Item No. 86
Regular List

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

CCP(S) No.473/2022
In SWP No.1228/2013

TARIQ ABDULLAH BHAT …Petitioner(s)

Through: Mr. Molvi Aijaz, Advocate.

Vs.

ARUN KUMAR MEHTA & ORS. …Respondent(s)

Through: Mr. Syed Musaib, Dy. AG.

<u>CORAM:</u>HON'BLE MR. JUSTICE SANJAY DHAR,JUDGE

<u>ORDER(ORAL)</u>
15.07.2024

1. Through the medium of present petition, the petitioner has sought implementation of order dated 28.04.2015 passed by the Writ Court in SWP No.1228/2013, whereby the respondents have been directed to consider and decide the claim of the petitioner for his regularization in terms of the Jammu & Kashmir Civil Services (Special Provisions) Act, 2010 (hereinafter referred to as "the Act of 2010") on the analogy of Sh. Noor-ul-Amin and Sh. Javid Ahmad Wani in case the petitioner is eligible and similarly situated as the said officials.

2. The respondents have filed the statement of facts/compliance report, wherein it has been submitted that in terms of Government Order No.180-JK (FST) of 2023 dated 18.09.2023, the claim of the

petitioner has been considered and rejected. The respondents have rejected the claim of the petitioner, primarily, on the ground that his case is not similarly situated to the cases of Shri Noor-ul-Amin and Shri Javid Ahmad Wani, inasmuch as in the case of aforesaid two officials, there were no criminal cases pending as on the date of application of the Act of 2010, whereas in the case of the petitioner, FIR No.21/2005 registered with P/S VOK, Kashmir, was still subjudice. It has been contended that one of the conditions of eligibility for regularization as laid down in Section 5 of the Act of 2010 is that there should be no disciplinary or criminal proceedings pending against an appointee on the appointed date. This has been interpreted by the respondents to mean that as on the date of application of the Act of 2010, if a criminal case is pending against an *ad hoc*/contractual or consolidated appointee, his services cannot be regularized. It has been claimed by the respondents that the Act of 2010 was published in the Government Gazette on 29th April, 2010, thus, in order to be eligible for regularization, it was mandatory that there should not be any criminal case pending against an appointee on the said date.

3. It has been claimed by the respondents that the petitioner was involved in FIR No.21/2005 of P/S VOK, that was subjudice as on 29.04.2010 whereas in the cases of Shri Noor-ul-Amin and Shri Javid Ahmad Wani, no criminal proceedings were pending on the said date, though both of them were involved in FIR No.23/2011 of P/S VOK.

4. Heard and considered.

5. The interpretation given by the respondents to the provisions contained in Section 5 of the Act of 2010 appears to be illogical and unsound for the reason that if the same is accepted, it would lead to anomalous situations. To illustrate, if an *ad hoc* appointee is considered for regularization in the year 2013 and on that date he is found to be involved in a serious offence, he would still be eligible for regularization in case the date of registration of said case happens to be after 29.04.2010 and on the other hand, if we have a case of an *ad hoc* appointee who though was facing a criminal trial in an offence as on 29.04.2010, but was honourably exonerated of the charges later on before the consideration of his case for regularization, he would become ineligible for his regularization. This is what has happened in the present case. The petitioner has been acquitted in FIR No.21/2005 of P/S VOK in terms of the judgment dated 17.07.2012 passed by the learned Special Judge, Anti-corruption, Baramulla. It is also discernible from the affidavit filed by the respondents that the said judgment of acquittal has been accepted by the Vigilance Organization and the same has not been assailed in any higher forum. Thus, as on the date of consideration of the case of the petitioner i.e. in the year 2023 when the rejection order came to be passed by the respondents, there was absolutely no case pending against the petitioner whereas the situation is quite opposite in the cases of Shri Noor-ul-Amin and Shri Javid Ahmad, who, as per the documents on record of this file, are still facing trial before the Court of Special Judge, Anticorruption Cases, Baramulla, and are yet to be exonerated of the charges. It would be

travesty of justice if the petitioner despite having been honourably acquitted of the charges is denied the benefit of regularization of his services in terms of the Act of 2010, particularly when the said benefit has been extended to Shri Noor-ul-Amin and Shri Javid Ahmad Wani who are still facing criminal prosecution. Here it is pertinent to mention that the case of the petitioner for regularization has already been cleared by the Empowered Committee and the Finance Department vide its U.O. No.A/Spl.Cell/2016/39 dated 28.04.2016 has tendered its advice to the respondents in this regard.

6. In the face of aforesaid facts and circumstances of the case, the rejection order passed by the respondents in terms of Government Order dated 18.09.2023 does not satisfy the letter and spirit of order of the Writ Court. The respondents are, therefore, directed to file a fresh compliance report strictly in the light of the order of the Writ Court by the next date of hearing.

7. Be listed on **21.08.2024**.

(Sanjay Dhar)
Judge

Srinagar
15.07.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No