

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)**

Pronounced on : 26.12.2023

Case: SWP No. 167/2018

IA No. 1/2018

Ghulam Mohi-ud-Din Ganaie
Aged about 40 years
S/o Ghulam Mohammad Ganaie
R/o Bandipora.

.....Petitioner(s)

Through: Mr. R.A.Jan, Sr. Advocate with
Mr. Suhail Mehraj, Advocate.

Vs

1. J&K State Road Transport Corporation through its Managing Director, M.A.Road, Srinagar/RHQ Rail Head, Jammu.
2. General Manager, (Adm), J&K State Road Transport Corpn., M.A.Road, Srinagar.
3. General Manager, (Operations), J&K State Road Transport Corpn., M.A.Road, Srinagar.
4. Deputy General Manager (Adm), J&K State Road Transport Corpn., M.A.Road, Srinagar.
5. Deputy General Manager (Load), J&K State Road Transport Corpn., M.A.Road, Srinagar.
6. Deputy Financial Advisor/ Incharge Administration, J&K State Road Transport Corpn., M.A.Road, Srinagar.
7. Traffic Manager (Load), J&K State Road Transport Corpn., M.A.Road, Srinagar.

..... Respondent(s)

Through: Mr. Altaf Haqani, Sr. Advocate with
Mr. Shakir Haqani, Advocate.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The petitioner before being promoted on officiating basis has probationary driver in the year 1994 initially worked as Bus Driver and

thereafter as cleaner with the respondent-department. The petitioner is stated to have proceeded on 10 days earned leave on 14.06.2004 and reported back for duty on 24.06.2004 as per the petitioner. The petitioner was placed under suspension vide order No. JKSRTC/EML/4668 dated 16.11.2004. This prompted the petitioner to approach the civil court for having subsistence allowance under Rules and the same was allowed by the court vide order dated 21.02.2006.

2. The petitioner preferred SWP No. 184/2009 qua the order of suspension that came to be passed by the respondents and instead of granting any relief to the petitioner for their action, the respondent-corporation terminated the services of the petitioner vide order dated 05.02.2009 which came to be impugned again by the petitioner in Writ Petition No. 660/2009. This Court vide judgment dated 01.06.2015 allowed the petitioner to resume the duty and also allowed the respondents to initiate fresh enquiry for the alleged period the petitioner remained absent from his duties.
3. The respondents vide order No. JKSRTC/GMA/PS/J/338 dated 21.01.2016 passed directions qua the alleged absent period in view of the enquiry held by the respondents. The respondents also directed recovery of amount of Rs.1,06,488/- vide order dated 25.03.2017 being excess salary drawn by the petitioner.
4. The petitioner indeed prays for quashing of the aforesaid orders passed by the respondents.
5. The objections stand filed by the respondents wherein the respondents have submitted that the petitioner remained absent for a certain period for which the impugned orders came to be passed by the respondents. The petitioner has no case is the sum and substance of the objections filed by the respondents.
6. As per the impugned order dated 21.01.2016, the respondents have shown leniency towards the petitioner. The period from 24.06.2004 to

05.02.2009 has been treated as leave whatever kind due to the petitioner and the period w.e.f. 06.02.2009 till 04.11.2015 as Dies-non. The excess salary drawn by the petitioner is being recovered through order of 2017, passed by the respondents.

7. In pursuance to the directions passed by this court in writ petition in SWP No. 660/2009, the enquiry was initiated against the petitioner which culminated into the enquiry report dated 23.12.2015 and wherein the enquiry officer made certain recommendations to the Corporation and thereafter the impugned orders came to be passed.
8. Mr. R.A.Jan, learned Senior counsel appearing for the petitioner has vehemently argued that the enquiry officer had in fact exonerated the petitioner of all the charges and yet made certain recommendations which were not in tune with the enquiry outcome. The attention of the court has been drawn to the report of the enquiry officer wherein as per the petitioner the petitioner has been cleared of all the charges. There was no reason to pass the impugned order by the Corporation in the light of the outcome of the enquiry though the recommendations by the enquiry officer were also not in tune with the findings given by the enquiry officer. The petitioner has relied upon Rule 108-B of CCA Rules.
9. Mr. Altaf Haqani, learned Senior Counsel appearing for the respondent-Corporation has submitted that the Corporation was not bound by the findings of the enquiry officer and could take independent decision in respect of the omissions and commissions committed by the petitioner. The counsel has referred to AIR 1964 SC 365. The respondents submit that the petitioner is governed by the rules and regulations of the Corporation.
10. The enquiry officer has gone into the details of the allegations leveled against the petitioner as far as his unauthorized absence from the duty is concerned. The enquiry officer has taken into consideration the documents which were produced by the enquiry officer including the

