

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 156/2020

CM No. 5641/2020

Reserved on: 30.05.2024

Pronounced on: 07.06.2024

State of J&K & Ors.

...Appellant(s)

Through: Mr. Mohsin Qadri, Sr.AAG with
Ms. Maha Majeed, Assisting counsel.

Vs.

Masarat Jan

...Respondent(s)

Through: Mr. Nissar Ahmad Bhat, Advocate.

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

Per Chowdhary, J.

1. Appellant-State is aggrieved of the judgment dated 17.02.2016 (for short 'impugned judgment') passed by the Single Bench of this Court in Review (SWP No.21/2015 c/w SWP No.1134/2009)) titled *Masarat Jan Vs. State & Ors.*, whereby Review Petition was allowed providing that writ petitioner -respondent herein would be deemed to be continuing in service, further directing the appellants to allow her to resume her duty forthwith and to pass orders for release of some monetary benefits in her favour for the period she remained out of service. It is alleged by the appellants that the impugned judgment has been passed without considering and appreciating the material

facts, a such, seeks setting aside the same on the ground of concealment of material facts.

2. The facts leading to filing of the present LPA are briefly summarized as under:

2.1. The respondent herein was appointed as Constable in Jammu & Kashmir Police vide Order No. 59 of 1999 dated 11.01.1999, however, she unauthorizedly absented herself from duty and was accordingly discharged from duty by SSP Srinagar by virtue of Order No. 317 of 1999 dated 22.04.1999, but was later on reinstated into service on compassionate grounds; that the respondent again absented herself unauthorizedly, and subsequently submitted her resignation showing her inability to work against the said post due to some domestic compulsions. The said request of the respondent was accepted vide DPO Srinagar Order No. 739/2002 dated 10.06.2002.

2.2. That a writ petition SWP No. 1134/2009 came to be filed by the respondent seeking her reinstatement into service on the ground that under threat perception she was compelled to submit her resignation and is willing now to work against the said post; that vide order dated 09.11.2010 this Court in SWP No. 1134/2009, filed by the respondent herein, directed the concerned authorities to take a compassionate view in the matter, taking into consideration the facts and circumstances detailed in the representation, filed by the respondent before the concerned authorities; that in compliance to the said order dated 09.11.2010, the case of the respondent was considered at Police Head

Quarters (PHQs) but was found without any merit, as such, was rejected vide Order No. 177/2011 dated 17.01.2011.

- 2.3. The respondent thereafter filed another writ petition SWP No. 1015/2011, which was, however, dismissed by this Court vide its judgment dated 31-05-2012, observing therein that the petitioner-respondent herein had made it clear in her resignation letter dated 01-06-2002 that she was not willing to serve the Police Department; that the said judgment was assailed by the respondent herein through the medium of LPA No. 212/2013, which was accorded due consideration and the Division Bench was pleased to dismiss the Appeal vide judgment dated 19-05-2014, making an observation that the case of the respondent herein, throughout, has been that she had tendered resignation which was accepted.
3. The case of the appellants-State herein is that in the year 2015, after a gap of more than five years, the respondent filed Review Petition, seeking review of the order dated 09.11.2010 passed in SWP No. 1134/2009, however, on the perusal of the same, it reveals that the respondent, with *malafide* intention, had concealed the material facts from this Court, which fact relates to the disposal of her representation by the PHQ, in compliance to the order dated 09.11.2010, dismissal of SWP No. 1015/2011 as well as LPA No.212/2013, which action of concealment of facts amounts to deceitful tactics resorted to by the respondent herein.
4. Mr. Mohsin Qadir, learned Sr.AAG appearing for the appellants-State, while arguing the matter submitted that in terms of the impugned order dated 17.02.2016 passed in Review Petition, this

Court had observed that the petitioner-respondent herein would be deemed to be continuing in service, directing the appellants to pass appropriate orders for released of some monetary benefits for which she remained out of the service, and accordingly reviewed and recalled the judgment dated 09.11.2010 passed in SWP No. 1134/2009. Learned Sr.AAG vehemently argued that the Review Petition clearly shows *malafides* on the part of respondent, inasmuch as, there are material concealments in the Petition, which if had been brought to the kind notice of the Court beforehand, the Review Petition would not have been allowed. The respondent, before the writ court as petitioner, had not approached the Court with clean hands and had resorted to misrepresentation of facts, resulting in passing of the impugned order.

