

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

Reserved on: 23.11.2022

Pronounced on: 02.12.2022

SWP No.869/2019[WP(C) No.1387/2019]

ABASS ALI

... PETITIONER(S)

Through: - Mr. Firdous Ahmad, Advocate.

Vs.

STATE OF J&K & OTHERS

...RESPONDENT(S)

Through: - Ms. Insha Haroon, GA-for R1.

Ms. Rehana, Adv. vice

Mr. T. M. Shamsi, DSGI-for R2&R3

Mr. Shakir Haqani, Adv- for R4 to R7.

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

JUDGMENT

1) The petitioner has sought a Writ of Mandamus against the respondents for releasing his salary for the period with effect from 01.06.2015 to 29.12.2016 along with interest. The petitioner has also sought compensation in the amount of Rs.74,000/ per month for the period during which his salary was withheld.

2) As per the case of the petitioner, he is a permanent employee working as a Driver with the J&K State Road Transport Corporation (hereinafter referred to as the SRTC). On 25.05.2016, the petitioner was transferred on deputation to the office of respondent No.2-Ladakh Autonomous Hill Development Council, Kargil (hereinafter referred to as LAHDC) and, accordingly, he joined the office of respondent No.2. It has

been submitted that the petitioner discharged his duties as a Driver in the office of respondent No.2 but he was not paid his salary despite many requests made by him in this regard. Respondent No.2 vide communication dated 1st August, 2015, requested respondent No.4 to release the salary of the petitioner from his parent department but vide communication dated 13.09.2015, it was conveyed to respondent No.2 that there is no provision for payment of salary to those employees who have been sent on deputation to other departments/organizations.

3) Ultimately, the petitioner was relieved on 27.12.2016 from the office of respondent No.2 and was directed to report to the office of respondent No.7, which is a subordinate office of respondent No.4. According to the petitioner, he has served with respondent No.2 for 20 months on deputation basis but he has not been paid any salary for this period, either by LAHDC or by SRTC. The petitioner is stated to have made representations before the office bearers of his parent organization but he has not been paid the salary which has compelled him to file the instant writ petition.

4) Both LAHDC and SRTC have filed separate replies in opposition to the writ petition. In its reply, the LAHDC has submitted that the petitioner was working with the said Council on attachment basis with Executive Councilor Works, Power and Tourism. It has been claimed that for the entire period of his posting with LAHDC, the petitioner continued to be under the substantive employment of the SRTC. It has been contended that since the petitioner was working on attachment basis from

his parent department, as such, it is his parent organization which has to pay the monthly salary to him. It has been further contended that in similar other cases the salary has been paid by the parent departments of the employees whose services were utilized by the LAHDC. It has been also contended that there is no post of Driver in LAHDC, as such, the petitioner's salary could not be drawn by the Council.

5) The SRTC has, in its reply, contended that vide order dated 25.05.2015, the petitioner was transferred on deputation to the LAHDC Secretariat on the request of the said Council and he was repatriated in terms of order No.LAHDC-K/CEC/Detach/2016/ 473-75 dated 27.12.2016, issued by the LAHDC, Kargil. It has been submitted that during the whole of this intervening period the petitioner performed his duties with LAHDC. It has been claimed that in terms of deputation order dated 25.05.2015, it was made explicitly clear that the salary of the petitioner for the period of deputation shall be paid by the LAHDC and not by the parent department. On this ground, it has been contended that the unpaid salary during the period the petitioner had served with the LAHDC has to be paid by the Council and not by the SRTC.

6) I have heard learned counsel for the parties and perused the pleadings and the documents placed on record.

7) It is not in dispute that the petitioner has served with LAHDC from 26th May, 2015 to 29th December, 2016 and it is also not in dispute that the petitioner has not been paid his salary during this period. The

only question which is required to be determined is as to which amongst the two organizations i.e., LAHDC and SRTC, is obliged to pay salary to the petitioner.

