

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

SWP No. 2493/2002

Pronounced on : 3.06.2020

Om Parkash Sharma

.... Petitioner(s)

Through:- Ms. Surinder Kour, Sr. Advocate  
with Ms. Manpreet Kour,  
Advocate

V/s

State of J&K & others

.....Respondent(s)

Through:- Mr. Rajesh Thappa, Dy. AG

**Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

**01.** Petitioner seeks quashing of order dated 30.05.2002 issued by the Chief Education Officer, Udhampur whereby the petitioner was not found entitled to release of salary for the period of absence with effect from 07.08.1996 to 19.07.1999, and the period of absence was treated as on leave without pay and allowance.

**02.** The two issues which were required to be considered in this case, are; (i) whether the absence period of the petitioner with effect from 07.08.1996 to 19.07.1999 has rightly been treated as on leave without pay and allowance vide order dated 30.05.2002, and (ii) whether the respondents are justified in directing recovery of Rs.43,320/- from the salary of the petitioner.

**03.** It is the admitted case of the respondents that the petitioner while posted as a Teacher in Government Primary School, Magiote Udhampur, was deputed for B.Ed. training on regular basis at Government College of Education, Jammu during session 1995-96 vide the order of Director, School Education Jammu dated 09.09.1995. He was, accordingly, relieved by the

Zonal Education Officer, Udhampur on 28.09.1995 and was directed to report to Principal, Government College of Education, Jammu before 30.09.1995. It is also admitted that he had joined the course as directed, however, vide letter dated 13.08.1996 (Annexure D), the Principal of the College asked the petitioner to produce his qualification certificates in original for verification.

**04.** The petitioner as per Annexure-E to the petition, claims to have submitted the certificates to the Principal on 21.08.1996. However, on 21.08.1996, the Principal, Government College of Education, Jammu wrote to the Deputy Registrar, (Exam.), Universities of Jammu, in reference to his letter dated 21.08.1996 that as per directions, the petitioner would not be permitted to appear in the examination 1996 both in theory as well as practice of teaching.

**05.** Principal, Government College of Education/respondent No. 6, also wrote to the petitioner that he has cheated the College by misrepresenting that he was B.Com Graduate and this fact has been belied by record, and the petitioner was thus, asked to show, as to why the disciplinary action should not be taken against him.

**06.** Petitioner's case is that he replied to the said notice but there was no response to the same as it was never pursued, and rightly so because the Principal of the College was not being a Controlling Officer of the petitioner did not send him for appearing in the examination, as he found him ineligible. This was all that he was required to do at his end.

So far as the recovery of the amount of Rs. 43,320/- from the salary of the petitioner is concerned, the department ought to have verified the file and his antecedents before selecting him for the said training course and the

Principal of Government College of Education, was required to verify it only at the time of sending the petitioner to appear in final examination.

**07.** Petitioner was appointed as a Teacher in the Education Department in February, 1973, but the impugned order is dated 30.05.2002 by virtue of which, the period of absence with effect from 07.08.1996 to 19.07.1999 has been treated as on leave without pay and allowances under Article 163 of the Civil Service Regulations.

**08.** The order says “the petitioner was repeatedly asked to explain his whereabouts during the period of absence time and again and he has failed to reply in order to defend himself till date in spite of repeated notices”. Thus, the order during his period of absence does not take into consideration SRO 321 dated 07.12.1995, but the Education Department is a vacation department and how much of the earned leave was due to him, ought to have been considered. There is no reason why the salary paid to the petitioner is being recovered when he had attended the course and if he was found guilty of producing certificate of another person then, he could have been dealt under law. Since no regular enquiry was conducted, therefore, no action was called for.

**09.** So far as recovery of Rs.43,320/- paid to the petitioner during deputation period, the same was stayed by this Court vide order dated 30.09.2002. The amount appears to have been reflected in the salary since October, 1995 to 1996. Petitioner had joined service in 1973 and was deemed to have been relieved on 14.10.1996 for joining B.Ed. training as per letter dated 29.11.1996 addressed to the Principal B.Ed. Colleges, Jammu, therefore, his deputation was valid as per law, and as per the order of the Director, School Education, he also attended the course but was not allowed

to appear in the examination, therefore he could not be denied salary for the said period. Thus, no amount be recovered from him without holding an enquiry. Since no enquiry was conducted for almost 25 years, it is too late to hold an enquiry when he has already superannuated.

**10.** So far as the order dated 30.05.2002, is concerned, the relevant extract is reproduced below:-

“Now, therefore, in pursuant to the judgment dated 24.12.1998 passed in SWP No. 434/98 titled Om Parkash Sharma Vs. State, the claim of the petitioner was considered and on close scrutiny and due application of mind Shri Om Parkash Teacher is found not entitled to release of salary for the absence period and the claim of the petitioner for release of salary is hereby rejected. The period of absence with effect from 07.08.1996 to 19.07.1999 i.e. the date of joining in the present school (GPS Mudgali, Udhampur zone) is hereby treated as on leave without pay and allowances.”

**11.** This order suffers from non-application of mind being against the mandate of SRO 321 dated 07.12.1995 as per SRO, wherein it has been explained in Government Instructions that “No period of un-authorized leave or absence may be treated as Extraordinary Leave without allowances when a Government servant has at his credit earned leave.....”. Respondents having nowhere pleaded that the petitioner has no earned leave to his credit, as he is an appointee of 1973, an employee of the Education Department, therefore, he must have some leave to his credit.

**12.** In view of the aforesaid discussions, this petition is allowed, the impugned order dated 30.05.2002, thus, is without any basis and the same is

quashed. Petitioner's period of absence w.e.f., 07.08.1996 to 19.07.1999 be treated as on leave period whatever kind due to him.

**13. Disposed of** in the aforesaid terms.

**(Sindhu Sharma)**  
**Judge**

JAMMU

3.06.2020

*Ram Murti*

*Whether the order is speaking* : *Yes.*  
*Whether the order is reportable* : *Yes/No.*

