

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA 172/2023 in[OWP 526/2015] CM(5419/2023)

UNION TERRITORY OF J AND K AND ORS. (PHE I AND FC DEPARTMENT) ...Petitioner/Appellant(s)

Through: Mr. Jehangir Ahmad Dar, GA.

Vs.

MOHAMMAD SHAFI SHAH

...Respondent(s)

Through: Mr. Javid Hamid, Advocate.

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER

14.07.2025

1. This appeal under Clause 12 of the Letters Patent filed by the Union Territory of J&K arises out of an order and judgment dated 20th May, 2015, passed by a learned Single Judge of this Court ('the writ court') in OWP No. 526/2015, titled 'Mohammad Shafi Shah v. State of J & K and Ors', whereby the writ petition filed by the respondent has been allowed and the appellants herein have been directed to provide employment to the respondent in lieu of land provided by him to the appellant Department.
2. Briefly stated, the facts leading to the filing of the petition, as are gatherable from the writ petition filed by the respondent, are that land measuring 5 marlas (the subject land) falling under survey no. 446 situate at Qasim Colony, Khrew Pampore, owned and possessed by the respondent was taken in possession by the appellants and later on was also mutated in their name. The aforesaid land was neither acquired in accordance with law

nor purchased from the respondent. The appellants constructed a tube well under some Water Supply Scheme for the benefit of the adjoining area.

3. It was submitted by the respondent that at the time of taking over the possession of the land, he was made to understand that in lieu of his land, he would be provided employment. On the asking of the appellants, the respondent also submitted an affidavit to the appellants. The matter was considered by the Assistant Executive Engineer, Pampore, and on completion of the formalities, he recommended the same to the Chief Engineer of the appellant-Department. When the appellants did not act in the matter and failed to provide employment to the respondent, the respondent filed OWP No. 526/2015 before the Writ Court, praying therein, *inter alia*, for a direction to the appellants to engage the respondent in the PHE Department, Pampore Division, in lieu of the subject land.
4. The writ petition was contested by the appellants herein, and in the reply affidavit filed by the Executive Engineer, a stand was taken that in lieu of the subject land comprising 5 marlas acquired by the appellant Department from the petitioner for construction of a departmental structure at Qasim Colony, Khrew Pampore, the case was recommended for engaging the respondent. It is further submitted in the reply affidavit filed before the Writ Court that the case of the respondent, after having been cleared by the Departmental Screening Committee, stood submitted to the higher authorities for engagement of the respondent provided, it is permissible under law and rules.
5. In the light of rival contentions of the parties and the material on record, the Writ Court came to the conclusion that since the case of the respondent for

engagement was under consideration of the appellants, as such, directions ought to be issued to provide employment to the respondent.

6. While passing the impugned order and judgment dated 20th May, 2015, the Writ Court disposed of the petition with the direction aforementioned. It is this order of the Writ Court which is called in question before us in this appeal.
7. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the impugned judgment passed by the Writ Court cannot wholly sustain.
8. Indisputably, the subject land, i.e., land measuring 5 marlas belonging to the respondent, is under the occupation of the appellants since 2014, over which a tube well stands constructed. The subject land also stands mutated in favour of the appellants. There is also no dispute with regard to the fact that the respondent has not been paid either compensation for the land in possession of the appellants, nor has he been provided with any employment.
9. From perusal of documents on record, it transpires that the case of the respondent for his engagement has been processed at different levels and has been submitted to the Competent Authority for taking a decision, if permissible under law and rules. This is exactly the stand taken by the appellants before the Writ Court. The Writ Court has, therefore, erroneously assumed that the recommendations made by the Executive Engineer and other lower functionaries of the PHE Department have created a right in the respondent to seek employment.
10. The reference to “engagement” is also not free from ambiguity. Is it engagement as a daily wager or permanent employment under the State is

also not very clear. There is nothing on record of the writ petition to demonstrate that in the year 2014, there was any policy of the Government in vogue providing for employment in lieu of land given by the people for welfare schemes of the Government.

11. Whether providing of 5 marlas of land by the owner thereof would entitle one to permanent employment is another question which needs to be pondered. Viewed from any angle, there was no warrant for issuance of mandamus to the appellants to necessarily provide employment to the writ-petitioner. However, the fact remains that the subject land is in occupation of the appellants since the year 2014 without payment of any compensation.

12. In view of the aforesaid, we propose to dispose of this appeal by providing as under:

- I. That the case of the petitioner for engagement, as forwarded by the Executive Engineer, PHE Division Awantipora, to the Competent Authority, shall be considered and taken to its logical end, if not already decided and appropriate orders by the Competent Authority shall be passed within a period of six weeks from the date a copy of this judgment is received by the appellants.
- II. That in case the request of the respondent for engagement in Government employment, as recommended by the Executive Engineer concerned, is not found permissible under rules and is not acceded to, requisite steps shall be taken by the appellants to acquire the subject land and pay compensation strictly in terms of the J&K Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The process shall be

initiated immediately upon completion of six weeks, as provided above, and completed within the timeline provided under the Act of 2013.

III. That in case the appellants decide not to utilize the land under their occupation, they shall handover the possession to the respondent by dismantling the structure and removing the debris. They shall also compensate the respondent for the use and occupation of 05 marlas of land since the year 2014. Decision in this regard shall be taken by the Deputy Commissioner of the concerned district after hearing both sides.

IV. It shall, however, remain open to the appellants to bring it to the notice of the Deputy Commissioner, damage/loss, if any, caused by the respondent to appellants, and the said aspect, if brought to the notice of the Deputy Commissioner, shall be investigated in accordance with law to fix the responsibility.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
14.07.2025
“Hilal”

Whether the order is speaking/reportable?

Yes/No.