5. Learned Sr.AAG further argued that the matter having been finally settled by the Division Bench of this Court vide judgment dated 19-05-2014, while dismissing the LPA No. 212/2013, preferred by the writ petitioner-respondent herein against the dismissal of her subsequent writ petition SWP No. 1015/2011, the learned Single Bench ought not to have allowed the Review Petition, whereby the judgment passed in an earlier writ petition SWP No. 1134/2009 has been recalled, notwithstanding the fact, that same stood already implemented in letter and spirit. His next argument is that the appellants herein were not provided with adequate opportunity to place the material facts before the Single Bench and in such eventuality the Court would not have at all allowed the Review Petition, which has the effect of upsetting the judgment itself, for the same having already been implemented in letter and spirit and the

orders passed in this behalf were also challenged by the writ petitioner-respondent herein, but the writ petition was dismissed and same fate was also met by the LPA filed against writ court order. Learned AAG submits that the impugned order is against the facts of the case and also contrary to law, as such, same is liable to be set aside.

6. Mr. Nissar Ahmad Bhat, learned counsel for the respondent, ex-adversus, argued that the fact of the matter is that the respondent herein had submitted her resignation not out of her free will but due to threat to her person and family members, and this fact has also not been disputed by the appellants herein. He further argued that tendering resignation is a voluntary act. A document can be said a resignation only when it is shown that a person has tendered it out of her/his own free will and without there being any threat or pressure. According to learned counsel for the respondent, it is the admitted fact that even if the respondent had submitted the resignation, the same was not voluntary but was tendered due to the threat to her person and family. He, finally, urged this Bench to reject this Appeal and uphold the impugned judgment.

7. Heard, perused the material on file and considered.

8. The factual background of the case is that the respondent-review writ petitioner having been appointed as Constable in the year 1999, due to her unauthorized absence was initially discharged on 22.04.1999 by District Police Office Srinagar, however, on her request, she was reinstated in service on compassionate grounds, but she again absented herself unauthorizedly and also submitted her resignation

showing her inability to work against the said post due to some domestic compulsions. Her resignation was accepted on 10.06.2002.

9. After a period of seven years, she filed a writ petition (SWP No.1134/2009) seeking her reinstatement into service on the ground that under threat perception she was compelled to submit her resignation and that she was now willing to work against the said post. This Court vide order dated 09.11.2010 disposed of the petition, without deciding the same on merits, on a submission made by learned counsel for the respondent herein that the appellants herein be directed to consider her representation, which she had filed on 27.05.2007 for re-consideration of her resignation, directing the appellants herein to look into the matter and to take compassionate view after taking into consideration the facts and circumstances detailed in the representation filed by the writ petitioner.

10. The Director General of Police on 17.01.2011, in compliance to the said directions, considered the representation filed by the respondent- ex-Constable Masarat Jan and noted that she had filed representation after a period of five years seeking reinstatement, however, on the scrutiny of records, indicated that she had lost her job in consequence to the resignation tendered by her with own conscious will, as such, her reinstatement was not warranted and rejected the representation vide Order No. 177/2011 dated 17.01.2011. Aggrieved of this rejection order, respondent-review writ petitioner again filed second writ petition (SWP No.1015/2011), which was disposed of on merits vide judgment dated 31.05.2012, holding that the writ petitioner had no legally enforceable right in her favour to seek setting aside of the resignation, which had been

accepted, as such, the petition against rejection order was dismissed, however, the appellants herein were expected to consider the plight of the respondent herein against the backdrop of the circumstances that according to her, she was compelled to submit the resignation as also her resolve to serve the Department and directed to explore chances of her engagement against any available post including the post of Constable in the Police Department.

11. Aggrieved of this order passed by the writ court in the year 2012, the respondent-review writ petitioner filed intra-court appeal (LPA No.212/2013), which came to be disposed of on 19.05.2014, upholding the order dated 31.05.2012 passed by the writ court, rejecting the plea of learned counsel for the writ petitioner that the application dated 01.06.2002 moved by the writ petitioner cannot be regarded as a resignation *stricto sensu*, and rejected this plea having regard to the averments made in SWP No. 1134/2009 decided on 09.01.2010.

