

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

WP (C) No. 3405/2019

Reserved On: 17th of April, 2023.
Pronounced On: 11th of May, 2023.

Wajid Ali

... Petitioner(s)

Through: -
Mr Hakim Suhail Ishtiaq, Advocate.

V/s

Union Territory of Jammu and Kashmir & Ors.

... Respondent(s)

Through: -
Ms Asifa Padroo, AAG.

CORAM:

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

(JUDGMENT)

01. By medium of the instant Petition, the Petitioner seeks quashment of Government Order No. 61 SKIMS of 2019 dated 12th of June, 2019 (for short 'the impugned Order') issued by the Respondent No.2 insofar as it directs for treating the period of suspension of the Petitioner w.e.f. 6th of January, 2018 as leave whatever kind due, with a warning to the Petitioner to be careful in future.

02. The facts, under the shade and cover of which the instant Petition has been filed by the Petitioner, as these emerge from the perusal of the file under consideration, are that a video clip of an alleged sting operation is stated to have surfaced on a Social Media Website, namely, Facebook, which was also aired by a News channel, namely, 'Republic TV', wherein it was claimed that the sting operation was conducted by one of their reporters *qua* three (03) Doctors of the Respondent-Institute, including

the Petitioner herein, who were shown to have been indulging in private practice.

03. It is alleged that, without verifying the veracity and authenticity of the aforesaid video which was otherwise not clear and without verifying the fact as to whether the Petitioner was actually resorting to private practice, the Petitioner, along with two (02) other Doctors of the Respondent-Institute, was placed under suspension vide Government Order No. 01 SKIMS of 2018 dated 6th of January, 2018 and an enquiry was ordered to enquire into the matter. During the said suspension, the Petitioner was directed to remain attached with the office of the Divisional Commissioner, Kashmir. Thereafter, a full-fledged enquiry was conducted by the Respondents which took more than a year and, during the enquiry, the video footage was sent for forensic assessment as well. Charge sheet was served upon the Petitioner, who denied all the charges leveled against him. The Enquiry Officer submitted his report before the competent authority on 5th of October, 2018, wherein it was submitted that the charge against the Petitioner could not be conclusively established, due to lack of scientific evidence.

04. The competent authority, accordingly, is stated to have accepted the report of the Enquiry Officer and decided to reinstate the Petitioner with immediate effect, with a warning to him to remain careful in future in the discharge of his duties and treated his period of suspension as leave whatever kind due vide Order dated 12th of June, 2019. The Petitioner, immediately after reporting back on duty, on 18th of June, 2019, represented before the Respondent No.2 seeking review of the aforesaid Order dated 12th of June, 2019, insofar as it directed for treating his period of suspension on leave, whatever kind due, however, the Respondent No.2 informed the Petitioner that the said Order cannot be reviewed for the reason that it is a legal and valid order.

05. Faced with the above situation, the Petitioner has filed the instant Petition before this Court for seeking quashing of the impugned

Government Order dated 12th of June, 2019 to the extent of treating his period of suspension as on leave.

06. Pursuant to notice, Objections stand filed on behalf of the Respondents, wherein it is stated that a full-fledged enquiry was conducted in the matter and, on the basis of the said enquiry report submitted by the Enquiry Officer, the competent authority approved the course of action in respect of the Petitioner, including his reinstatement in service and treating his intervening period as leave whatever kind due. It is further submitted that Article 108-B of the Jammu and Kashmir Civil Service Regulations, as relied upon by the Petitioner, is self-explanatory and it casts an obligation upon the Government to make a specific order regarding the pay and allowances and treatment with respect to the interim period and that, in the case of the present Petitioner, the Government passed a specific order with respect to suspension and intervening period of suspension by virtue of the impugned Order.

07. Mr Hakim Suhail Ishtiaq, the learned Counsel for the Petitioner, submitted that, in terms of the mandate of Rule 108-B of the Jammu and Kashmir Civil Service Regulations, it is clear that where the Government servant has been fully exonerated, such Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been suspended. It is argued that the Petitioner has been exonerated of all the charges levelled against him, yet the period of suspension has been treated as leave whatever kind due, despite the fact that he was attending the office of the Divisional Commissioner, Kashmir, where he was attached during the period of suspension. The learned Counsel for the Petitioner further argued that the other two (02) Doctors, who had also been charged along with the Petitioner for the allegations arising out of the sting operation, had been punished by the Respondents, however, this Court had quashed those orders which were, on being challenged, upheld by the Division Bench of this Court as well.

08. Ms Asifa Padroo, the learned Additional Advocate General, appearing for the Respondents, submits that the impugned Order has been

issued by the competent authority in tune with the law/ rules governing the subject and in keeping with the recommendations of the Enquiry Officer in this behalf. The learned Additional Advocate General further argued that the Petitioner had not been fully exonerated of the charges and that is why, instead of treating him on duty, he had been ordered to be treated on leave whatever kind due. She finally prayed that the Petition filed by the Petitioner is, thus, liable to be dismissed.

09. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

10. Vide Government Order No. 171/45-F of 2000 dated 18th of October, 2000, the Government of Jammu and Kashmir ordered that the Doctors and the para-medical staff of the Sher-e-Kashmir Institute of Medical Sciences (SKIMS), Srinagar, shall not indulge in any kind of private practice.

11. A video footage of a sting operation was reportedly aired/ telecast by one of the National News channels 'Republic TV' that appeared on Facebook and other Social Networking sites on 5th of January, 2018, showing the Petitioner-Dr. Syed Wajid Ali, among others, indulging in private practice, who was placed under suspension with immediate effect and attached with the office of Divisional Commissioner, Kashmir, till culmination of disciplinary proceedings against him vide Government Order No. 01-SKIMS of 2018.

12. The Petitioner-Dr. Wajid Ali was formally charge-sheeted for the alleged misconduct vide office endorsement No. SIMS/Per/1317/2017/18-552-57 dated 20th of January, 2018, who, on 25th of January, 2018, filed reply, thereby denying all the allegations. The Enquiry Officer was, thereafter, appointed vide Government Order No. 570-GAD of 2018 dated 10th of April, 2018.

13. The Enquiry Officer, after conducting the enquiry, on 5th of October, 2018, submitted his report to the competent authority, holding that no charge has been conclusively established against the Petitioner, due to

lack of scientific evidence. The competent authority considered the enquiry report, accepted the same and ordered the reinstatement of the Petitioner with immediate effect, with a warning to remain careful in future, in the discharge of his duties, treating his suspension period as leave, whatever kind due.

14. The contention of the learned Counsel for the Petitioner is that, once an officer/ official is discharged of the charges, he/ she cannot be treated on leave which amounts to inflicting punishment.

15. Article 108-B of the Jammu and Kashmir Civil Service Regulations deals with reinstatement after suspension, which, for the purpose of ready reference, is extracted hereinbelow:

“108-B Reinstatement after suspension:

(i) When a Government servant who has been dismissed, removed, compulsorily retired before attaining the age of superannuation, or suspended is reinstated the authority competent to order the reinstatement shall consider and make a specific order:

(a) Regarding the pay and allowance to be paid to the such Government Servant for the period of his absence from duty; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(ii) Where the authority mentioned in sub-rule (i) is of the opinion that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified the Government servant shall be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired before attaining the age of superannuation or suspended, as the case may be. The period of absence from duty shall be treated as period spent on duty.”

16. On a careful perusal of the aforesaid provision, what emerges is that it has been provided that, where a Government servant is reinstated by the authority competent to order the reinstatement, an order shall be made regarding pay and allowances to be paid to such Government servant for the period of his absence from duty and, whether or not the said period shall be treated as on duty, with a further stipulation that when the Government servant has been fully exonerated, the Government servant

shall be given full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired before attaining the age of superannuation or suspended, as the case may be, and this period of absence from duty shall be treated as period spent on duty.

17. Since, the Order impugned states that the charges against the Petitioner have not been proved by the Enquiry Officer, the charge against him has not been conclusively established due to lack of scientific evidence, which report was accepted by the competent authority, that is the Director SKIMS, who is also the Ex-Officio Secretary to the Government of Jammu and Kashmir. That being so, the moot question to be addressed in this Petition is, thus, as to whether the Petitioner is exonerated fully so as to be treated as on duty or has not been fully exonerated to be treated not on duty but on some leave whatever kind due to him and with a warning to be careful in future. Since, the Enquiry Officer has come to the conclusion that the charge against the Petitioner had not been conclusively established for lack of scientific evidence, the same does not, in any manner, mean and cannot be stretched to give a meaning that he has not been fully exonerated so as to warrant to treat him not on duty and, instead on leave whatever kind due with a further warning to be careful in future. In the considered opinion of this Court, the Petitioner has been fully exonerated as the charge has not been conclusively established by the Enquiry Officer. The competent authority, who reinstated the Petitioner, was, itself, under an obligation to treat him on duty for the period of suspension and not on leave whatever kind due and also without a warning to be careful in future.

18. This Court also takes judicial notice of the submissions of the learned Counsel for both the parties that the Petitioner has, now, superannuated from service, as such, the direction to him to be careful in future also pales into insignificance.

19. For the foregoing reasons and observations made hereinabove, the instant Petition succeeds and is **allowed**. The impugned Government Order No. 61 SKIMS of 2019 dated 12th of June, 2019 is quashed insofar as

it directs for treating the period of suspension of the Petitioner w.e.f. 6th of January, 2018 as leave whatever kind due, with a warning to be careful in future and the competent authority is directed to treat the Petitioner on duty for the suspension period in terms of Government Order No. 01-SKIMS of 2018 dated 6th of January, 2018 with all consequential benefits.

20. **Disposed** of as above, along with the connected CM(s).

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
11th May, 2023
"TAHIR"

- | | | |
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| i. | Whether the Judgment is speaking? | Yes |
| ii. | Whether the Judgment is reportable? | Yes |

