

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

SWP No. 1261/2011

Reserved on: 15.02.2024  
Pronounced on: 23.02.2024

**Jaswant Singh S/O Sh. Mukhtar Singh,  
R/O Gurda Beldara, Tehsil Hira Nagar,  
District Kathua, Aged 54 years**

**.....Petitioner**

Through: Mr. Virender Bhat, Advocate.

vs

**1. J&K State Road Transport Corporation,  
though its Managing Director  
Railway Station Jammu**

**2. State of J&K through Secretary  
Roads and Transport, Jammu**

**.....Respondents**

Through: Ms. Anjeet Kour, Advocate.

**CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE**

**JUDGMENT**

**01.** Petitioner, through the medium of this petition seeks issuance of an appropriate writ direction or an order including writ of certiorari quashing the Order No. JKSRTC/EC-IV/2476 dated 19.01.2009, whereby his services were terminated retrospectively by the respondent-J&K State Road Transport Corporation (hereinafter referred to as "**the Corporation**").

**02.** The petitioner has impugned order no. JKSRTC/EC-IV/2476 dated 19.01.2009 (hereinafter referred to as "**impugned order**") asserting therein that he had joined services in the Corporation as a Conductor on 18.02.1986, when he was registered vide no. 2607 and that he continued to work as a

Conductor till finalisation of the Voluntary Retirement Scheme; that he was served with notice No. JKSRTC/MPS/J/1896-1917 dated 29.10.2008 by the Corporation as he had been found eligible along with other crew members for being brought under Golden Handshake/Voluntary Retirement Scheme introduced by the Government vide its Order No 218-F of 2007 dated 16.07.2007 and his name figured at serial no. 12 of the said list; that he along with others had been directed to convey their acceptance in writing within 10 days positively, failing which, they were to be dealt with as per Rules; that in response to the aforesaid notice, he had submitted his consent along with the affidavit on 02.11.2009

**03.** It has been further pleaded by the petitioner and alleged that he had not been paid the monetary benefits and, as such, he had been compelled to file a writ petition bearing SWP No. 508/2009, wherein the respondents were issued notice on 23.03.2009; that pursuant to the notice, the respondents caused their appearance but did not file any reply till the Hon'ble Court vide order dated 14.03.2011 was pleased to direct the respondents to file the reply or remain present in the Court. Thereafter, respondents filed their reply and copy whereof was received by the petitioner on 25.05.2014, wherein a stand had been taken by the respondents that the services of the petitioner had been terminated vide Order No. JKSRTC/EC-IV/2476 dated 19.01.2009, retrospectively with effect from 12.08.2005.

**04.** Petitioner has challenged the aforesaid termination order on the grounds that the impugned order had been passed without issuing any show cause notice and without following the principles of natural justice as he was neither associated with any inquiry nor any inquiry was conducted by the respondents; that the retirement scheme for golden handshake/voluntary

retirement had been formulated by the Government on 16.07.2007 and the employees had been asked to submit their acceptance; that he being found entitled to be brought to the scheme of Golden Handshake had also been included in the list and he had exercised his option in this behalf, as such, the question of disciplinary proceedings did not arise once the petitioner was held entitled to benefit of scheme of Golden Handshake; that the respondents' statement in their reply filed in SWP No. 508/2009 preferred by him for granting of Monetary Benefits of the Scheme, took a stand that the list of the employees reflected in the order dated 29.10.2008 was a random list and that his case was pending consideration before the disciplinary authority is not tenable; that assuming once any employee is approved for being weeded out under golden handshake scheme, there is no question of disciplinary action; that the disciplinary action is impliedly waived declaring the employee entitled to scheme of golden handshake; that the respondents never conveyed the impugned order to him and on the contrary sought his consent to the application of the Scheme and that the impugned order had been passed in vengeance due to the order passed by this Court, asking Managing Director of the Corporation, to be present in the Court in the event of failure to file the reply; that he after submitting his consent to the scheme of the voluntary retirement had legitimate expectation that he will receive the benefit of the scheme, whereas, the respondents in an arbitrary manner resorted to his termination with a view to defeat his legitimate claims; that in terms of the scheme of golden handshake, the Corporation is bound to make the payment of the dues to be paid within a period of 60 days from the acceptance of the offer and the respondents neither paid the dues under the scheme nor conveyed to him that his services stand terminated and as a

matter of fact the order impugned has been antedated, otherwise, there was no reason to seek his consent or withhold the fact of the termination from him. Petitioner has alleged that the respondents had flagrantly violated the rights of the petitioner contained under Articles 14,16, 19 and 21 of the Constitution and prayed that the impugned order be quashed.