12. Respondent- review writ petitioner, without making any mention of the afore-stated development of rejection of her representation, filing subsequent writ petition (SWP No. 1015/2011), judgment passed by the writ court in this petition and upheld by the Division Bench in intra-court appeal (LPA No.212/2013) filed Review Petition against the order dated 09.01.2010, passed by this Court in earlier writ petition (SWP No.1139/2009) filed by her, seeking review of the same. The writ court in the Review Petition, filed by the respondent-review writ petitioner, while observing that a document can be said to be a resignation only when it is shown that a person has tendered it out of her/his own free will and without there being any threat or

duress, held that in the facts and circumstances of the case, there was no resignation in law tendered by the review writ petitioner, though in fact resignation letter was submitted by the review writ petitioner, which contention is also denied by the review writ petitioner in the review petition.

13. Undoubtedly, there is material concealment of facts in the present case. The Supreme Court has already settled down the issue as to how a litigant, who conceals material facts from the Court, is to be dealt with. In **K.D. Sharma v. Steel Authority of India Limited & Ors**, reported as (2008) 12 SCC 481, it was observed that:

"39. If the primary object as highlighted in Kensington Income Tax Commrs., (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

14. In a judgment titled **ABCD v. Union of India & Ors.**, reported as (2020) 2 SCC 52, the Supreme Court, in the matter where material facts had been concealed, while issuing notice to the petitioner therein, exercising its suo-motu contempt power, observed as under :

"15. Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 of the IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said Section. In respect of matters coming under Section 195(1)(b)(i) of the Code, in Pushpadevi M. Jatia v. M.L. Wadhawan etc., (1987) 3 SCC 367 prosecution was directed to be launched after prima facie satisfaction was recorded by this Court.

16. It has also been laid down by this Court in Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks imprisonment. It was observed as under:

"1. The stream of administration of justice has to remain unpolluted so that

purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

The legal position, thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt."

15. The contention of learned counsel for the respondent- review writ petitioner that she had tendered resignation under 'compelling circumstances', citing security concerns of her as well as her family

in the period when she submitted her resignation, cannot be gone into, in view of her failure in her earlier endeavours. Respondent-review writ petitioner has, thus, very conveniently withheld the facts from the writ court, dealing with the Review Petition. Had all the facts of rejection of her representation by DG Police, filing subsequent writ petition, judgment passed thereon and on having been challenged, approved by the Division Bench in the intra-court appeal, to the notice of the writ court, the view that has been taken by the writ court, would not have been taken in view of the clear finding recorded by the writ court as well as Division Bench with regard to the acceptance of the resignation.

- 16.** A writ remedy is an equitable one. While exercising extraordinary power, a Writ Court certainly bears in mind the conduct of the party, who invokes the jurisdiction of the Court. Litigant before the Writ Court must come with clean hands, clean heart, clean mind and clean objective. He/she should disclose all facts without suppressing anything. Litigant cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he/she likes to disclose and to suppress/conceal other facts. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If a litigant does not disclose all the material facts fairly and truly or states them in a distorted manner and misleads the Court, the Court has inherent power to refuse to proceed further with the examination of the case on merits. If Court does not reject the petition on that ground, the Court would be failing in its duty. There is a compelling need to take a serious view

in such matters to ensure purity and grace in the administration of justice.

17. Having regard to the law laid down by the Apex Court discussed hereinabove and reverting to the facts and circumstances of the case, the finding recorded in the Review Petition, impugned in this Appeal, is not sustainable, due to conduct of the respondent herein. The present Appeal, is, thus, allowed and the impugned judgment is set aside.
18. The respondent-review writ petitioner has been following her case since the year 2009 and, as submitted by her counsel, due to humble and poor background of the respondent, the appellants herein may consider her to be engaged against some post in the J&K Police.
19. LPA is disposed of, as indicated above. There shall be no order as to costs.

(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
JUDGE

Srinagar
07.06.2024
Muzammil. Q

Whether the order is reportable: Yes / No