

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

Reserved on 04.03.2024

Pronounced on 19.03.2024

LPA No.170/2023

CAV No.1541/2023

1. University of Kashmir,
through its Vice Chancellor,
University of Kashmir, Srinagar.

2. Vice Chyancellor,
University of Kashmir, Srinagar.

3. Registrar,
University of Kashmir, Srinagar,
through Dr. Nisar A. Mir.

.....Appellants

Through: Ms Surekha Bhat, Advocate.

versus

Bansi Lal Charagi,
S/o Kashi Nath Charagi,
R/o Budgir Alikadal, Srinagar, Kashmir.
At Present: Katra, District Reasi,
Age 62 years.

.....Respondent(s)

Through: Mr. P.N. Raina, Sr. Advocate, with Mr.
J.A. Hamal, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Tashi Rabstan - J

1. This appeal is directed against the judgment/order dated 17.05.2023 delivered by the learned Single Judge in SWP No.547/2016, whereby the learned Single Judge, while allowing of the writ petition, set aside Order No.F(SA-Adm)KU dated 17.10.1985. It was further directed that the writ petitioner shall be entitled to release of his service benefits retrospectively with effect from 17.10.1985 with all consequential benefits be it for purpose of promotions, arrears of pay and other service benefits.

2. The facts, as gathered from the writ file, are that the writ petitioner was appointed as Junior Assistant in the University of Kashmir in January 1980. In 1983 he was promoted to the post of Senior Assistant. In the year 1985, on the complaint of Registrar, University of Kashmir, an FIR bearing No.153 of 1985 under Section 409 RPC was registered against the writ petitioner at Police Station Nageen. Accordingly, the writ petitioner was placed under suspension vide Order No.F(SA-Adm)KU dated 17.10.1985 issued by the Deputy Registrar (Administration). The writ petitioner was discharged by the Court of Judge Small Causes (JMJC), Srinagar on 29.09.1988. Thereafter, the writ petitioner was acquitted by the learned trial Court vide order dated 22.12.2015 for the commission of offence under Section 409 RPC in FIR No.153/1985.

3. It was pleaded that the writ respondents neither conducted any inquiry against the writ petitioner nor paid any subsistence allowance in his favour. Feeling aggrieved, the writ petitioner filed SWP No.878/1992, which came to be disposed of by a learned Judge of this Court vide order dated 06.12.1993 to settle the claim of writ petitioner for the suspension period within a period of one month. Thereafter, the Assistant Registrar (Administration), University of Kashmir issued order vide endorsement No.F(S.A-Adm)Suspension/KU/95 dated 07.02.1995, whereby sanction was accorded to the grant of subsistence allowance in favour of writ petitioner with effect from 01.01.1994 subject to production of a proper non-employment certificate. Vide the said order; the writ petitioner was attached to the Sub-Office at Jammu with immediate effect. When no subsistence allowance was released in favour of writ petitioner, he filed a contempt petition being COA(S) No.10/1994, in which vide order dated 12.05.1999 it was directed to settle the suspension period of writ petitioner within one month. It was averred in the writ petition that he has now been

retired but till date neither he has been reinstated nor suspension allowance has been released in his favour despite the directions from the Court. It is averred that he even filed an affidavit deposing that during the period of suspension he did not join any other Government or Semi-Government employment or business, profession or vocation. He even filed number of representations but nothing happened. Feeling aggrieved, he filed SWP No.547/2016 and the learned Single Judge vide judgment/order dated 17.05.2023 set aside Order No.F(SA-Adm)KU dated 17.10.1985, whereby the writ petitioner was placed under suspension. It was further directed that the writ petitioner shall be entitled to release of his service benefits retrospectively with effect from 17.10.1985 with all consequential benefits be it for purpose of promotions, arrears of pay and other service benefits. Hence, the present appeal on behalf of University of Kashmir.

4. Learned counsel appearing for appellants argued that after the acquittal of writ petitioner by the trial Court, the appellants herein filed a petition under Section 561-A Cr.P.C being CRMC No.109/2019 in the Srinagar Bench of the High Court and the same is still pending. It was argued that in such a situation the exoneration of writ petitioner from criminal charges has not yet attained finality, as such the writ petitioner cannot be given the benefits of service till the said CRMC is decided by the Court. Learned counsel further argued that the learned Single Judge has erred in allowing the writ petition as the writ petition has been decided in absence of the learned counsel for writ respondents, further the learned Single Judge without admitting the writ petition, only while considering the objections of writ respondents, decided the writ petition on merits.

5. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file.

6. Before proceeding further, it would be appropriate to reproduce hereunder the relevant portion of order/judgment dated 17.05.2023 delivered by the learned Single Judge in SWP No.547/2016:

“Be that it may be, the impugned order ought not to have survived beyond one year of its operation going by standard of reasonableness and fairness and that too without any enquiry in the offing, but the same has continued to stay in play till the disposal of the present writ petition is taking place by virtue of this judgment. The writ petition is allowed. The impugned order no.F(SA-Adm)KU dated 17.10.1985 is set aside.

