

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



SWP No. 2046/2015

Reserved on - 07.03.2025

Pronounced on- 13.03.2025

Dilshada Begum

..... Petitioner

Through: Mr. K.D.S Kotwal, Advocate.

vs

State of J&K & Ors.

..... Respondents

Through: Mrs. Monika Kohli, Sr. AAG.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Petitioner has invoked writ jurisdiction of this Court, under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir for quashment of her disengagement order and consequent reinstatement and release of her wages.

2. As factual narration of the present case, from pleadings of the parties would unfurl, petitioner came to be engaged as a Special Police Officer (SPO) vide order no. 369 of 2013 with belt no. 327 on 08.06.2013 on a consolidated honorarium of Rs. 3,000/- per month. After about five months, she came to be disengaged from the roll of SPO of District Ramban with immediate effect by Senior Superintendent of Police, Ramban-respondent no. 4 vide order no. 805 of 2013 dated 12.11.2013.

3. Case of the petitioner is that SPOs are appointed under rules 18 and 19 of the Police Manual and they have the same powers, privileges and protection, as enjoyed by an ordinary officer of police force. It is allegation of the petitioner that she came to be disengaged by the respondents with a single stroke of pen, on the basis of false and frivolous allegations, without any enquiry and in violation of principles of natural justice, as no show cause notice was served upon her.

4. The petitioner has questioned the impugned order of her disengagement, primarily on the ground of violation of principles of natural justice.

5. *Per contra*, respondents are affront with the contention that name of the petitioner came to be struck off from the roll of SPOs on the ground of poor performance without any inquiry/notice because it was terms and conditions of her engagement order that “*she will liable to be terminated from her service any time without giving her prior notice*”. It is also contention of the respondents that since petitioner ceases to be a member of their organisation, she is not entitled to any benefit, available to a personnel, who is on the continuous roll of the organisation.

6. Heard learned counsels for the parties and perused the record.

7. Learned counsels for the parties have reiterated their respective stand in arguments.

8. The petitioner has assailed impugned order of her disengagement primarily on the ground that SPOs appointed under the Police Manual are entitled to same powers, privileges and protection as are enjoyed by an ordinary officer of the police force, in terms of Rule 19 of the Manual.

9. Section 19 of the Police Act 1983, (“the Police Act” for short), deals with the powers, privileges, protection and duties of SPOs. It reads as:-

19. “Special Police Officer:- Every Special Police Officer so appointed shall have the same powers, privileges and protection and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary Officers of the Police.”

10. It is pertinent to underline that Rule 359 of J&K Police Rules, 1960 provides that a delinquent police official must be given an opportunity to meet the charges levelled against him and Sub-Rule (11) (2) of the said Rule specifically

provides that said official has to be given a reasonable opportunity of showing cause orally and in writing against the proposed penalty. It reads thus:-

“359. Procedure in departmental enquiries

(1) xxxxx

xxxxx

(11) (1) xxxxxx

(2) No police officer shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause orally and also in writing against the action proposed to be taken in regard to him, provided that this clause shall not apply:-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove an officer or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the Sadar-i-Riyasat is satisfied that in the interest of the security of the State it is not expedient to give to that officer such an opportunity.

***xxxxxxx
xxxxxxx”***

11. If Section 19 of the Police Act is read in conjunction with Sub-Rule (11) (2) of Rule 359, it is manifest that since an SPO enjoys the same protection as an ordinary officer of police, holding a substantive post, his services cannot be disengaged unless he is provided a reasonable opportunity to show cause and to meet the charges levelled against him.

12. The principle of natural justice is founded on public policy and rooted in the concept of fairness and equity to ensure that similarly circumstanced persons are treated equally and justly. The core of this principle is that it emphasizes the right of individuals to be heard and to present their case before a decision is made that could affect them adversely. It is a fundamental principle of fair legal procedure and due process in legal and administrative actions to safeguard individual rights and maintain public trust in the system. Therefore, it is an integral part of Article 14 of the Constitution of India, which guarantees equality and equal protection before the laws.

13. Back to the case on hand, there is admission on the part of respondents that petitioner came to be disengaged from service without any enquiry/notice because of the terms and conditions of her engagement order that “*she will liable to be terminated from her service any time without giving her prior notice*”. The said action on the part of respondents besides being illegal and unjust is unconstitutional.

14. Having regard to the aforesaid, the present petition is allowed and impugned order is set-aside. Consequently, petitioner is directed to be reinstated as SPO, subject, however, to the condition that she will not be entitled to the monthly honorarium for the period she was disengaged. Respondents, however shall be at liberty to hold an enquiry against the petitioner, as per law, occupying the field and conclude the same within a period of two months from the date copy of this order is made available to them. Reinstatement of the petitioner shall be subject to outcome of the said enquiry.

15. Disposed of.

(Rajesh Sekhri)
Judge

Jammu
13.03.2025
Abinash

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes