

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

**WP(C) No.1757/2019**

**AIJAZ RASHID KHANDAY**

**...PETITIONER**

Through: Mr. Rizwan, Advocate

**Vs.**

**STATE OF J&K AND  
OTHERS**

**...RESPONDENTS**

Through: Mr. Ilyas Laway, GA.

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**ORDER (ORAL)**

**04.07.2024**

**1)** The petitioner, through the medium of instant petition, has challenged order No.125 of 2019 dated 27.03.2019, whereby his services as Special Police Officer (SPO) have been disengaged on account of his unauthorized absence from duty with effect from 03.10.2018.

**2)** It is case of the petitioner that he was engaged as an SPO in the year 2014 in terms of order No.355/2014 dated 08.07.2014 issued by respondent No.4. The petitioner was allotted belt No.526/GRP-K and

in terms of order dated 19.08.2014, he was posted at GPRS, Anantnag. According to the petitioner, he performed his duties to the satisfaction of his superiors.

3) It has been submitted that in the year 2016, law and order situation in Kashmir Valley, particularly in South Kashmir, became precarious and the police personnel, particularly the SPOs started receiving threats to their life from the militants and they were asked to give up their jobs. It has been averred that in September, 2018, the petitioner received life threats and he was under continuous surveillance of some unknown armed persons, as a result of which he could not attend his duties. It has been further contended that in February, 2019, due to ease in situation, the petitioner proceeded to resume his duties but was not allowed to do so. Therefore, on the recommendations of respondent No.5, impugned order came to be issued whereby services of the petitioner were disengaged on account of his unauthorized absence.

4) The petitioner has challenged the impugned order primarily on the ground that the same is in clear violation of principles of natural justice as neither any enquiry has been held against the petitioner nor any opportunity of hearing has been afforded to him. It has been contended that as per the ratio laid down by this Court in the case of **Gh. Haider v. State of J&K & Ors.; 2014(3) JKJ 461 [HC]**, even an SPO is entitled to be subjected to enquiry before taking any action against him as the SPOs, in terms of Section 19 of the Police Act, are

vested with same powers, privileges and protections as are available to ordinary officials of the police force.

5) The respondents have contested the writ petition by filing a reply thereto. In their reply, the respondents have submitted that after the engagement of petitioner as SPO in the year 2014. He was deployed at Police Station GRP, Anantnag, at Railway Track KM 22-23 but he unauthorizedly absented from his duty and the same was recorded in Daily Dairy of Police Station, GRP, Anantnag vide Report No.6 dated 03.10.2018. It has been submitted that vide Police Station GRP, Anantnag's signal 17/5A/GRPS/Ang/2019 dated 03.01.2019, the petitioner was informed through his native Police Station viz P/S Qaimoh to report back for duties but he did not report. On 18.02.2019, the petitioner put forth an application for resuming his duties but on 20.02.2019, disengagement of petitioner for his unauthorized absence was recommended by SDPO, Railways, Anantnag, which resulted in passing of impugned order dated 27.03.2019. It has been contended that the petitioner has shown act of cowardice in the line of duties by avoiding to perform his duties without information to his superior officers. It has been further submitted that there was no requirement of conducting a departmental enquiry against the petitioner.

6) I have heard learned counsel for the parties and perused the record of the case.

7) The main contention that has been advanced by the learned counsel for the petitioner is that an SPO appointed under Section 18 of

the Police Act is entitled to the same privileges and protections as an ordinary officer of police. In this regard, learned counsel has relied upon the provisions of Section 19 of the Police Act and the judgment of this Court in **Gh. Haider v. State of J&K & Ors.; 2013(3) JKJ 240.**

8) So far as the petitioner is concerned, it is not in dispute that he was engaged as an SPO temporarily on consolidated wages. Section 18 of the Police Act deals with engagement of SPOs. It reads as under:

*“18. Special Police officers.— When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require to act as Special Police officers for such time and within such limits as he shall deem necessary ; and. the Magistrate to whom such application is made shall unless he see cause to the contrary comply with the application.”*

9) Section 19 of the Police Act deals with the powers of SPOs. It reads as under:

*“19. Powers of Special Police Officers.— Every special Police Officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary officers of Police.”*