19. In view of the disposal of the writ petition, the petitioner shall be within his right to raise all his claims with respect to service status from the University of Kashmir. In view of the setting aside the order dated 17.10.1985, the petitioner is held entitled to release of the service benefits retrospectively within effect from 17.10.1985 with all consequential benefits be it for purpose of promotions, arrears of pay and other service benefits. The University of Kashmir shall be bound to decide the claim of the petitioner within a period of two months from the date the petitioner lays his claim before the University of Kashmir along with the certified copy of this judgment of this Court.”

7. Admittedly, the learned Single Judge while allowing the petition has granted all the reliefs to the writ petitioner with effect from 17.10.1985. However, a perusal of the order/judgment impugned reveals that the same has been passed in absence of learned counsel for the writ respondents, even the writ petition had not been admitted to hearing, which are procedural proprieties the Writ Court had to observe if the matter was to be decided on merits. The learned Single Judge while allowing the petition only considered the objections filed by the writ respondents. Thus, the writ respondents were deprived of the opportunity to argue the matter on merits of the case nor they had an opportunity to file the counter.

8. What is held by the Apex Court in paragraphs 5, 6 & 7 of the case, titled as, Union of India vs Daya Ram, in Civil Appeal No.7409/1996, decided on 18.04.1996, is reproduced hereunder:

“5. It will be noted that both the orders, of the learned Single and of the Division Bench, give the respondent some relief “without admitting the petition to hearing”. It is difficult to see how enforceable orders directing the respondent to a writ petition to do certain things can be passed upon a proceeding which, in express terms, is stated to have been not admitted. We appreciate that the writ petition itself was disposed of at the admission stage by consent of parties. At that stage rule should have been issued to the present appellants and the judgment and order should have noted that service thereof was accepted on behalf of the present appellants by learned counsel who was present on their behalf. The final order would have made the rule absolute. The order passed by the learned Single Judge would thus have been passed upon a petition which was admitted and was on the file of the High Court. The order would have been enforceable.

6. The Division Bench, when it modified the order of the learned Single Judge in appeal, made no modification in this behalf. The order of the Division Bench directing the present appellants to consider the respondent’s case was also, in express terms, passed upon a writ petition that was not admitted.

7. It is unfortunate that the lapse will have some adverse effect upon the respondent both in terms of time and in terms of costs, but the present order, in our view, requires to be passed because the courts have to observe the procedural proprieties if their orders are to be enforceable.

8. We make it clear that we do not express any opinion whatsoever in regard to the merits of the case of either the appellants or the respondent.”

9. Similarly, a Division Bench of this Court in a case, titled as, Jammu Dev. Authority vs Bhag Din, in LPA(OW) No.3/2003 along with connected matters, decided on 02.12.2003, held on the same lines, relevant portion of paragraph-15 whereof is reproduced hereunder:

“When a writ petition comes up before the Court on first date of hearing on admission and after hearing counsel for the petitioner, Rule 15(1) of the Writ Proceedings Rules envisages only three eventualities, depending upon the satisfaction of the court: first, issuance of rule nisi; second issuance of notice for rule nisi and third dismissal of the writ petition. When a writ petition under Article 226

of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir comes up for hearing on admission for the first time, the Rules do not envisage dispensing with the requirement of issuance of rule nisi or notice for rule nisi and instead issuing a warrant of arrest. Since we have framed these Rules, insofar as they are meant for our observance, we are obliged to obey and observe the same in their letter and spirit. Issuance of notice to the other party is sine qua non to the administration of justice. Since that course has not been adopted, with respect, we feel that grave irregularity has crept in, prejudicing the respondents in the writ petition to the hilt. Any proceedings conducted or orders passed without notice cannot be sustained in law.”

10. Therefore, in view of what has been discussed above, we, without discussing the merits of the case, deem it proper to dispose of the appeal and remit the writ petition back to the Writ Court for deciding the matter afresh. Ordered accordingly. Accordingly, the order and judgment impugned is hereby set aside, the writ petition is restored to its original number and the writ petition is remitted back to the learned Single Judge with a request to decide the matter afresh. Writ respondents-appellants herein through their learned counsel are directed to file counter to the writ petition within a period of three weeks from today, thereafter, rejoinder, if any, to be filed within next one week. Registry is directed to list the writ petition before the learned Single Judge on 22nd of April, 2024, when the learned Single Judge is requested to finally decide the writ petition.

11. Appeal stands disposed of along with connected miscellaneous CM, if any. CAV No.1541/2023 stands discharged.

Jammu
19.03.2024
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

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

Yes/No
Yes/No