

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No.1936/2022

Bashir Ahmed ...Petitioner(s)

Through:- Mr. M.P.Sharma, Advocate

V/s

Union Territory of J&K and others ...Respondent(s)

Through:-

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

JUDGMENT

1. The petitioner has challenged order No.504 of 2013 dated 3rd August, 2013 passed by respondent No.3, whereby the petitioner has been disengaged from the roll of Special Police Officers (SPOs) of the District Ramban. A writ of mandamus has also been sought by the petitioner for his appointment as constable with retrospective effect with all consequential benefits. The petitioner has further sought a writ of prohibition thereby asking the respondents not to take note of the judgment dated 6th June, 2018 passed by the learned Judicial Magistrate 1st Class, Gool.

2. It is the case of the petitioner that he was engaged as Special Police Officer (SPO) in terms of Police Headquarter Order No.743 of 2011 dated 24th February, 2011. Whereafter he continued to discharge his functions honestly in a dedicated and faithful manner. It is submitted that an FIR came to be registered against the petitioner, whereafter challan was presented against him and the respondents without holding any enquiry and

without issuing any show cause notice to the petitioner, disengaged/terminated his service vide impugned order dated 3rd August, 2013. It is submitted that despite the petitioner having made many representations to the respondents, the aforesaid order of disengagement has not been withdrawn by the respondents.

3. The petitioner goes on to submit that FIR No.58/2013 for offences under Sections 336, 147, 427 RPC came to be lodged against him and challan was filed against him that was decided by the Judicial Magistrate 1st Class, Gool vide his judgment dated 6th June, 2018. While convicting the petitioner and co-accused, the learned Magistrate extended benefit of probation to the accused. It has been contended that the petitioner has not committed any offence and the case lodged against him is absolutely false. According to the petitioner, after expiry of three years during which period he was directed to observe good conduct as per the judgment of the learned Magistrate, the petitioner made a representation to the respondents for recalling of the impugned order but to no effect. It has been submitted that co-accused, who are similarly situated with the petitioner, have been reinstated in their respective jobs but the petitioner continues to be without any job.

4. The impugned order of disengagement of the petitioner as SPO has been challenged mainly on the ground that in terms of Section 19 of the J&K Police Act, under which the petitioner was engaged as SPO, enjoys same powers, privileges and protection as are being enjoyed by ordinary officers of the police. On this ground, it is urged that without holding an

enquiry and without issuing show cause notice to the petitioner, he could not have been discharged from service.

5. I have heard learned counsel for the petitioner and perused the record of the case.

6. As already noted, the main contention which has been advanced by learned counsel for the petitioner is that an SPO appointed under Section 18 of the J&K Police Act is entitled to same privileges and protection as an ordinary officer of police. In this regard, learned counsel has relied upon the provisions contained in Section 19 of the J&K Police Act.

7. The provisions contained in Section 19 of the Police Act came up for consideration before this Court in case titled Bilal Ahmad Sheikh v. State of J&K and others (SWP No.2548/2017) decided on 17th September, 2021. While interpreting the said provision, this Court, after noticing the provisions contained in Section 19 of the Police Act, observed as under:-

“From a perusal of the provisions contained in Section 18 of the Police Act, it is revealed that SPOs are appointed by Police Officers above a particular rank for specific purposes when the police force ordinarily employed for preserving the peace is not sufficient for its 5 SWP No.2548/2017 preservation and for the protection of the inhabitants. The provision makes it clear that residents of neighbourhood can be appointed as SPOs for dealing with specific contingencies. Thus, engagement of SPOs is not of a permanent nature but it is only to take care of a particular contingency. It is in this context that the provisions contained in Section 19 of the Act are required to be interpreted. By doing so, it becomes axiomatic that SPOs enjoy same powers, privileges and protections as do the ordinary officers in the matter of crowd control, prevention of unlawful assemblies or contingencies of like nature. The said provision cannot be interpreted in a manner so as to

extend even the powers, privileges and protections relating to service conditions of an ordinary police officer to the SPOs, who, admittedly, do not hold any civil posts regulated by any Statutory rules. Therefore, they are not entitled to any protection as afforded to ordinary police officers under Police Rules or Civil Service Regulations. I am supported in my aforesaid view by the judgment of a Division Bench of this Court in State of J&K v. Mohammad Iqal Mallah (LPA No.153 of 2012 decided on 05.06.2014).”

8. From a perusal of the ratio laid down in the aforesaid judgment, which is based on a Division Bench judgment of this Court in Mohammad Iqbal Mallah's case (supra), it is clear that an SPO engaged under Section 18 of the Police Act is not entitled to right of any hearing or enquiry, keeping in view the nature of his engagement. In this view of the matter, it was not incumbent upon the respondents to hold an enquiry or give an opportunity of hearing to the petitioner before terminating his services as SPO.

9. Even otherwise, once the petitioner was convicted of a criminal charge,, even though, he was granted benefit of probation, it was open to the respondents to refuse to take him back in service, because the service of police department is not like service of any other department. A person, who has been convicted of a criminal charge is definitely not fit to serve as police official/officer not even as an SPO. Thus, the contention of the petitioner that because co-accused after pssing of the judgment by the criminal Court, were re-instated in their respective services and as such, he should also be re-instated, cannot be accepted. The nature of service of a

police official cannot be equated with the nature of any other service. Thus, there has been no discrimination against the petitioner.

10. So far as contention of the petitioner that he has been disengaged by an incompetent authority is concerned, the same is also without any merit because the petitioner has been appointed under the hand and signatures of Superintendent of Police, Ramban and the impugned order of disengagement has also been passed by the same authority.

11. Apart from the above, the writ petition suffers from delay and laches. The impugned order was passed by the respondents way back in the year 2013 and the judgment of the criminal Court was delivered in the year 2018. Therefore, the petitioner has approached this Court after more than four years after delivery of the judgment by the Criminal Court. It has been submitted by the petitioner that he has kept on filing representations for his re-instatement but the same were not considered by the respondents. A litigant cannot go on filing representations and wait for their outcome for years together. Once his representation was not considered by the respondents, it was open to the petitioner to approach the Court immediately.

12. Conduct of the petitioner shows that he was acquiesced in the inaction of the respondents and it is only after more than four years that the petitioner has woken up from deep slumber. The remedy provided under Article 226 of the Constitution of India is discretionary in nature and the High Court in exercise of its discretionary jurisdiction does not ordinarily come to the rescue of a tardy, indolent, acquiescent and lethargic litigant.

As already noted, there is inordinate delay of more than four years in filing the present writ petition, which has not been explained by the petitioner satisfactorily, therefore, the petitioner cannot be permitted to resort to the extra ordinary writ jurisdiction of this Court at this belated stage.

13. For the foregoing reasons, I do not find any merit in this petition.

The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

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Whether the order is speaking : Yes
Whether the order is reportable: Yes