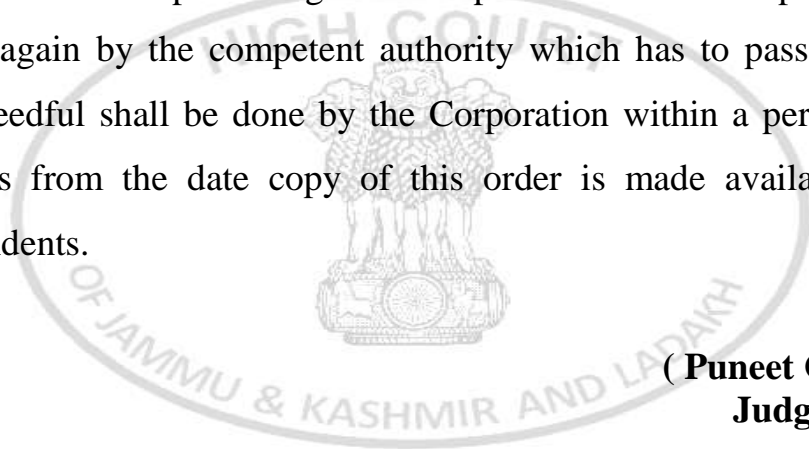
attendance card, trip challan and salary statement of account and also noted the contradictions which appeared during the enquiry proceedings and concluded that the petitioner joined the duty after expiry of his leave period and further that the salary sheet also vindicates the version of the petitioner that he had joined his duty after expiry of earned leave. The enquiry officer also took note of the lapses on behalf of the Corporation during the relevant period in his enquiry report. The enquiry officer recommended the period w.e.f 24.06.2004 to 05.02.2009 is to be treated as leave of whatever kind is due to him and the period w.e.f 06.02.2009 to the date of restoration of his service i.e. 04.11.2015 is to be treated as Dies-non.

11. The respondents vide impugned communication dated 21.01.2016 reiterated the recommendations made by the enquiry officer. The petitioner was also administered a warning to remain careful in future. The enquiry officer having found in the enquiry that the petitioner had not remained absent from duty unauthorizedly and that the petitioner was not to be blamed for any action there was no reason for the Corporation to pass the impugned order of 2016 or pass order of 2017 whereby the alleged excess salary drawn by the petitioner is being recovered is the plea of the petitioner.
12. The Court will not go into the findings recorded by the enquiry officer which after detail analysis had exonerated the petitioner of any wrong doing. The Court will not substitute its own view in the findings recorded by the enquiry officer. The competent authority is not bound by the outcome of the findings recorded by the enquiry officer and can take independent decision as pleaded by the learned counsel for the respondents cannot be disputed nor is fairly controverted by the learned counsel for the petitioner. However, it does not mean that the competent authority can pass any order without exercising its discretion in a rightful manner. The Court does not find any reason as to why the enquiry officer despite holding that the petitioner did not

remain absent from his duties made the recommendation as detailed above. The authority passing the impugned order of 2016 appears to have taken a very extreme view of the matter and passed the directions as contained in the impugned order of 2016.

13. The Court does not *prima facie* finds any reason for the respondents to pass the impugned order and more particularly the period from 06.02.2009 to 04.11.2015 as Dies-non. It is not that the respondents had initiated any other enquiry or proceeding against the petitioner and had conclusions different from what the enquiry officer had in his enquiry report. There has to be some firm and tenable basis for passing the impugned order by the respondents.
14. Mr. Haqani, learned senior counsel for the respondents has though tried to impress upon the court that the orders of 2016 and 2017 are in consonance with the law as the respondents have taken the decision keeping in view the real facts of the case yet the court is not satisfied with the argument of the counsel for the respondents. Any action taken by the respondents affecting the petitioner adversely after the enquiry report has to have reasonable basis. The competent authority cannot act arbitrarily. It is not that the respondents had otherwise contested the findings of the enquiry report and rather accepted it.
15. The Court has no hesitation in holding that the enquiry officer though absolved the petitioner of any wrong doing yet made recommendations which were not in tune with his findings. Infact there was no requirement for the enquiry officer to make recommendations as made by him once he found the petitioner being not guilty of the charge made against him.
16. The Court in the final analysis holds that the respondents have in any case taken a very harsh stand qua the petitioner who was just a petty official with the department and passed the impugned orders of 2016 and 2017. The respondents have not acted fairly in the matter while passing the impugned orders.

17. In the facts and circumstances of the case, the petition is allowed and both the orders impugned in the present petition are quashed. The respondents are directed to pass fresh orders keeping in view the enquiry report and the rules governing the subject. In case any order adverse is to be passed against the petitioner then the petitioner be heard again by the competent authority which has to pass the order. The needful shall be done by the Corporation within a period of two months from the date copy of this order is made available to the respondents.



(**Puneet Gupta**)
Judge

Jammu :
26.12.2023
Pawan Chopra

Whether the Judgment is speaking : Yes/No
Whether the Judgment is reportable : Yes/No