

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

SWP No. 592/2007  
IA No. 3603/2013  
C/w  
CPSW No. 09/2007

Pronounced on : 1<sup>st</sup> .06.2020

Sudershan Singh

.....Petitioners

Through:- Mr. R. S. Thakur, Sr. Adv. with  
Mr. Ashwani Thakur, Advocate

**Vs.**

State of J&K and others

.....Respondents

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

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

**JUDGMENT**

**SWP No. 592/2007**

1. Petitioner initially challenged his suspension dated 14.02.2006. Respondent No. 2, who has been impleaded by name as party respondent No. 3, alleging bias and *mala fide* against him, however, his suspension was revoked and the period of absence from duty was treated as on leave whatever kind is due, vide order dated 31.12.2010 issued by the then Director, Local Bodies, Jammu.
2. It appears that Sh. Jeet Lal Gupta took over as Commissioner Secretary to Government, Housing and Urban Development Department sometimes after the re-instatement of the petitioner. He got the reinstatement of the petitioner re-examined and issued Govt. Order dated 12.08.2013, Annexure 'O' to the petition directing as under:

“Whereas the case was re-examined in the department and it was

found that grave illegalities has been committed by the successive Directors of Urban Local Bodies, Jammu from 2006 onwards in ordering re-instatement of the official who had remained on un-authorized absence from a period of 3 years 8 months and 5 days w.e.f 28/12/2005 to 03/08/2009, who neither competent nor qualified to issue re-instatement order because as per J&K CSR, the powers lies with the Government.

Now, for the above cited reasons, the re-instatement Order No. DULBJ/2010/4587-89 dated 12/05/2010 issued by Director, Urban Local Bodies, Jammu is hereby rescinded ab-initio. Besides, Shri Arun Kumar Sharma, KAS, Director, Urban Local Bodies, Jammu is hereby appointed as Enquiry Officer to conduct de novo enquiry in the case including the promotions given to Shri Sudershan Singh by the then Director, Urban Local Bodies, Jammu. The Enquiry Officer will also make specific recommendations to the Administrative Department in respect of settlement of his un-authorized period.”

3. This order directing fresh enquiry was challenged by the petitioner by amending SWP No. 592/2007 and the amendment was allowed by this Court vide order dated 01.01.2015. Objections to the amended petition were filed on 15.03.2016 in terms of order dated 15.02.2016 passed by the Court. Paras 2 to 4 of the amended writ petition are re-production of paras of unamended petition. Whether the petitioner has made out a case for alleged bias and *mala fide* attributed to Shri Jeet Lal Gupta- Respondent No. 3 can only be considered by reproducing these paras:

“3. That, the petitioner continued to be sick and under medical treatment, as borne out from the medical certificate, a copy whereof is annexed herewith as annexure ‘H’. During this period of sickness, the order no. DULBJ/2006/ dated February 2006 (annexure ‘A’) came to be made by respondent 3, when he was holding the post of Director Urban Local Bodies, Jammu. This order too was never served on the petitioner.

4. That, it appears that the said Director Urban Local Bodies, Jammu, respondent 3 herein, instituted an enquiry against the petitioner, and Sh. R. K. Gupta, an officer of the Urban Local Bodies was appointed Inquiry Officer to inquire into his alleged unauthorized absence. The

said Sh. R. K. Gupta, submitted his inquiry report to the Director Urban Local Bodies sometime about 13 March 2006. A copy of the said report is annexed herewith as annexure 'J'. It is clear from the said report that there was absolutely no justification for the suspension of the petitioner. It is pertinent to mention here that the Inquiry Officer asked for the "copy of record and application if any given by Sudershan Singh" from the President, Municipal Council Udampur, and the latter vide his no. MCU/2005-06/5318 dated 8 March 2006, furnished the said copies and made the position clear on the subject. A copy of the said communication of the President, Municipal Council Udampur, is annexed herewith as annexure 'K'. From the aforesaid narration, it is obvious that the order of reversion was made in hot haste, practically setting at naught the Government Orders without seeking approval or instructions from the Government, and thereafter suspension of the petitioner on false grounds, is mala fide, and for extraneous considerations. The petitioner has not as yet been reinstated in spite of the said Inquiry report."

