

**HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT
SRINAGAR**

Reserved on: 25.03.2025
Pronounced on: 09.04.2025

LPA No.36/2024

DR. SHEIKH MUSHTAQ AHMAD ...**APPELLANT(S)**

Through: Mr. S. H. Thakur, Advocate.

Vs.

UT OF J&K & OTHERS ...**RESPONDENT(S)**

Through: Mr. Rayees-ud-Din Ganai, Dy. AG-for R1 to R4.
Ms. Asifa Padroo, Advocate-for R5.

CORAM:-

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

Per OSWAL 'J'

1. Appellant had filed a writ petition bearing WP(C) No.183/2024 contending therein that he came to be appointed as Professor-cum-Head of the Department of Pediatrics in the newly established Government Medical College, Anantnag after proper selection in the year 2019 for a period of three years. Respondent No.5, an Associate Professor, was ineligible for holding the post of Head of the Department and because of hatred, jealousy and vengeance, he had always been plotting against the appellant with malicious intention.

2. It was stated that on 28.10.2023, the respondent No.5 locked the room allotted to the appellant as Head of the Department from inside and managed to manufacture a fraudulent order on his own without having any competence and authority. An explanation was called from

respondent No.5 by the Principal, Government Medical College, Anantnag and respondent No.5, accordingly, submitted the explanation. The respondent No.5 also appeared before the respondent No.4 and tendered an unconditional apology. The respondent No.4 also informed other official respondents about the misconduct of respondent No.5 and for taking appropriate action as warranted under law but no action was taken. The respondent No.5, after tendering the apology, filed a civil suit before the Court of JMIC, Anantnag, titled “Dr. Showkat Hussain Tali vs. Dr. Sheikh Mushtaq Ahmad & Others” and obtained an ex-parte interim order on 31.10.2023. An application was filed by the appellant under Order 7 Rule 11 of CPC and when the matter was reserved for appropriate orders, the case was allowed to be withdrawn by the learned trial court at the back of the appellant without looking into the grievance of the appellant.

3. The appellant also addressed a representation to the Administrative Secretary, Health and Medical Education Department which was endorsed by all the nine members who were appointed along with the appellant, but no action was taken against the private respondent.

4. By pleading the aforesaid facts in the writ petition, the appellant sought the following reliefs:

In the premises it is, therefore, humbly prayed that the Hon’ble Court be pleased to issue a writ, order or direction including :

- (I) One in the nature of mandamus, commanding the respondent to take appropriate legal action

against the private respondents and his supporters as requested by the petitioner through his representation dated 6.12.2023 for breeding the indiscipline in the college for harassing the employees in general and the petitioner in particular and submit the updates with regard to the representation filed by the petitioner along with the follow-up action of the respondents to the extent it relates to the private respondent by or before the next date of hearing.

- (II) One in the nature of mandamus commanding the respondents not to assign any responsibility to the private respondent for the post of the Assistant professor department of Hospital in government medical collage Anantnag Kashmir till present case is solved by the official respondents
- (III) One in the nature of continuing mandamus for taking appropriate disciplinary action against the officer of the Judicial Magistrate court Anantnag Mandamus, for misusing the judicial powers with regard to subject over. which the court has no jurisdiction, the appropriate measure be taken for unnecessary harassment and the exploitation of the senior citizen by misusing the process of the law and matter be inquired through the vigilance Commissioner J & K high court and appropriate action be taken against the erring officer
- (IV) One in the nature of mandamus commanding the private respondent to compensate the petitioner to the tune of ten laces for abusing the position and the person of petitioner for exploitation, for ruining the reputation as senior citizen and reputed professor in medical science and official respondents be directed to recover the same from the salary and retirement benefits of the private respondents in exercise of Public law writ remedy and further liberty be given to the petitioner to avail the appropriate remedy for proper compensation and for punishment of the private respondent under law.

5. The aforesaid writ petition came to be dismissed vide order dated 02.02.2024 (for short “the impugned order”). The appellant has assailed the impugned order on the following grounds:

(I) That the learned Writ Court has neither considered the facts nor the law while dismissing the petition preferred by the appellant.

(II) That the learned Writ Court has not decided the two issues raised by the appellant in respect of the disciplinary action to be taken against the private respondent who had manufactured the fraudulent order and the conduct of the court while allowing the respondent No.3 to abuse its jurisdiction for entertaining the matter which, in fact, was a service matter cognizable by the Central Administrative Tribunal.

