

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

CM no.2298/2025
In WP(C) no.1918/2023
RP no.33/2025

Abdul Rehman Mir

.....Petitioner(s)

Through: Mr M. M. Dar, Advocate

Versus

Union Territory of J&K and others

.....Respondent(s)

Through: Mr Faheem Nissar Shah, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL JUDGE

ORDER

06.05.2025

1. In application, being CM no.2298/2025, applicants/respondents are seeking recalling/modification of Order dated 11th March 2025 regarding receipt of clear Character Antecedents Report as stated in the said Order as no such report has been received by the Corporation as of now. It is being stated in the application that Corporation has not received any fresh report/clear report from Criminal Investigation Wing, Kashmir. Review/recall/modification of the order dated 11th March 2025 is sought with respect to receipt of clear Character Antecedents Report from CID as no such report has been received by applicants or the Criminal Investigation Wing Kashmir may be directed to provide the latest report/status of the case to the applicants/respondents.

2. In petition, being RP no.33/2025, preferred by writ petitioner, review of Order dated 11th March 2025 passed by this Court in WP(C) no.1918/2023 is sought to the extent of observations made in paragraphs 9&10 reflecting impleadment of Additional Director General of Police CID as party respondent and also report submitted by him to Chief Engineer, Distribution, KPDCL, Kashmir on 27th July 2023 as the case of petitioner was already cleared by SHO police station Chadoora vide report dated 17th April 2023, holding that petitioner is not involved in any kind of subversive activities so far as the record of the police station the petitioner is not found involved in any criminal case, but note was appended therein that petitioner's brother was involved in subversive activities and gone abroad for obtaining training of illegal arms and ammunition and as per that report petitioner was not himself involved in any subversive activity and reference given in the paragraphs 9&10 is pertaining to one Abdul Hamid Ganie, whose regularization was also cancelled by virtue of common order dated 14th July 2023 and in whose favour this Court has already passed judgement, in which order under challenge was quashed with a further direction holding petitioner entitled to all consequential and service benefits.
3. It is also stated in review petition that petitioner was initially engaged in respondent corporation in April 2009 as PDL and remained posted in various offices and ultimately, although he completed his continuous seven years of service in the year 2016, was not considered for regularization, but finally he was considered for regularization vide order dated 13th October 2022, in which petitioner figures at serial no.43. In the said regularization order, it was conditioned that

concerned DDO shall ensure that all credentials/documents of PDL/TDLs, viz. state subject certificate, date of birth certificate and qualification certificate duly verified from concerned issuing authority and vigilance clearance are obtained before release of their salary and other service benefits and if any adverse report was received regarding PDL/TDL, such regularization would be treated as null and void and also as per condition no.15, concerned DDO would obtain an undertaking from the regularizing candidates that if any adverse report was received from any quarter at any stage against candidate it would be deemed that he had no right or claim against the post and action under law would be initiated that while reading both these conditions it was clear that if there was any adverse report against the candidate in person and not against the family members or any relative which had effect for appointment/regularization of the candidate at all. Reports were had from concerned police, who informed that petitioner is not involved in any criminal case or in any kind of subversive activities, but in the said report it was mentioned that brother of subject had exfiltrated to POK/PAK in the year 1989 and infiltrated in the year 1991 and was killed in an encounter at Pulwama District.

4. It is being also stated in review petition that petitioner's case was considered by this Court and after hearing both the parties and during hearing a copy of judgement passed in *Abdul Hamid Ganie's* case was also produced to show that identical writ petition was allowed and although this Court set-aside the order but made certain observations conducted in the case of said *Abdul Hamid Ganie* on 27th July 2023 and same was also reflected in the order under review whereas instead of

reflecting verification report of said *Abdul Hamid Ganie*, the verification conducted by SHO police station Chadoora holding that petitioner was not involved in any kind of subversive activities forwarded vide communication dated 17th April 2023 forming Annexure V to writ petition, was not reflected in the order resulting in non-consideration of petitioner's case for reliefs already granted by this Court. It is being also stated that order dated 11th March 2025 requires to be reviewed on the ground that this Court was to reflect verification conducted by SHO concerned in paragraphs 9 and 10 instead of reflecting verification of *Abdul Hamid Ganie* whose regularization too was cancelled vide common order dated 24th July 2023, so that the order passed by this Court would have been implemented by respondents in its letter and spirit instead of denying its implementation precisely on the ground that reflection in paragraphs 9&10 pertains to verification conducted by Additional Director General of Police, CID, in respect of *Abdul Hamid Ganie* only.

