

State of Jandk and Others Vs. Mohammad Iqbal Mallah

State of Jandk and Others Vs. Mohammad Iqbal Mallah

SooperKanoon Citation : sooperkanoon.com/1151660

Court : Jammu and Kashmir

Decided On : Jun-05-2014

Judge : The Honourable Chief Justice Mr. M. M. Kumar & Muzaffar Hussain Attar

Appeal No. : LPA No. 153 of 2012

Appellant : State of Jandk and Others

Respondent : Mohammad Iqbal Mallah

Advocate for Pet/Ap. : Mr. A. M. Khan

Judgement :

1. The instant appeal under Clause 12 of the Letters Patent is directed against judgment and order dated 05.04.2012 rendered by the learned Single Judge of this Court, holding that the petitioner- respondent could not be disengaged from discharging the duties as Special Police Officer (SPO) and the order of disengagement dated 01.07.2011 was liable to be set aside. It is appropriate to mention that the petitioner- respondent was engaged to discharge the duties as SPO for an honorarium of Rs. 3000/- per month vide Order dated 18.10.2008. On account of absence from duty he was disengaged. The learned Writ Court held in a short order that the order of disengagement suffers from violation of principles of natural justice and therefore it was quashed. The impugned judgment and order dated 05.04.2012 runs into few paras which is set out below in extenso:-

Writ petitioner was engaged as SPO vide Order No. ESTT/SPO/08-22093-22101 dated 18.10.2008 and disengaged vide Order No. Estt/SPO-S/11189-91 dated 01.07.2011.

Feeling aggrieved the petitioner questioned the same by the medium of writ petition.

Respondents have filed reply.

Admittedly, the petitioner was performing his duty as SPO, had remained absent and came to be disengaged vide order supra without conducting enquiry and without even show cause notice.

Thus the impugned order, on the face of it, is violative of principles of natural justice and merits to be quashed so far as it relates to petitioner.

Accordingly, the writ petition is allowed and impugned order is quashed so far as it relates to petitioner. However, the respondents are at liberty to pass appropriate orders as warranted in the circumstances and as per rules occupying the field.

2. Mr. R. A. Khan, learned AAG has vehemently argued that the petitioner-respondent was not holding any post under any rules warranting compliance of rules of natural justice. He has stated that in a case where an employee does not hold any post then no enquiry is required to be held. According to Mr. Khan there are no statutory rules governing the service conditions of SPOs.

3. Mr. A. M. Khan, learned counsel for the petitioner- respondent has, however, argued that principles of natural justice of issuing show cause notice were required to be followed.

4. Having heard learned counsel for the parties we are of the considered view that once the petitioner- respondent was not holding any post regulated by any statutory rules, then it is not possible to hold that a departmental enquiry was required to be held although the SPOs might be discharging significant duties at their respective places. In somewhat similar circumstances the issue was raised before Honble the Supreme Court in the case of State of Karnataka v. Ameerbi,

(2007) 11 SCC 681.

Considering the judgment rendered in the case of *State of Assam v. Kanak Chandra Dutta*, AIR 1967 SC, 884, their Lordships of Honble the Supreme Court held in para 29 as under:-

Appointments made under a scheme and recruitment process being carried out through a committee, in our opinion, would not render the incumbents thereof holders of civil post. Our attention has not been drawn to any rule or regulation governing the mode of their recruitment. Some statements in this behalf have been made by the interveners but for the reasons stated hereinbefore, we cannot enter thereinto. A distinction must be made about a post created by the Central Government or the State Governments in exercise of their power under Articles 77 or 162 of the Constitution of India or under a statute vis-a-vis cases of this nature who are sui generis. Terms and conditions of services of an employee may be referable to acts of appropriate legislature. The matter may also come within the purview of Article 309 of the Constitution of India as proviso appended thereto confers power upon the President or the Governor of a State or other authority, who may be delegated with such power, to make rules during the interregnum.

5. In the present case the petitioner- respondent was working as SPO at an honorarium of Rs. 3000/- per month. He decided to absent himself from duty and his services were disengaged vide order dated 01.07.2011 when he had rendered less than three years service. He has no right to any post. There was no requirement of law to hold an enquiry for complying with the rules of principles of natural justice as he was not a holder of a post, much less a civil post. Therefore, the appeal deserves to be accepted and the judgment of the learned Single Judge is liable to be set aside.

6. As a sequel to the above discussion this appeal succeeds. The order of the learned Single Judge is set aside and the impugned order dated 01.07.2011, disengaging the petitioner- respondent, is upheld.