**10)** From a perusal of the provisions contained in Section 18 of the Police Act, it is revealed that SPOs are appointed by Police Officers above a particular rank for specific purposes when the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants. The provision makes it clear that residents of neighbourhood can be appointed as SPOs for dealing with specific contingencies. Thus, engagement of SPOs is not of a permanent nature but it is only to take care of a particular contingency. It is in this context that the provisions contained in Section 19 of the Act are required to be interpreted. By doing so, it becomes axiomatic that SPOs enjoy same powers, privileges and protections as do the ordinary officers in the matter of crowd control, prevention of unlawful assemblies or contingencies of like nature. The said provision cannot be interpreted in a manner so as to extend even the powers, privileges and protections relating to service conditions of an ordinary police officer to the SPOs, who, admittedly, do not hold any civil posts regulated by any Statutory rules. Therefore, they are not entitled to any protection as afforded to ordinary police officers under Police Rules or Civil Service Regulations. I am supported in my aforesaid view by the judgment of a Division Bench of this Court in **State of J&K v. Mohammad Iqal Mallah** (LPA No.153 of 2012 decided on 05.06.2014).

**11)** It seems that the binding precedent rendered by Division Bench of this Court in **Mohammad Iqbal Malla's** case (supra), as also the

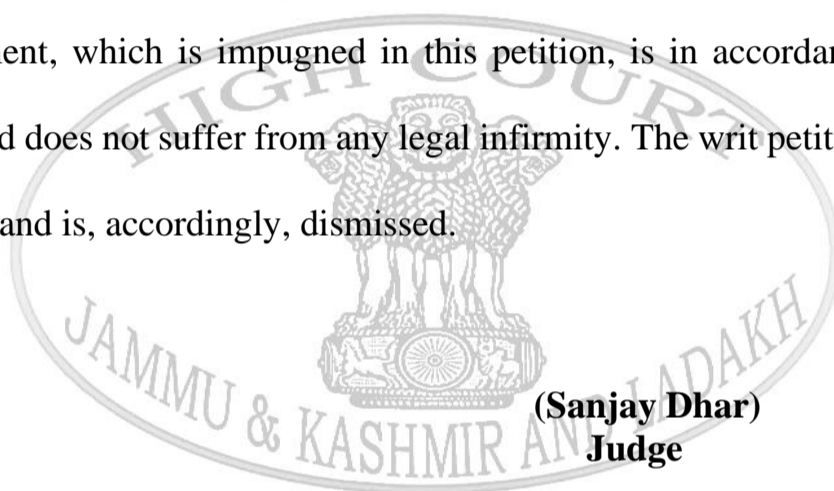
provisions contained in Section 18 of the Police Act which deals with the purpose for which Special Police Officers are appointed, were not brought to the notice of the learned Single Judge when **Gh. Haider's** case was decided.

**12)** Thus, from the above it is clear that the petitioner, who was engaged as an SPO, was not entitled to any right of hearing or enquiry keeping in view the nature of his engagement. Therefore, it was not incumbent upon respondents to hold an enquiry or give an opportunity of hearing to the petitioner before disengaging his services as an SPO.

**13)** Even otherwise, such an enquiry was not necessary at all in the facts and circumstances of the present case because, admittedly, the petitioner was absent from duty from 03.10.2018 upto 19.02.2019 when he approached the respondents for resuming his duties. The explanation tendered by the petitioner for not attending his duties is that he was threatened by militants and was asked to give up his duties. The explanation given by the petitioner for his unauthorized absence from duty is not tenable at all. If officers/officials of the police force, who are assigned the task of protecting the life and property of the common people, feel afraid of anti-national and anti-social elements, then such police officers/officials do not deserve to be the part of the belt forces. If the guardians of security of the common people abdicate their duties, then only God can save this Country. The ground projected by the petitioner for his absence from duty can by no stretch of imagination be termed as genuine. Thus, even if an opportunity of hearing is given to

the petitioner, the same would be an empty formality and it would not improve his case in any manner. The principles of natural justice do not operate in vacuum. Once the facts are evident, it would be an exercise in futility to give an opportunity of hearing to the petitioner. Thus, on this ground also, there was no need to hold an enquiry against the petitioner to prove his absence from duty.

**14)** From the foregoing discussion, it is clear that the order of disengagement, which is impugned in this petition, is in accordance with law and does not suffer from any legal infirmity. The writ petition lacks merit and is, accordingly, dismissed.



**(Sanjay Dhar)**  
**Judge**

**Srinagar**

04.07.2024

*“Bhat Altaf-Secy”*

*Whether the order is speaking: Yes/No*

*Whether the order is reportable: Yes/No*