

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

LPA 239/2022 in[SWP 1147/2009]

1. Union Territory of Jammu &
Kashmir through its Chairman, J&K
State Board of School Education,
Srinagar.

2. Secretary, J&K State Board of
School Education, Srinagar.

...Appellant(s)

Through: Mr. M.I. Dar, Advocate with
Ms. Sana Imam, Advocate

Vs.

Abdul Rehman Dar
S/O Mohammad Sabir Dar
R/O: Kanipora District Kulgam

...Respondent(s)

Through: Mr. Mir Manzoor Ahmad, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE.

ORDER

25.07.2025

Per: Sanjeev Kumar-J: (Oral)

01. This intra-court appeal, essentially by the Jammu & Kashmir Board of School Education [for short "the Board"], is directed against an order/judgment dated 3rd June, 2022, passed by a learned Single Judge of this Court ["the writ Court"] in SWP No. 1147/2009 in case

titled “***Abdul Rehman Dar Vs. State of J&K and Anr.***”, whereby the writ Court has allowed the petition filed by the respondent and quashed the impugned order of penalty.

02. Briefly put, the facts leading to the filing of this appeal are that, on the charge that the respondent had accepted the examination application form of a candidate for Secondary School Examination Session 2008 Bi-Annual, despite the fact that the said candidate had already passed the matriculation, a show cause notice dated 24th April, 2009, was served upon the respondent.

03. The respondent submitted reply to the said notice, in which he fairly admitted the mistake committed by him. The fair explanation tendered by the respondent was not accepted by the Board. and, accordingly, the Board appointed a Fact Finding Committee. The Committee conducted proceedings and submitted its report to the Competent Authority. It is on the basis of the report of Inquiry Committee, that the Competent Authority vide order No. 538-B of 2009, dated 28th July, 2009, imposed a penalty debarring the respondent from any further promotion for a period of two years with effect from the date he would become eligible for his next promotion.

04. This order was called in question by the respondent in SWP No. 1147/2009. The order of penalty was assailed

by the respondent primarily on the ground that no inquiry associating the respondent was ever conducted, and that the respondent was condemned unheard.

05. The writ petition was contested by the appellants herein. In the counter affidavit, the Board took a stand that an adequate opportunity of hearing was provided to the respondent before passing the order of punishment/penalty. It was submitted that a show cause notice was issued which was duly replied by the respondent.

06. The writ Court, after hearing the parties and perusing the material on record, came to the conclusion that the impugned order of penalty was passed in violation of principles of natural justice, as the respondent had not been afforded an adequate and reasonable opportunity of hearing. Relying upon a couple of judgments of the Hon'ble Supreme Court, the writ Court found merit in the petition, and, vide order/judgment impugned in this appeal, the order of penalty was set aside.

07. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the writ Court is legally and factually correct and does not call for any interference of this Court. It is true that a mistake came

to be committed by the respondent in entertaining the application form of a candidate for sitting in an examination which he had already qualified. Ordinarily, it is the duty of an employee receiving the application forms to make proper scrutiny and to ensure that such types of application forms are rejected. However, in the absence of any *mala fides* attributable, an action against an employee who has made a *bona fide* mistake, cannot be taken for misconduct.

08. We have gone through the allegations levelled against the respondent and are of the considered opinion that the allegations not constitute a serious misconduct as would entail a departmental inquiry and a penal action against the respondent. We see a lot of *bona fide* on the part of the respondent, who immediately admitted his mistake upon receiving the show cause notice. The Board should have shown grace and let him off with a warning to remain careful in future. Instead of accepting his *bona fide* admission and showing grace, the Board constituted a Fact Finding Committee and on the basis of some report submitted by the Inquiry Committee holding the respondent guilty of dereliction of duty, the penalty of stoppage of promotion for two years was ordered. It is not in dispute that the report of the Fact Finding Committee was never served along with the show cause notice nor any reply/response from the respondent was obtained.

09. For the reasons which are given by the writ Court in support of the impugned judgment, and also for the discussion we have made hereinabove, we find no merit in this appeal, and the same is accordingly ***dismissed***.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

25.07.2025

"Mir Arif"

- (i) Whether the order is reportable? Yes/No.
- (ii) Whether the order is speaking? Yes/No.