8) According to the stand of the SRTC, the petitioner was transferred on deputation to LAHDC on the request of said Council whereas according to the stand of the LAHDC, the petitioner was only attached with the Council and he was not transferred on deputation. In order to determine as to which of the two stands is correct, it will be apt to have a look at the order dated 25.05.2015, by virtue of which the petitioner was deputed to serve with the LAHDC. It reads as under:

*J&K State Road Transport Corporation,
Subject: Deputation of Driver to LAHDC Secretariat Kargil*

ORDER

Shri Abass Ali, Driver Regd No. 3640 presently posted in Depot Kargil hereby deployed to Ladakh Autonomous Hill Development Council Secretariat, Kargil subject to condition that his salary shall be paid by the concerned autonomous body.

*Dy. General Manager,
JKSRTC, Srinagar*

NO.

Dated: 25.05.2015

Copy to the;

- 1. Managing Director JKSRTC, Srinagar.*
- 2. General Manager JKSRTC Srinagar.*
- 3. General Manager Ops. JKSRTC Srinagar.*
- 4. P/A to Executive Counselor Works power and education LAHDC Kargil for information. This is in reference to his office No. LAHDC/K/CECSRTC /2015/163 dated: 18.05.2015.*
- 5. Divisional Accounts officer SRTC Srinagar.*
- 6. Manager Tourist Services JKSRTC, Srinagar for information, he will furnish LPC/Service Book of the deputationist to LAHDC Secretary.*
- 7. Depot Manager JKSRTC Kargil for information.*

9) From a perusal of the aforesaid order, it is clear that the petitioner was sent on deputation to LAHDC Secretariat, Kargil. The order makes it clear that the salary of the petitioner has to be paid by the Council. Even

the LPC and service book of the petitioner has been directed to be forwarded to the LAHDC.

10) It appears that after issuance of this order the LAHDC has written letter dated 30th May, 2015, to the Managing Director, SRTC, Srinagar, conveying that there is no provision for payment of salary to the petitioner and that salary dues of the petitioner should be paid by the SRTC. Another similar communication has been addressed by LAHDC to the Manager, Tourist Services, J&K SRTC, Srinagar, on 01.08.2015. In response to these communications, it seems that General Manager (Admn), J&K SRTC, has addressed letter dated 13th September, 2015, to the Executive Councilor, Works, Power & Education, LAHDC, Kargil, conveying that the SRTC has no provision towards payment of salary to its employees who have been sent on deputation to other departments.

11) From the aforesaid sequence of events, it is clear that the petitioner was sent on deputation by the SRTC to LAHDC and it was made clear that the salary of the petitioner shall be paid by the LAHDC, though it seems that the Council was not comfortable with the condition regarding payment of salary and in this regard it addressed a number of communications to the officers of the SRTC but at the same time the Council did not relieve the petitioner and continued to avail his services, that too when General Manager, J&KSRTC, vide his letter dated 13th September, 2015, had made it clear to the Council that the salary of the employees sent on deputation has to be borne by the borrowing department. The Council continued to avail the services of the petitioner

for good 20 months without paying any salary to him and without resolving the issue relating to payment of his salary when the parent organization of the petitioner had made it clear to the Council that the liability of paying salary of the petitioner rests with it.

12) When an employee is sent on deputation from his parent department to the borrowing department at the request of the borrowing department, it is the liability of the borrowing department to pay the salary of the employee. The stand taken by the LAHDC that the petitioner was only attached and not deputed to it, is belied from the order issued by the parent department whereby services of the petitioner were kept at the disposal of the LAHDC. Therefore, it is the LAHDC which has to pay the salary to the petitioner during the period he served with the said organization, particularly when in the deputation order itself it was made clear that the salary of the petitioner has to be borne by the Council. The respondents No.2 and 3 cannot wriggle out of their liability to pay the legitimately earned salary of the petitioner by taking a stand that it was a case of attachment only, which is not the correct position.

13) The dispute between the two organization has led to withholding of legitimately earned salary of the petitioner for none of his fault. Respondents No.2 and 3 are, therefore, under an obligation not only to release the salary of the petitioner for the period he has served with them but also to pay interest.