6. The respondents No.1 to 4 have filed their response wherein they have objected to the maintainability of the appeal on the ground that disputed questions of fact are involved in the case. The respondents No.1 to 4 have admitted the engagement of the appellant as Professor in the discipline of Pediatrics in terms of SRO 24 of 2019 dated 10.01.2019 for a period of three years or till the post is filled up on regular basis or till he attains the age of 70 years, whichever is earliest. After his engagement, the appellant being the senior most faculty member, acted as Head of the Department Pediatrics. It is stated that respondent No.5 was appointed as Assistant Professor in the Department of Pediatrics vide order dated 28.01.2019 and was promoted to the post of Associate Professor in terms of order dated 08.06.2023. Soon after his promotion to the post of Associate Professor, the respondent No.5 intended to take the charge of Head of the Department Pediatrics on the ground of being senior most permanent faculty member, as the appellant was working on

academic arrangement basis. While the matter of assignment of charge of the Head of the Department, Pediatrics, in favour of respondent No.5 was being considered by the official respondents and guidance from the Administrative Department was being sought, respondent No.5 himself assumed the charge of the Head of the Department of Pediatrics. An explanation with regard to his conduct was sought from the respondent No.5 and the matter was taken up with the Administrative Department. The respondent No.5, in order to defend himself, instituted a civil suit for injunction. Later, the said suit was withdrawn by respondent No.5. It is also the stand of the official respondents that as the appellant was working on academic arrangement basis under SRO 364, as such, he could not have been assigned the charge of the Head of the Department. It is further stated that vide order dated 28.11.2023, the Administrative Department instructed the respondent No.4 to function as HOD Pediatrics in addition to her own duties till further orders and, accordingly, respondent No.4 assumed the charge of Head of the Department, Pediatrics, till further orders/directions from the higher authorities.

7. The respondent No.5 has also filed his response, primarily, stating therein that the appellant could not have performed the functions of the Head of the Department, Pediatrics, and when the respondent No.5 joined as permanent Associate Professor, he was eligible and entitled to hold the charge of the Head of the Department. The appellant, having knowledge about the rule position and about his ineligibility, started

creating hindrances in smooth functioning of the department for which the respondent No.5 filed a representation before the competent authority and when his grievance was not redressed, he filed a suit before the Civil court. It is also stated that the Department vide communication dated 23.12.2023 has clarified that the charge of the Head of the Department can be held only by a permanent Professor or Associate Professor on rotation basis after every two years as per the seniority.

8. Mr. S. H. Thakur, learned counsel for the appellant, has argued that the respondent No.5 had prepared a fraudulent order himself which is demonstrated by the explanation submitted by one Tawseef Ahmad, Computer Operator that the respondent No.5 had forcibly snatched the dispatch register from him and he entered some document lying in his hand in the dispatch register. The learned counsel strenuously argued that in absence of any order from the competent authority, the respondent No.5 on his own took charge of the Department of Pediatrics by preparing the document himself, regarding which an explanation was sought from him by the respondent No.4.

9. *Per contra*, Mr. Rayees-ud-din Ganai, learned Dy. AG appearing for the official respondents, has argued that the suitable action was taken by the official respondents in the matter and the respondent No.4 took over charge as Head of the Department, Paediatrics and the respondent No.5 was not allowed to function as Head of the Department.

10. Ms. Asifa Padroo, learned counsel appearing for respondent No.5, has argued that the appellant had tried to settle personal scores by filing

the writ petition and, in fact, at present he is no longer in service of the official respondents as the period of his contract has expired.

11. Heard and perused the record.

12. The dispute primarily, appears to be between appellant and the respondent No.5 but from the response filed by the official respondents, it is evident that respondent No.5 had issued a communication dated 28.10.2023 thereby declaring himself to be the Head of the Department Pediatrics. An explanation was sought from the respondent No.5 as to why he assumed the charge of the Head of the Department without orders from the competent authority and to explain his position. The reply to the explanation was submitted but the respondent No.5 also approached the civil court. Pursuant to the directions of the Administrative Department, the respondent No.4 took over charge of the Head of the Department, Pediatrics and, in fact, it was urged by Mr. Rayees-ud-Din Ganai, learned Dy.AG, that it was a sort of punishment for respondent No.5 for assuming the charge of Head of the Department himself in absence of any order from the competent authority.

13. The relief sought by the appellant cannot be granted in his favour because dispute if any is between the employer and employee and it is for the employer to take action against an employee, if he/she has acted in violation of the guideline/rules in vogue and further no writ can be issued to the private respondent to compensate the appellant. Merely filing of representation would not furnish any cause to the appellant to

file writ petition and the representation filed, if any was meant to settle personal scores. Though the learned writ court has dismissed the writ petition mainly on the ground that the disputed facts are involved but it is evident that the writ jurisdiction was invoked by the appellant for settling the personal dispute with respondent No.5.

14. For the foregoing reasons, we do not find any illegality and infirmity in the order impugned and we do not find any reason to show indulgence. The appeal is dismissed being bereft of any merit.

(MOHD. YOUSUF WANI) (RAJNESH OSWAL)
JUDGE JUDGE

Srinagar
09.04.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No