

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

RP No.33/2019

PERVAZ AHMAD PARRA ...Petitioner(s)

Through: Mr. G. A. Lone, Advocate.

Vs.

STATE OF J&K & ORS. ...Respondent(s)

Through: Mr. Hakeem Aman Ali, Dy. AG.

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

ORDER(ORAL)

07.08.2024

1. The petitioner through the medium of instant petition has sought review of judgment dated 17.05.2019 passed by this Court, whereby the writ petition filed by the petitioner has been dismissed.

2. It appears that the petitioner had filed a writ petition bearing SWP No.1141/2009 before this Court whereby he had challenged his termination order bearing No.162-Accts of 2009 dated 06.04.2009 passed by respondent No.3.

3. As per the pleadings of the parties before the Writ Court, the petitioner, who was posted as a Cashier in Government Treasury, Bandipora, had proceeded on leave for twelve days on 20.08.1992. He overstayed the leave for about 12 years, whereafter he reported back to duty in the year 2004. In September, 2004, the petitioner presented himself before the respondent Department and pleaded that his long absence was

justified having regard to his ailment certified by the doctors. It seems that on 05.08.2005, the respondents issued a notice to the petitioner asking him to explain his position as to why his service be not terminated in view of his long absence from duty without leave in terms of Rules 113 and 128 of the J&K CSR.

4. The petitioner responded to the aforesaid show cause notice by filing his reply thereto but the same was not found satisfactory by the respondents, as a consequence whereof, in terms of Government Order No.215-F of 2005 dated 04.10.2005, a regular enquiry was directed to be initiated against the petitioner and an Enquiry Officer was appointed. The petitioner participated in the enquiry and thereafter the Enquiry Officer submitted his report dated 31.08.2006.

5. It seems that a final show cause notice was issued to the petitioner on 21.01.2009 after report of the enquiry was received. The petitioner submitted his reply to the aforesaid final show cause notice which was considered by the respondents, whereafter the impugned order of termination came to be passed by the respondents.

6. The petitioner challenged the aforesaid order of termination on the grounds that no formal chargesheet was issued against him and that the enquiry was conducted in disregard to the provisions contained in Article 311 of the Constitution of India as well as Rule 33 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956. It was also contended that the services of the petitioner could not have been terminated retrospectively with effect from 20.08.1992. The petitioner

also contended that he was not paid any subsistence allowance during his suspension, as such, the impugned order cannot stand. Finally, it was contended that the impugned order has been passed by an incompetent authority.

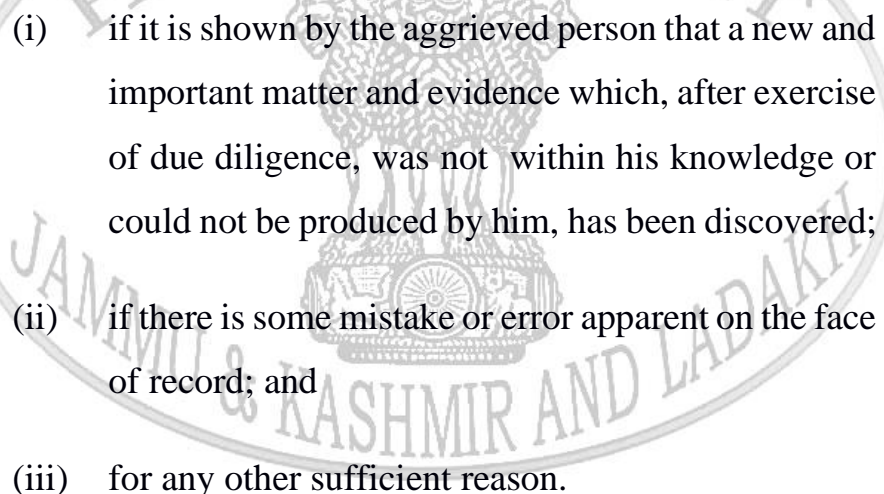
7. The learned Writ Court, after considering the contentions raised by the petitioner and the response of the respondents, came to the conclusion that the petitioner had remained on long unauthorized absence which he could not substantiate on the strength of any material before the Enquiry Officer, hence there was no merit in his petition.