5. Given the contentions made by parties, it is appropriate to go through the pleadings of the parties projected by them in writ petition and reply. In writ petition, it is stated that petitioner was initially engaged in the respondent-Corporation way back in the month of April 2009 as PDL and remained posted in various offices and ultimately although he has completed his continuous seven years of service in the year 2016, but was not considered for regularization on the said date however, after threat bear discussion by the respondents and also while taking in to consideration the long services rendered by the petitioner as PDL he was finally considered for regularization by the respondents herein vide

order dated 13.10.2022 and in the said order petitioner is figuring at serial No. 43. This was to be done subject to certain conditions which included submission of state subject certificate, date of birth certificate and qualification certificate and vigilance clearance as well. SHO police station Chadoora vide letter no.PSC/6A/23/645 dated 17th April 2023, reported that verification of petitioner was got conducted and it was found that petitioner was found not involved in any kind of subversive activities or in any criminal case. However, there had been a Note at the bottom of the letter that brother of petitioner had exfiltrated to POK/PAK in the year 1989 and after his infiltration he was killed in an encounter at Pulwama District.

6. In their objections to writ petition, it is stated by respondents that regularisation of petitioner was made subject to vigilance/security clearance. Respondents also state that the case of petitioner among others was forwarded to investigating agency and adverse security clearance was received against petitioner, as such, Chief Engineer, Distribution, KPDCL, vide no.185 of 2023 dated 24th July 2023 cancelled regularisation/conversion of petitioner.
7. In view of submissions made by parties, the order, with respect whereof review/modification is sought, is reproduced hereunder:

- “1. Objections have been filed.
2. I have heard counsel for parties and considered the mater. Admit.
3. Issue notice. Mr. Jahingeer, GA accepts notice. He submits that reply filed at preadmission stage may be treated as counter. Prayer granted
4. Petitioner does not want to file rejoinder.
5. Petitioner, feeling aggrieved of, seeks quashing of Order no.CEO/D/ KPDCL/185 of 2023 dated 24.07.2023, as in terms thereof his regularization/conversion has been treated as cancelled, null and void ab initio.

6. It was by virtue of Order No.CEO/D/KPDCL|LT2 of 2022 dated 13.10.2022, that petitioner's services were regularized, but in terms of order impugned, his regularization order has been cancelled on the ground of non-fulfilment of basic terms and conditions with regard to security clearance.

7. Petitioner's case is that he was working as permanent daily rated worker and was regularized vide Order dated 13.10.2022. Before his regularization was cancelled, he was neither afforded an opportunity of being heard nor was there any adverse report against him.

8. Respondent-department in their Reply have stated that since there was no security clearance, regularization was cancelled.

9. When it was found that Reply filed by respondent-department was evasive, a Bench of this Court vide order dated 0E.O7.2024, with a view to do substantial justice thought it imperative to array Additional Director General of Police, CID, as party respondent in the instant petition and file his response and ordered accordingly.

10. Response has been filed by newly added respondent – Additional Director General of Police, CID, stating in unequivocal terms that service verification of the petitioner was received from the field formation and after considering the report, service verification of petitioner 'cleared' and report forwarded to Chief Engineer Distribution, KPDCL, Kashmir on 27 .07 .2023.

11. Petitioner's regularization has been cancelled/withdrawn because of no security clearance and so is the stand of respondent department in their Reply. Once response/reply filed by newly added respondent throws light on whole subject matter of the case by stating that service verification of petitioner stands cleared, then in such situation impugned order cannot sustain.

12.It is not out of place to mention here that the moment respondent/ department received verification report from CID, they ought to have revoked and withdrawn impugned order on their own, but they kept the pot boiling and petitioner in lurch for none of his faults.

13. That being the case, impugned Order bearing no. CEOID/KPDCL/185 of 2023 dated 24.07 .2023 is quashed. As a corollary thereof, petitioner is held entitled to all consequential and service benefits.