4. It is strange that the petitioner has withheld the information about the temporary appointment as Checker-cum-Clerk (Junior Assistant) in the pay scale of Rs. 180-250 issued by the Director Local Bodies vide order No. 313/LB dated 27.09.1979 and also at the time of his appointment as Secretary in 1995 he was holding the same post.
5. The question is what post was held by him at the time of his appointment as Secretary is not disclosed by the petitioner. He has also not disclosed while making allegations of bias and *mala fide* against Shri Jeet Lal Gupta that he was transferred and posted as Junior Assistant in Municipal Committee, Banihal vide order dated 23.12.2005 by Shri Jeet Lal Gupta-Respondent No. 3 but the order of reverting him to the post from which he was promoted and appointed as Secretary was issued only after the dismissal of SWP No. 17/2000 in which Government order No. 215-HUD/LSG of 1995 dated 21.07.1995 cancelling his appointment

was upheld by dismissing the Service Writ Petition filed by the petitioner challenging the validity of the said order.

6. The then Director-Shri Jeet Lal Gupta had no option but to issue said order in compliance to the Government Order dated 21.07.1995 after the dismissal of his Letters Patent Appeal by the Hon'ble Division Bench of this Court on 20.12.2005 so no bias and *mala fide* can be attributed to the respondent who issued order dated 23.12.2005
7. Another grievance of the petitioner is that he was placed under suspension vide order dated 14.02.2006 though he was on sanctioned leave during this period. The order of suspension was a result of bias and *mala fide* besides arbitrary exercise of power. However as per order dated 31.12.2010 the Enquiry Officer in his report dated 29.04.2010 has concluded that the official could not justify his unauthorized absence from duty, properly and satisfactorily for the period mentioned above. So the absence of the petitioner from duty w.e.f 28.12.2005 to 03.08.2009 is not disputed. Even the Review Committee of the Government accepted his absence. As per Govt. Order No. 66-HUD of 2015 dated 03.03.2015, the petitioner was reinstated but the period of absence from duty w.e.f. 28.12.2005 to 03.08.2009 was treated as extraordinary leave in terms of the Jammu & Kashmir Leave Rules, 1979 without pay and allowances. The finding of the first Enquiry Officer is that the petitioner could not justify his absence from 28.12.2008 to 03.08.2009 stands confirmed by the Review Committee. If that be so, then how could the allegations of bias and *mala fides* attributed to Shri Jeet Lal Gupta, (the then Director) be sustained. Moreover, it is not the absence from duty alone but the non-compliance of transfer order by the

petitioner. It is clear that he applied for leave after coming to know that he has been reverted to the post he was holding before his appointment instead of joining at the place of posting, he preferred to remain on leave it was only to defy the order which has been upheld by the decision of this Court. So his suspension was not only for remaining absent, but for defiance of the administrative order of transfer too, so the suspension order cannot be questioned on the plea of bias or *mala fides*.

8. So far as the competence of the Director to re-instate the petitioner vide order dated 31.12.2010 is concerned as the petitioner was Junior Assistant at the time of his suspension so the Director alone was competent to re-instate him as per the seniority list-Annexure 'A' appearing at page No. 68 furnished by the Director. The petitioner was confirmed as Junior Assistant only on 30.01.1986 and he was promoted as Senior Assistant on 28.02.1994 in the pay scale of Rs. 4000-6000(PR) and as Head Assistant in the pay scale of Rs. 5000-8000(PR) w.e.f 16.06.2002 after he was re-instated vide order dated 31.12.2010 as he was Junior Assistant at the time of his suspension and held the same post at the time of his suspension order was revoked. So the Director, who had suspended him was competent to revoke the order after enquiry was held and the report of the Enquiry Officer was received. Govt. order dated 12.08.2013 holding that:

“Whereas, the official was promoted to the post of Sr. Assistant in the pay scale of 4000-6000(PR) and subsequently, as Head Assistant in the pay scale of 5000-8000(PR) w.e.f 16/06/2002 vide order issued under endorsement No. DULBJ/2010/16382-85 dated 31/12/2010 keeping in view of his seniority with the other counter parts.

