

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

Reserved on: 24.03.2025

Pronounced on: 09.04.2025

WP(C) No.1005/2023

ZAHOOOR AHMAD WANI

...PETITIONER(S)

Through: Mr. Z. A. Qureshi, Sr. Advocate, with
Ms. Rehana, Advocate.

Vs.

HIGH COURT OF J&K & ANOTHER

...RESPONDENT(S)

Through: Mr. Aatir Kawoosa, Advocate.

CORAM:-

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

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

JUDGMENT

Per OSWAL 'J'

1. The petitioner has impugned the order bearing No.82 of 2023/Psy dated 31.01.2023 issued by respondent No.2, whereby order No.23 of 2023/Psy dated 01.01.2023, issued by respondent No. 2, has been cancelled.

2. The petitioner was posted in the Court of Special Mobile Magistrate (Sub Judge), Leh. After the creation of two Union Territories, i.e. Union Territory of Jammu & Kashmir and Union Territory of Ladakh, the respondent No.2 issued a notification bearing No.1093 of 2022/RG dated 22.09.2022, whereby a separate service cadre for the staff of subordinate courts of UT of Ladakh was created. In terms of the said notification, members of the erstwhile J&K Subordinate Courts staff belonging to UT of Ladakh became the members of the subordinate court service of UT of Ladakh.

3. Vide another notification No.1163 of 2022/PSY dated 06.09.2022, the Hon'ble Chief Justice directed that the staff members belonging to the UT of Ladakh but serving in Subordinate Courts of UT of J&K and those belonging to UT of J&K but serving in the UT of Ladakh shall be given an option of serving the UT of Ladakh on the corresponding/equivalent posts in the Subordinate court Service of UT of Ladakh. The option was to be exercised within a period of 15 days from 6th September, 2022.

4. The petitioner submitted a representation to the respondent No.2 through Principal District and Sessions Judge, Srinagar, which was forwarded to respondent No.2 vide communication dated 06.12.2022. The representation was considered and vide communication dated 12.12.2022 addressed to the Principal District & Sessions Judge, Srinagar, the respondents sought reply from the petitioner and an affidavit, in case he intended to exercise his option of serving in the UT of Ladakh.

5. The petitioner claims to have submitted the requisite affidavit and thereafter vide order No.23 of 2023/Psy dated 03.01.2023, the petitioner was transferred from the Court of Principal Judge Family Court, Srinagar, and absorbed as such, in the establishment of Subordinate Judiciary and posted in the Court of Principal District & Sessions Judge, Leh.

6. The petitioner has further submitted that though he was willing to proceed to Ladakh but could not join his new place of posting as he was not relieved by the Principal Judge, Family Court, Srinagar. Thereafter vide order No.82 of 2023/Psy dated 30.01.2023, issued by respondent No.2, the order of absorption of the petitioner dated 03.01.2023 was

cancelled and the petitioner was placed at his own place of posting i.e. Principal Judge, Family Court, Srinagar.

7. The petitioner has impugned order dated 31.01.2023 on the ground that the facts were not correctly placed before Hon'ble the Chief Justice and except the representation filed before the Principal Secretary to Hon'ble Chief Justice, the petitioner had not given anything in writing opting to be the member of the Subordinate Judiciary of UT of J&K but this is a fact that the petitioner had requested the Principal District & Sessions Judge, Leh, that he wanted to serve in the UT of Jammu & Kashmir, though the said communication was not taken note of and the petitioner was transferred vide order dated 03.01.2023 along with other staff.

8. It is urged by the petitioner that the order impugned has been passed without affording an opportunity of hearing to the petitioner and the correct facts were not placed before the Hon'ble Chief Justice, as such, the impugned order is not sustainable in the eyes of law.

9. The respondents have filed their response wherein they have admitted issuance of order Nos.1093 of 2022/RG dated 02.09.2022 and 1163 of 2022/Psy dated 06.09.2022. It is stated that the petitioner while serving as Head Assistant in the Court of Special Mobile Magistrate (Sub Judge), Leh-Ladakh, submitted his option and opted to become the member of Subordinate Court service of UT of J&K. The option/representation of the petitioner was forwarded by the Principal District & Sessions Judge, Leh, to respondent No.2 vide communication