**05.** Pursuant to notice, the respondent Corporation filed reply asserting therein that the petitioner being a habitual offender of going on unauthorized leave had earlier been placed under suspension for his unauthorized absence w.e.f. 01.09.2003 and a show cause notice was issued and after enquiry, he was reinstated with a fine of Rs. 2000/- in February 2004; that the petitioner again absented himself w.e.f. 12.08.2005 and show cause notices were issued to him on a number of occasions vide No. JKSRTC/DGM/(IS)/J/7100 dated 19.10.2005 and No. JKSRTC/DGM/IS/J/8277 dated 28.11.2005, however, he did not respond to any of the notice and for being unauthorized absence from duty, as such, he was placed under suspension vide Order No. JKSRTC/GMO/J/4189-91 dated 23.02.2006 with a direction to report to the office of GM (Ops), Jammu for facing enquiry but he failed to appear before the enquiry officer and also failed to respond to the notices issued to him for facing the enquiry.

**06.** It is being further pleaded by the respondent Corporation that having initiated process for retirement under VRS/Golden Handshake Scheme for which employees were being identified, the name of the petitioner was inadvertently reflected in the said list because he was facing the departmental enquiry and VRS/GHS was not applicable to him as per the terms and conditions of the Scheme; that the matter was thereafter dealt with administratively and in terms of relevant provisions of the Corporation

Rules read with Article 128 of J&K CSR, the services of the petitioner as Conductor were terminated vide Order No. JKSRTC/EC-IV/2476 dated 19.01.2009, effective from the date of his unauthorised absence i.e. 12.08.2005; that since the petitioner stands removed from the services of the Corporation w.e.f. 12.08.2005, therefore, the ambit of VRS/GHS Scheme was not applicable to him and mere reflection of his name in the list dated 29.10.2008 would not clothe the petitioner with any right for the reasons stated hereinabove with any right, as such, he is not entitled to any relief and finally prayed that the petition be dismissed.

**07.** Mr. Verinder Bhat, learned counsel for the petitioner, while reiterating the grounds pleaded in the writ petition, argued that once the petitioner was issued a notice after having included his name in the eligible employees of the Corporation to a scheme of voluntary retirement/Golden Handshake notified by the Government of Jammu & Kashmir, vide Govt. Order No. 218-F of 2007 dated 16.07.2007 and after obtaining his consent to accept the scheme, the respondent Corporation was not within its right to, either conduct any enquiry into his misconduct as an official or terminate his services as has been done by the respondent Corporation vide impugned order. He has finally argued that the impugned order is not sustainable in law as the same has been passed by the respondent Corporation against the legal principle of estoppel and as the Corporation cannot approbate and reprobate at the same time by firstly clearing the name of the petitioner for VRS/Golden Handshake Scheme and once the consent is obtained from the petitioner and order of his termination is passed instead of granting him retiral benefits. He prayed that the petition be allowed and the impugned order be quashed with a direction to the respondents to grant him all the

benefits, to which he was entitled to, in terms of the Golden Handshake/Voluntary Retirement Scheme.

**08.** Ms. Anjeet Kour, learned counsel for the respondent Corporation, *ex adverso*, argued that since the name of the petitioner had crept in the list inadvertently and the Corporation on finding that an enquiry for unauthorised absence was pending against the petitioner, as such, he was not entitled to the retiral benefits in terms of the Scheme, the respondent Corporation had taken a conscious decision of termination of the services of the petitioner as he had not contested the enquiry against him and, as such, he is not entitled to any of the retiral benefits in terms of the VRS/Golden Handshake Scheme of 2007. She has further argued that the petitioner having been found to have misconducted by being unauthorizedly absent from the duties since the year 2005 had been terminated in the year 2009 with effect from his absence in the year 2005, therefore, there is no merit in the petition filed by the petitioner which is required to be dismissed, there being no illegality in the impugned order which has been assailed in the petition. She has finally argued that petition be dismissed.

**09.** The main crux of the case in hand as pleaded and argued before this Court is that the respondent Corporation having taken a decision to include the name of the petitioner in the list of those employees who were found entitled to reitral benefits on their consent and option of the Volutary Retirment/Golden Handshake Scheme introduced by the Government vide Government Order No. 218-F of 2007 dated 16.07.2007. It is an admitted case that the petitioner's name figured at serial no. 12 of the list formulated by the respondent Corporation seeking acceptance by the employees to be communicated within 10 days positively and indisputably, the petitioner had

submitted his consent along with an affidavit on 02.11.2009. The case projected by the petitioner is that instead of granting him the retiral benefits in terms of the Scheme for which option had been sought by the respondent Corporation, his services were terminated in the year 2009 by the Corporation, allegedly for the offence that the Managing Director had taken with regard to a direction from this Court in SWP No. 508/2009 for his personal appearance on the failure of the Corporation to file the reply to the petitioner's petition, as such, an enquiry was stated to have been conducted wrongly and petitioner's services were terminated for being unauthorizedly absent.

**10.** The petitioner as per record had joined his services as Conductor in the respondent Corporation on 18.02.1986 and in the year 2008, vide Notice No. JKSRTC/MPS/J/1896-1917 dated 29.10.2008, he along with other employees was issued a notice asking his consent to the Golden Handshake Scheme introduced by the Government for voluntary retirement of the officials of the Corporation. The petitioner is stated to have given his option on 02.11.2009. It is alleged that the respondent Corporation in an antedated order dated 19.01.2009 had terminated the services of the petitioner retrospectively w.e.f. 12.08.2005 for his unauthorized absence. The question to be decided by this Court is as to whether in view of the communication seeking consent of the petitioner for Voluntary Retirement Scheme and conveying of the acceptance by him shall operate as an estoppel for the respondent Corporation to proceed against him for his termination from the service on an enquiry.