8. The petitioner has sought review of the aforesaid judgment by way of the instant review petition, primarily, on the ground that the Enquiry Officer had, in his report, clearly stated that the petitioner is not mentally sound and, therefore, absence of the petitioner from duty was neither deliberate nor intentional, as such, he could not have been terminated from service. It has also been contended that the learned Writ Court has not taken into consideration the provisions of the J&K Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1988 (hereinafter referred to as "the Act of 1998"), particularly Section 36 of the said Act, as also the ratio laid down by the Supreme Court in the case of **Geetaben Ratilal Patel vs. District Primary Education Officer**, (2013) 7 SCC 182, while passing the judgment under review, which constitutes an error apparent on the face of the record.

9. I have heard learned counsel for the parties and perused record of the case including record of the Writ Court.

10. Before dealing with the contentions raised in the review petitioner, it would be apt to understand the scope of review jurisdiction.

11. Rule 65 of the Jammu & Kashmir and Ladakh High Court Rules, 1999 deals with power of the High Court under its review jurisdiction. As per this Rule, an application for review can be entertained only on the grounds mentioned in Order XLVII Rule 1 of the CPC. If we have a look at the provisions contained in Order XLVII Rule 1 of the Code of Civil Procedure, it becomes clear that review of the judgment can be made on the following grounds:

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- (i) if it is shown by the aggrieved person that a new and important matter and evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him, has been discovered;
 - (ii) if there is some mistake or error apparent on the face of record; and
 - (iii) for any other sufficient reason.

12. In the instant case, the learned counsel for the petitioner has premised his challenged to the judgment under review on the ground that there is mistake/error apparent on the face of the record as the Writ Court has not taken into consideration the fact that the Enquiry Officer had observed in his report that the petitioner was not mentally sound and once such an observation was made by the Enquiry Officer, it was not open to the respondents to terminate services of the petitioner while he was

suffering from mental disability as the same would be in violation of the provisions contained in the Act of 1998 and the ratio laid down by the Supreme Court in **Geetaben Ratilal Patel's** case (supra).

13. When we have a look at the judgment under review, it comes to the fore that in para (12) of the judgment, the contention of the learned counsel appearing for the petitioner that the Enquiry Officer had observed that the petitioner is not mentally sound, has been taken note of by the learned Writ Court. The learned Writ Court has also taken note of the provisions contained in Section 36 of the Act of 1998 as also the judgement in **Geetaben Ratilal Patel's** case reported in (2013) 7 SCC 182. In para (13) of the judgment under review, the learned Writ Court has noted that the judgment referred to and relied upon by the petitioner is distinguishable on facts, probably because in **Geetaben Ratilal Patel's** case (supra), the employee had produced a disability certificate issued by a Medical Board whereas in the instant case, admittedly, the petitioner has not placed on record any disability certificate issued by the Medical Board. What he has placed on record is a copy of the prescription and a copy of the certificate issued by a Psychiatrist which only show that the petitioner had been under treatment of the Psychiatrist. Whether the mental ailment with which the petitioner was suffering was of such a nature as would have rendered him incapable of joining his duties is not substantiated by any document placed on record before the Writ Court. It seems that on account of this, the learned Writ Court has observed that the instant case is not covered by the ratio laid down by the Supreme Court in **Geetaben Ratilal Patel's** case (supra).

14. From the above it is clear that it is not a case where the learned Writ Court has not taken note of either the observations of the Enquiry Officer with regard to mental state of the petitioner or the ratio laid down by the Supreme Court in the judgment relied upon by the petitioner but it is a case where the learned Writ Court was clearly conscious of these contentions and in spite of this, the Writ Court has taken a view that the petitioner has not been able to justify his long absence from duty.

15. The view taken by the learned Writ Court may or may not be right but it is not a ground for review that a judgement proceeds on an incorrect exposition of law. Simply because a Judge has gone wrong in law, that is not a ground for review, though it may be a ground for appeal. Similarly, an erroneous view of law is no ground for review though it may be a ground for appeal. It seems that the petitioner in the guise of present review petition is trying to persuade this Court to rehear the case as if it is sitting in appeal over its own judgment, which is not permissible in law.

16. For the foregoing reasons, this Court is not inclined to exercise its jurisdiction of review to interfere with the judgment under review. The review petition lacks merit and is dismissed accordingly.

(Sanjay Dhar)
Judge

Srinagar
07.08.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No