dated 13.09.2022. It is further stated that after having exercised the option to serve as the member of Subordinate Court service of UT of J&K, the petitioner was transferred and posted as Head Assistant in the Family Court, Srinagar. However, another letter dated 06.12.2022 was received from the office of Principal District & Sessions Judge, Srinagar, whereby another representation filed by the petitioner was forwarded to respondent No.2 for necessary action, wherein he had shown his inclination to serve in the Subordinate Courts of UT of Ladakh. Accordingly, upon consideration of the representation of the petitioner, order bearing No.23 of 2023/Psy dated 03.01.2023 came to be issued by respondent No.2, whereby the petitioner was transferred and absorbed as Head Assistant in the establishment of Subordinate Judiciary of UT of Ladakh. Later on, it came to the fore that the petitioner had earlier exercised his option through the medium of representation submitted by him through Principal District & Sessions Judge, Leh and though the said representation was submitted within time but the same was not brought to the notice of the competent authority which led to the passing of order dated 03.01.2023 and when the competent authority acquired knowledge of the actual representation/option of the petitioner submitted within the stipulated time, order dated 03.01.2023 was cancelled in terms of 31.01.2023 impugned in this petition. The respondents have contended that the petitioner has concealed the important fact that he had earlier exercised his option of choosing Subordinate Judiciary of UT of J&K as his service cadre through proper channel vide communication No.514/PDJS/Leh dated 13.09.2022.

10. Mr. Z. A. Qureshi, learned senior counsel appearing for the petitioner, has submitted that no opportunity of hearing was afforded to the petitioner, as such, the order impugned is not sustainable in the eyes of law.

11. *Per contra*, Mr. Aatir Kawoosa, learned counsel for the respondents, has argued that once the petitioner had exercised his option of becoming the member of Subordinate Court service of UT of J&K, he could not have re-exercised his option and as soon as the exercise of earlier option by the petitioner came to the knowledge of the competent authority, the order dated 03.01.2023 was recalled by virtue of impugned order dated 31.01.2023.

12. Heard and perused the record.

13. This is an admitted case of the parties that vide notification No.1163 of 2022/Psy dated 06.09.2022, issued by respondent No.2, the staff members belonging to the UT of Ladakh but serving in U T of J&K and those belonging to the UT of Jammu & Kashmir but serving in the UT of Ladakh were given an option of serving in the UT of Ladakh on the corresponding or equivalent posts. 15 days time was granted to the staff members to exercise their option. The respondents have placed on record the communication dated 13.09.2022, whereby the option received from the petitioner was forwarded to respondent No.2. A perusal of the option reveals that the petitioner had opted to be the member of subordinate court service of the UT of J&K. Thus, this is established that within the period prescribed by the notification dated 06.09.2022, the petitioner had

exercised his option. The record further depicts that another representation was submitted by the petitioner through Principal District & Sessions Judge, Srinagar, and the same was forwarded to respondent No.2 vide communication dated 06.12.2022. Pursuant to the directions of the competent authority, order dated 03.01.2023 was issued by the respondents oblivious to the fact that the petitioner well within the period of 15 days in terms of notification dated 06.09.2022 had exercised his option to opt for the service cadre of subordinate courts of UT of J&K.

14. It is the positive case of the respondents that the competent authority was not aware of the earlier option exercised by the petitioner, as a result of which order dated 03.01.2023 was issued but as soon as it came to the knowledge of the competent authority that the petitioner had earlier exercised his option of joining the service cadre of subordinate courts of UT of J&K, order dated 31.01.2023 was issued whereby order dated 03.01.2023 was cancelled. The petitioner has, in fact, admitted that he had earlier submitted the representation though he has contended that it was not taken note of. Thus, it cannot be said that the correct facts were not placed before the competent authority, as such, there is no force in this contention and the same is, accordingly, rejected.

15. It was next contended by learned counsel for the petitioner that the order impugned has been passed in utter disregard of principles of natural justice.

16. This is a fact that the petitioner has not been heard before passing of the order impugned but it is equally true that had he been given an

opportunity of hearing, the same would not have changed his fate, particularly when the petitioner has not brought on record new facts, which could have prompted the competent authority to alter its decision. The violation of principle of natural justice alone cannot render the order invalid unless the aggrieved person is able to demonstrate the prejudice caused to him. In this case, the facts are admitted and the petitioner has not been able to demonstrate before this court that incomplete or wrong facts were brought to the notice of competent authority, which led to the passing of order impugned, causing prejudice to him and in absence of any prejudice caused to the petitioner in absence of hearing before passing of order impugned, the petitioner cannot succeed.

17. In this regard, it is apt to take note of the judgment of the Hon'ble Supreme Court of India in the case of “**State of U.P. v. Sudhir Kumar Singh**”, (2021) 19 SCC 706, wherein the Hon'ble Apex Court after taking note of its various earlier pronouncements has observed as under:

42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. **The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.**

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where

such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

(emphasis added)

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

(MOHD. YOUSUF WANI)
JUDGE

(RAJNESH OSWAL)
JUDGE

Srinagar
09.04.2024

“Bhat Altaf-Secy”

Whether the order is reportable:

Yes/No