**11.** It would be appropriate to deal with the concept of estoppel which appears to be the basic foundation of the case and the background of the

afore-noted facts. Estoppel is a rule of evidence and general rule is enacted in Section 115 of the Indian Evidence Act, 1872 which lays down that one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. The Apex Court in a case titled "*Sunderabai & Anr. Vs. Devaji Shankara Deshpande*" AIR 1954 SC 82 has held as under:-

*"So there is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue, whether in reality it be true or not. Estoppel, or conclusion, as it is frequently called by the older authorities, may therefore be defined as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability."*

High Court of Madras also in a case titled "*Depuru Veeraraghava Reddi vs. Depuru Kamalamma*", AIR 1951 Madras 403 held as under:-

*"An estoppel though a branch of the law of evidence is also capable of being viewed as a substantive rule of law in so far as it helps to create or defeat rights which would not exist and be taken away but for that doctrine."*

**12.** On the whole, an estoppel seems to be when, in consequence of some previous act or statement to which he is either party or privy, a person is precluded from showing the existence of a particular state of facts. It is based on the maxim, **allegans contrarium non est audiendus** (a party is not be heard to allege the contrary) and is that species of presumption **juris et de jure** (absolute or conclusive or irrebutable presumption), where the fact presumed is taken to be true, not as against all the world, but against a



particular party, and that only by reason of some act done; it is in truth a kind of argumentum ad hominem. Estoppel though a branch of the law of evidence is also capable of being viewed a substantive rule of law in so far as it helps to create or defeat rights, which would not exist or be taken away but for that doctrine. Estoppel is a complex legal notion, involving a combination of several essential elements-statement to be acted upon, action on the faith of it, resulting detriment to the actor. Estoppel is often described as a rule of evidence, as indeed it may be so described. But the whole concept is more correctly viewed as a substantive rule of law. Estoppel is different from contract both in its nature and consequences. But the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the constitution of the cause of action. But the whole case of estoppels fails if the statement is not sufficiently clear and unqualified.

**13.** Of course, an estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. But where such is not the case a right may be claimed as having come into existence on the basis of estoppel and it is capable of being enforced or defended as against the person precluded from denying it.

**14.** The respondent Corporation by its Notice No. JKSRTC/MPS/J/1896-1917 dated 29.10.2008 had conveyed to the employees including the petitioner that they are entitled for being retired in terms of Voluntary Retirement/Golden Handshake Scheme introduced by the Government vide order No. 2018-F of 2007 dated 16.07.2007 as the petitioner's name in that communication figured at serial no. 12 in the list to which the petitioner indisputably had consented to on 02.11.2009 along with an affidavit. The

respondent Corporation had once taken a conscious decision after perusal of the service record of the employees that the petitioner is entitled for being extended the benefits of the government order specifying the Scheme for Voluntary Retirement/Golden Handshake of the employees. The respondent Corporation having taken this decision cannot be allowed to say that on one hand they had found the petitioner entitled to retiral benefits and, on the other hand, claimed to have conducted an enquiry for his unauthorized absence since the year 2005 and that a decision with regard to his unauthorized absence resulted into termination of his services. The respondent Corporation cannot be allowed by the application of the principle of estoppel to say that the services of the petitioner after acceptance of his retirement in terms of the Scheme could be terminated on some enquiry to which the petitioner had not been associated.

**15.** On perusal of the record produced by learned counsel for the respondent Corporation, it is found in a noting that the file of the respondent with regard to his enquiry remained pending for two years without any proceedings, therefore, it appears that the respondent Corporation had not proceeded against the petitioner bonafidely but only to defeat his claim of receiving retiral benefits on the basis of the Scheme enunciated by the Government. In this view of the matter, the impugned order passed by the respondent Corporation terminating the services of the petitioner is unsustainable and is liable to be quashed.

**16.** Having regard to the foregoing discussion and observations made hereinabove, it is held that the respondent Corporation has passed impugned Order No. JKSRTC/EC-IV/2476 dated 19.01.2009, arbitrarily and illegally after having accepted the plea of the petitioner for his retirement in the year

2008. Viewed thus, the impugned order is quashed with a direction to the respondent Corporation to grant all the retiral benefits to which the petitioner is found entitled to, in terms of their notice No. JKSRTC/MPS/J/1896-1917 dated 29.10.2008 and Voluntary Retirement/Golden Handshake Scheme on the subject, within the period eight weeks from the date a copy of this judgment is supplied to the Managing Director of the Corporation.

17. Record received from the respondent-Corporation be returned back.

18. Disposed of, accordingly, along with connected application(s).

**(MA Chowdhary)**  
**Judge**

**Jammu**  
23.02.2024  
Abinash

