

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

**Reserved on 20.12.2023
Pronounced on 28.12.2023**

**LPA No.192/2023
CM Nos.6416/2023 &
6417/2023**

Ashok Kumar Sharma, Age 54 yrs,
Director, School Education Department,
Jammu.

.....Petitioners

Through: Mr. Raman Sharma, AAG.

versus

Yasin Hussain,
S/o Late Sh. Mehfooz Hussain,
R/o H.No.129, Mohalla Ustad,
Tehsil & District Jammu.

.....Respondent(s)

Through: M/s. S.S. Ahmed & Sheikh Najeeb,
Advocates

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

Tashi Rabstan - J

A. CM No.6416/2023

1. Issue notice. Mr. S.S. Ahmed, Advocate, appears and waives notice on behalf of respondent-Yasin Hussain.
2. Keeping in view the averments made in the application coupled with the submissions made at the Bar, we deem it proper to condone the delay of 71 days in filing the instant appeal. Accordingly, the delay is condoned and the application is disposed of.

B. LPA No.192/2023 & CM No.6417/2023

3. With the consensus of learned counsel appearing for the parties, this appeal is taken up for final disposal.

4. Heard learned counsel appearing for the respective parties, considered their rival contentions, perused the appeal file as well as files of SWP No.2936/2015 and SWP No.1842/2017, which were called from the Registry.

5. It is not in dispute that the writ petitioner-Yasin Hussain was already posted in Government Middle School, Kachi Chawni, Jammu, close to his residence, when Order No.369-DSEJ of 2015 dated 19.06.2015 came to be issued posting him to Higher Secondary School, Surinsar. He claims to have filed representation on 22.06.2015 for his retention at the same school in view of his heart ailment. When nothing happened, he filed SWP No.2936/2015 before this Court on 02.11.2015. The learned Single Judge on the same very date admitted the petition and without issuing notice to the official writ respondents disposed of the writ petition by providing the official writ respondents to suitably adjust the petitioner in Jammu City on medical grounds and release the legitimately earned salary. Admittedly, the order of learned Single Judge was an exparte order without affording an opportunity to the official respondents to put their stance.

6. Anyhow, since the direction was to release the legitimately earned salary of writ petitioner, now the question arises for consideration is what would be the legitimately earned salary.

7. Admittedly, it is not in dispute that after the issuance of order dated 19.06.2015, the writ petitioner came to be relieved from Government Middle School, Kachi Chowani, Jammu. After the issuance of relieving order, the writ

petitioner was supposed to put his joining report before the Principal, Higher Secondary School, Surinsar. However, instead of joining at his new place of posting the writ petitioner waited for the outcome of his representation. When nothing happened, he filed SWP No.2936/2015 on 02.11.2015 after more than four months, wherein the learned Single Judge directed for suitably adjusting the writ petitioner in Jammu City on medical grounds and for release of the legitimately earned salary. However, there was no interim direction as regards the writ petitioner in the said writ petition. Therefore, at this stage too, the writ petitioner was required to put his joining report before the Principal, Higher Secondary School, Surinsar till the formal order posting him in Jammu City is issued by the Director School Education, Jammu. However, the writ petitioner on his own opted not to put his joining report before the Principal, Higher Secondary School, Surinsar despite being relieved from Government Middle School, Kachi Chowani, Jammu in June 2015.

8. Thereafter, vide order dated 04.06.2016 the writ petitioner was adjusted in Higher Secondary School, Jullaka Mohalla, Jammu. Thus, the petitioner on his own remained absent from duty with effect from July 2015 to May 2016. Therefore, the Director School Education vide order dated 21.02.2017 conveyed that the intermediate period be treated as leave of whatever kind due. Against the said order, the writ petitioner filed SWP No.1842/2017 and the learned Single Judge vide order dated 14.03.2018, while quashing the order of Director School Education dated 21.02.2017, directed that the intervening period of writ petitioner with effect from July 2015 to May 2016 be settled keeping in view the facts and in accordance with rules.

9. When the official respondents failed to comply with the order dated 14.03.2018 passed in SWP No.1842/2017, the writ petitioner filed contempt petition being CPSW No.470/2018. In the contempt petition, the learned Single Judge vide order dated 17.05.2023 made an observation/direction that the intervening period cannot be asked to be accounted by the petitioner and it is now for the respondents concerned to deal with the said period and in no other manner then being on duty. The learned Single Judge posted the matter for 14.07.2023.

10. Against the said order, the official writ respondents filed the present appeal. This Court, as an interim measure, vide order dated 30.10.2023 directed that the order dated 17.05.2023 shall remain in abeyance.

11. Admittedly, the learned Single Judge in SWP No.2936/2015 had specifically directed the writ respondents to release the legitimately earned salary. Similarly, in SWP No.1842/2017 the learned Single Judge had directed the writ respondents to accord consideration to the intervening period of writ petitioner with effect from July 2015 to May 2016 and to settle the same keeping in view the facts and the rule position. The fact of the matter is that the petitioner came to be relieved in June 2015 from Government Middle School, Kachi Chowani, Jammu, but, despite being relieved, the writ petitioner on his own did not put his joining report before the Principal, Higher Secondary School, Surinsar, that too when there was no stay order or interim direction from the Court. Thus, the writ petitioner remained absent for the said period. Therefore, keeping in view the facts and the rule position the writ respondents have to decide the intervening period of writ petitioner with effect from July

2015 to May 2016 and, if the rule position allows, the writ respondents have to release his legitimately earned salary.

12. Therefore, in view of above factual position, the observation/direction of the learned Single Judge in the contempt petition that it is for the writ respondents concerned to deal with the said period and in no other manner than being on duty cannot stand in the eyes of law as also in the face of Apex Court ruling in many cases that in contempt jurisdiction the Court cannot travel beyond the original judgment and direction. Therefore, if the observation/direction given by the learned Single Judge in the contempt petition is upheld, then it will amount to grave miscarriage of justice as the same has been given without any basis or ground.

13. Viewed thus, we deem it proper to allow the appeal and set aside the order dated 17.05.2023 passed in CPSW No.470/2018. Ordered accordingly. Connected CM, accordingly, stands disposed of. Since the issue has been dealt with in detail here, as such the contempt petition also does not stand and the same is also dismissed. Director School Education, Jammu to decide the intervening period of writ petitioner with effect from July 2015 to May 2016 under rules and in view of the facts of the case within a period of six weeks from today.

14. Registry to place a copy of this order in CPSW No.470/2018.

Jammu
28.12.2023
(Anil Sanhotra)

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No