

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

LPA No.32/2020
CM No.1290/2020
CM No.5531/2023

Sandeep Singh, Age 31 years
S/o Sh. Jeet Singh,
R/o Marchola, Tehsil Sunderbani, District
Rajouri

.... Appellant/Petitioner(s)

Through :- Mr. Jasbir Singh Jasrotia, Advocate

V/s

1. Union Territory of J&K through Commissioner/ Secretary,
Rural Development and Panchayati Raj Department,
Civil Sectt. Jammu
2. Director, ,
Rural Development Department,
Jammu
3. District Development Commissioner,
Rajouri.
4. Assistant Commissioner Development,
Rajouri.
5. Block Development Officer,
Moghla, Rajouri.

....Respondent(s)

Through :- Mr. S.S.Nanda, Sr. AAG

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

ORDER
20.09.2024

Sanjeev Kumar J

1. Impugned in this appeal filed under Clause 12 of the Letter Patent is
directed against an order and judgment dated 27.12.2019 passed by

the Single Bench [“Writ Court”] in WP(C) No.4483/2019 titled Sandeep Singh v. UT of J&K and others, whereby the Writ Court has dismissed the petition filed by the appellant.

2. Briefly stated, the facts leading to the filing of this appeal are that the appellant came to be engaged as Technical Assistant on contractual basis under MGNREGA vide letter dated 22.02.2012. While he was performing his duties as Technical Assistant, an FIR bearing No. RC0042019A0008 came to be registered by the Central Bureau of Investigation (CBI) under Prevention of Corruption Act. The FIR was registered on the basis of a complaint and the appellant having been caught red handed while accepting bribe. The appellant was arrested by the CBI on 15.11.2019. It is claimed by the appellant that the trap was laid by the CBI on 14.11.2019 and he was arrested on 15.11.2019. The appellant was released on bail by the Special Judge Anticorruption (CBI Cases), Jammu on 04.12.2019.
3. Taking cognizance of the registration of FIR by the CBI and arrest of the appellant, Assistant Commissioner Development, Rajouri vide order dated 21.11.2019 disengaged the services of the appellant along with one Mushtaq Hussain. This order was called in question by the appellant before the Writ Court in WP(C) No.4483/2019. The disengagement order was challenged primarily on the ground that the same being stigmatic in nature could not have been passed by the respondents without complying with the principles of natural justice. It was contended before the Writ court that no opportunity of being heard was granted to the appellant before issuing the order of disengagement

of the appellant. The matter was considered by the Writ Court and having regard to the fact that there was no dispute with regard to registration of the FIR by the CBI against the appellant, laying of trap, arrest of the appellant by the CBI and thereafter his release by the Special Judge Anticorruption (CBI cases), the Writ Court came to the conclusion that compliance with the principle of natural justice, in particular, grant of opportunity of hearing, would be an exercise in futility. The Writ Court did not accept the contention of the learned counsel for the appellant that the order impugned was bad having been passed in violation of the principles of natural justice. Feeling aggrieved by the order and judgment dated 27.12.2019, the appellant is before us in this appeal.

4. 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 well reasoned and fully in consonance with law.
5. It is true that if an order of dismissal/discharge/disengagement of a temporary or contractual employee is stigmatic in nature, principles of natural justice are required to be complied with. The legal position on this point is fairly settled. However, there is exception to this settled legal position i.e. where grant of opportunity of being heard is not likely to change the result and the compliance with principles of natural justice is only a mere formality the Courts do not insist for compliance of the principles of natural justice in such case.

6. In the instant case, from a bare reading of paragraph No.5 of the writ petition it clearly transpires that the factual matrix contained in the impugned order is not disputed by the appellant. It is not in dispute that the FIR was registered against the appellant on 13.11.2019; trap was laid on 14.11.2019; he was arrested by the CBI on 15.11.2019 and released on bail by the Special Judge Anticorruption (CBI cases) on 04.12.2019. Appellant also does not dispute that in the trap he was caught receiving Rs.20,000/- from the complainant. However, the defence of the appellant is that the complainant had only come to pay him the money which he had earlier borrowed.

7. Be that as it may, the undisputed case of the appellant is that the FIR registered against him is false. However, he does not dispute that the FIR after investigation has been challaned in the competent Court of law and he has been charge-sheeted by the competent Court of jurisdiction. In view of the aforesaid, we fail to understand as to how, if appellant is granted opportunity of being heard today, the position would change.

8. The facts which are taken note of by the Assistant Commissioner Development in the order of disengagement continue to remain in existence and are not disputable even at this stage. Otherwise also, as rightly noted by the Writ Court that the engagement of the appellant was only a contractual and could have been dispensed with after the expiry of the period of contract. There is also a stipulation in the order of engagement of the appellant that the contractual services on which he was engaged shall be dispensable with one month's notice.

9. Be that as it may, the appellant was a contractual employee and there were serious allegations against him and, therefore, keeping him in service would not be in the interest of administration. True it is that the order of disengagement passed by the respondents is stigmatic in nature, in that, it makes mention of the FIR registered, trap laid and arrest of the appellant and subsequent release on bail. There are the incriminatory things which are mentioned in the impugned order of disengagement but the fact remains that the appellant does not dispute all these things. He is seeking to contest on merits all that happened right from the registration of the FIR to the presentation of challan. Be that as it may, we cannot enter into that arena in these proceedings. We, therefore, conclude that in the given facts and circumstances, though the appellant ought to have been given an opportunity of being heard before passing an order of disengagement, which is prima facie stigmatic in nature, yet we are of the considered opinion that providing of an opportunity of being heard to the appellant is not likely to change the position. The useless formality theory is completely attracted in the case.

10. For all these reasons, we concur with the view taken by the Writ Court. The appeal is, therefore, found to be devoid of merit and the same is, accordingly, dismissed.

(Rajesh Sekhri)
Judge

(Sanjeev Kumar)
Judge

Jammu:
20.09.2024
Vinod, PS

Whether order is reportable: Yes

Vinod Kumar
2024.09.26 10:48
I attest to the accuracy and
integrity of this document