appointed without following the procedure laid down under Articles 14, 16 and 309 of the Constitution.

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26. In the light of the discussion above, in my opinion, the Petitioner was dismissed without affording him the opportunity of presenting his case before the disciplinary authority, thereby violating the protection guaranteed to temporary servants under [Article 311\(2\)](#) of the Constitution of India. Further, the order of termination was not a discharge simplicitor but a dismissal, and was stigmatic and punitive in character. Also, the misconduct of the Petitioner was the foundation of the order of termination and not merely the motive. Resultantly, the impugned order of termination is held to be stigmatic and punitive and not sustainable. I, therefore, allow this petition and set aside the impugned orders dated 4th of June, 2004 and the consequent order in appeal dated the 1st of December, 2006 passed by the Respondent-Corporation. The Respondents are directed to reinstate the Petitioner, with all consequential benefits. This, however, will not prevent the Respondents from taking action in accordance with law."

18. Our own High Court has also decided a similar issue in a case titled **Faheen Vs. University of Kashmir & Ors. reported as 2003 (Supp) JKJ 235**, wherein the Court has held as under:-

“that termination of temporary services on account of misconduct attaches a stigma and is punitive and cannot be done without holding a proper inquiry.”

The Court further held that:-

“wherever the temporary arrangement of temporary service or adhoc service or that of a

probationer is required to be dispensed with, it can only be on account of unsatisfactory performance.”

19. Therefore, what emerges from the aforesaid judgments is that if an order is founded on allegations, the order is stigmatic and punitive and services of an employee cannot be dispensed with without affording him an opportunity of defending the accusations/allegations made against him in a full-fledged inquiry. Hence, it is settled law that even a contractual appointment cannot be terminated without affording an opportunity of hearing, if founded on allegation and/or misconduct, which casts a stigma on such an employee.

20. In the case ‘**Secretary, State Of Karnataka & Ors. Vs. Umadevi & Ors**, reported as **2006 (4) SCC 1**’, relied upon by the respondents’ counsel, the Apex Court observed as follows:-

“...When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons

either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post...”

21. The afore-stated law laid down by the Apex Court with regard to regularization of contractual staff, is not applicable to the petitioners’ case of disengagement, inasmuch as they are aggrieved of their disengagement, even before consideration of their regularization.

22. Since, the instant case relates to engagement of the petitioners on consolidated/need/contractual/contingency basis in the respondent-Corporation, it will be pertinent to look at the law with respect to stigmatic order, in the context of tenure appointments, therefore, the disengagement of petitioners from services is not only unreasonable but penal in nature also, passed without affording opportunity to meet the charge, thus, the order is unsustainable.

23. Resultantly, the petition is allowed in the following terms:-

(I) The Order No. 91-JKHC of 2022 dated 16.09.2022 issued by Managing Director of the J&K Handicrafts Corporation, communication No. IC-HHC/30/2022-02 dated 07.09.2022 issued by Under Secretary to Government, Industries & Commerce Department addressed to Managing Director Handicrafts & Handloom Corporation, and Alert Notice No. 48/2022 dated 27.06.2022, issued by Anti Corruption Bureau Srinagar to the Principal Secretary to Government, General Administration Department, are quashed, qua petitioners.

(II) Respondents are directed to allow the petitioners to perform their duties attached to the posts as was assigned to

them on being engaged on consolidated/need/contractual/contingency basis in the respondent-Corporation and they be granted all the service benefits including wages etc., to which they are entitled to.

(III) Respondents are directed to release the withheld wages, if any, duly earned by the petitioners, for the period their services had been utilized.

(IV) The Committee, so constituted by the Government vide Order dated 22.11.2021(supra), shall examine the proposed policy submitted by the Managing Director on 08.01.2021 and thereafter the Board of Directors of the Corporation, shall pass appropriate orders thereon.

24. It is, however, made clear that the quashment of the impugned orders will not prevent the respondents from initiating action against the alleged illegal engagements of the petitioners in accordance with the rules, if warranted in the facts and circumstances.

25. Disposed of, accordingly, along-with connected application.

**(M. A. CHOWDHARY)
JUDGE**

Srinagar
16.12.2023
Muzammil. Q

Whether the Judgment / Order is Reportable: Yes / No

Whether the Judgment / Order is Speaking: Yes / No