Whereas the case was re-examined in the department and it was found that grave illegalities has been committed by the successive Directors

of Urban Local Bodies, Jammu from 2006 onwards in ordering re-instatement of the official who had remained on un-authorized absence from a period of 3 years 8 months and 5 days w.e.f 28/12/2005 to 03/08/2009, who neither competent nor qualified to issue re-instatement order because as per J&K CSR, the powers lies with the Government.

Now, for the above cited reasons, the re-instatement Order No. DULBJ/2010/4587-89 dated 12/05/2010 issued by Director, Urban Local Bodies, Jammu is hereby rescinded ab-initio. Besides, Shri Arun Kumar Sharma, KAS, Director, Urban Local Bodies, Jammu is hereby appointed as Enquiry Officer to conduct de novo enquiry in the case including the promotions given to Shri Sudershan Singh by the then Director, Urban Local Bodies, Jammu. The Enquiry Officer will also make specific recommendations to the Administrative Department in respect of settlement of his un-authorized period.”

9. The petitioner was re-instated vide order dated 31.12.2010, copy of the order is also enclosed and sent to Principal Secretary to the Government, Housing and Urban Development Department, Jammu for information. The then Principal Secretary to the Government did not object to the issue of the order, it is only the respondent-Shri Jeet Lal Gupta, who issued the impugned order. The correctness of the said order has been questioned on the ground of *mala fide* and bias as the Director had allegedly reverted him to the post of Jr. Assistant and also suspended him. Both the orders have been legally justified and the allegations of *mala fide* exercise of power or bias found to be false and imaginary for the reasons already stated.
10. Regarding Govt. order dated 12.08.2013, the allegations of *mala fides* and bias were alleged, firstly because of the delay in the order of reversion of the petitioner and also his suspension by the same officer. Since his reversion and suspension stands justified in view of the earlier order, therefore, allegation of *mala fide* is not tenable but whether the

order is arbitrary and illegal has to be considered on its own merits.

11. It is not disputed that the period of unauthorized absence was not treated as 'Dies Non' and in view of SRO 321 dated 07.12.1995 and Government instruction appended to Article 163 of CSR, which is reproduced as under:

“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. Where it is the intention of the competent authority not to allow the concerned Government servant any pay and allowances for the period of un-authorized absence the said period may be treated as '*Dies Non*' (non qualifying for any remuneration). The '*Dies Non*' in such cases shall not disturb the title of earned leave nor shall it constitute an interruption for service qualifying for pension, leave and increment.”

12. So there is no illegality in the order dated 31.12.2010 treating unauthorized absence of the petitioner as leave whatever kind due to him which does not suffer from any illegality since Director was competent to pass order dated 31.12.2010, he did not act without jurisdiction. The next question is whether order dated 12.08.2013 is legally valid, the answer to this depends upon whether Section 271 of the Municipal Act is applicable to the facts of this case. Under Section 271, the Government has the power to reverse or modify the orders passed by the officers who acted in violation of carrying out the purpose of the Act. Thus, it is only the order which violates the purpose of the Act that can be reversed by the Government, as it is purely a case of maintaining discipline. Section 271 of the Act is not attracted, as such, the order impugned is arbitrary and, in violation of Article 14 of the Constitution of India because the petitioner was re-instated by the appointing authority and his period of absence was treated as leave of whatever kind

due, in accordance with the Government instruction as per SRO 321 dated 07.12.1995 and period of unauthorized leave or absence may be treated as extra-ordinary leave without allowance when a government servant has to his credit earned leave.

13. Since the petitioner has been in service since September, 1979, he is deemed to have sufficient leave at his credit, despite this, Enquiry Officer was given a specific recommendation to the Administrative Department in respect of the settlement of unauthorized absence which is not expected from the Enquiry Officer as he had to return a finding on the guilt of the delinquent officer. Therefore, Government order dated 12.08.2013 is quashed and therefore, Government Order No. 66-HUD of 2015 dated 03.03.2015 also does not survive as it is based on *de novo* enquiry.
14. In view of the above, Government order dated 12.08.2013 is quashed and all the orders issued in consequential thereof will have no legal validity, therefore, this petition is allowed with aforesaid direction.
15. **Disposed of** in the aforementioned terms alongwith connected IA.

(Sindhu Sharma)  
Judge

JAMMU  
1 .06.2020  
SUNIL-II

Whether the order is speaking?	Yes
Whether the order is reportable?	Yes/No