14. Disposed of along with connected CM(s).”

8. Taking into consideration the submissions of the parties and having regard to the fact that there is error apparent on the face of the record, the Order dated 11th March 2025, passed by this Court in WP(C) no.1918/2023, needs to be reviewed/modified, more particularly from *paragraph 08 onwards*, as such, the order dated 11th March 2025 is reviewed/recast as under: -

- “1. Objections have been filed.
2. I have heard counsel for parties and considered the matter. Admit.
3. Issue notice. Mr. Jahingeer, GA accepts notice. He submits that reply filed at preadmission stage may be treated as counter. Prayer granted
4. Petitioner does not want to file rejoinder.
5. Petitioner, feeling aggrieved of, seeks quashing of Order no.CEO/D/KPDCL/185 of 2023 dated 24.07.2023, as in terms thereof his regularization/conversion has been treated as cancelled, null and void ab initio.
6. It was by virtue of Order No.CEO/D/KPDCL/185 of 2023 dated 24.07.2023, that petitioner's services were regularized, but in terms of order impugned, his regularization order has been cancelled on the ground of non-fulfilment of basic terms and conditions with regard to security clearance.
7. Petitioner's case is that he was working as permanent daily rated worker and was regularized vide Order dated 13.10.2022. Before his regularization was cancelled, he was neither afforded an opportunity of being heard nor was there any adverse report against him.
8. Respondents in their Reply have stated that adverse security clearance has been received against petitioner and, as such, by order impugned regularization/conversion of petitioner was cancelled. Reference has also been made by respondents to Order no.528-JK (GAD) of 2021 dated 21st June 2021 that in case of receipt of an adverse report and on confirmation thereof by the State/Divisional/ District Level Screening Committee, the appointment shall automatically stand cancelled without any notice.
9. A reference during course of arguments has been made by learned counsel for petitioner to the order dated 31.12.2024, passed by this Court in WP(C) no.2067/2023, to say and submit that the said writ petitioner's regularization had also been cancelled by virtue of the same order impugned, which, however, has been quashed and writ petitioner therein held entitled to all consequential service benefits. Facts and circumstances of that case are not same and similar to instant case.
10. Thus, the instant case is to be considered and decided independently on its own set of facts and circumstances. According to respondents, security clearance has not been given.
11. With writ petition, a communication no.PSC/6A/23/465 dated 17.04.2023 (*Annexure V to writ petition*) is annexed. Perusal whereof reveals that SHO police station Chadoora has informed that verification of petitioner was conducted and it has been found that petitioner is not involved in any subversive activities or any criminal case so far. However, there is a “Note” at the bottom of the letter that petitioner's brother had exfiltrated to POK/PAK and after infiltrating back, he was killed in an encounter. This Note appears to have triggered respondents to issue impugned cancellation order.
12. The conditions contained in regularization order, *inter alia*, stipulate that concerned DDO shall ensure that all credentials/ documents of incumbents are duly verified from concerned issuing Authority and Vigilance Clearance is obtained/sought before release of their salary and other service benefits and if any adverse report is received regarding any incumbent, such regularization would be

treated as null and void. It is also stipulated in regularization order that the incumbents are not involved in any embezzlement, criminal cases, antinational/ subversive activity etc., besides there is no departmental enquiry pending against incumbents.

13. The report dated 17.04.2023 in unequivocal terms mention that petitioner is not involved in any subversive activities, yet at its bottom petitioner's brother had been involved in subversive activities and died in the year 1991, but that does not mean that an employee is to be punished for wrongful acts committed by his relatives. The liability and disciplinary action must be based on individual's own actions or omissions, not those of their family members, more particularly when petitioner was of the age of 14 years when his brother was killed in the year 1991. All family members of an alive officer or employee cannot be proceeded with and prosecuted simply because they are related to the employee. Similarly, an employee's disciplinary liability is personal and does not extend to relatives unless there is evidence of their direct involvement in alleged wrongdoing. Employment policies often require disclosure and management of workplace relationship to prevent conflicts of interest or favouritism, but they do not allow for punitive measures against an employee because of independent wrongdoing of a relative unless the employee was complicit or negligent in a way that connects them to the misconduct. In nutshell, punishment or disciplinary action must be based on employee's own conduct and an employee cannot lawfully be punished for misconduct of his relatives unless there is evidence that he was involved or directly responsible for the act. Such is not the situation in the present case and, therefore, impugned action culminated in order impugned qua petitioner is liable to be struck down.

14. For the reasons discussed herein before, impugned order no.CEO/D/KPDCL/185 of 2023 dated 24.07.2023 qua petitioner is quashed. Resultantly, petitioner is held entitled to all consequential service benefits.

15. Disposed of in terms of above."

9. Hence, above quoted paragraphs shall be read as the order dated 11th

March 2025 passed in WP(C) no.1918/2023 and shall form part of the said order dated 11th March 2025.

10.RP no.33/2025 and CM no.2298/2025 are, accordingly, **disposed of**.

(Vinod Chatterji Koul)
Judge

Srinagar
06.05.2025
Ajaz Ahmad, Secy.