

**Court of Special Judge, Anti-Corruption for districts
Baramulla, Kupwara and Bandipora.
Ist Additional Sessions Judge, Baramulla.**

CNR No. JKBA010020172022

Date of Institution: 28.11.2022

Date of Order:- 17.12.2022

In the Case of:-

- 1- Ab Majeed Bhat S/o Sonaullah Bhat
R/o Kralpora Hariwatnoo, Tangmarg.
 - 2- Mohammad Shafi Mir S/o Gh. Ahamad Mir
R/o Hariwantnoo, Tangmarg.
 - 3- Bilal Ahmad Pandith S/o Gh Ahmad Pandith
R/o Mughama, Kunzar.
 - 4- Gani Sheikh S/o Amma Sheikh r/o Harduaboora
 - 5- Umer Javid S/o Nazir Ahamad Najar
R/o Srinagar.
- All posted at Municipal Committee, Tangmarg/Gulmarg.

....Petitioners

Through: Mr. H.U, Naik, (Adv) and associates

Versus

Union Territory through
Police Station Crime Branch Kashmir.
FIR No. 19/2011
Under Section: 420,468,471,120-B RPC r/w 5(2) PC Act
Through: Learned SPP.

Coram: Malik Shabir Ahmad
J.O.Code: Jk00122

O R D E R:

- (1) The ld. counsel for the petitioners has filed the instant application thereby seeking appropriate orders for release of service books of petitioners seized in FIR No.19/2011 under Section 420,468,471,120-B RPC r/w 5(2) PC Act. It is

stated in the application that petitioners were engaged in the said department and are discharging their duties since long and their performance has been appreciated; that the service book/s of many others deposited with the Crime Branch in the aforementioned FIR were released by this Court vide order dated 03.11.2020 and since the deposition of the service books many years have elapsed and same has deprived the petitioners from the benefits accrued to them on account of their employment who are discharging their duty sincerely and with punctually and are drawing the salary but the other benefits are withheld as the service book is not with the concerned DDO and the same has caused injustice to the petitioners. Lastly prayer is made that the service book of the petitioners may be released with the direction for necessary entries which has accrued/pending due to withholding of service book.

- (2) On presentation of application, report from the Crime Branch Kashmir was sought and in response thereto the report was filed. As per the report of crime branch a written complaint in the shape of booklet endorsed by IGP Crime No. CHQ/CL-T/K-758/11-12413 dt. 27-10-2011 lodged by ABC Group of NGOS Abid Enclave Paraypora was

received by crime branch Kashmir, wherein it was alleged that the officers/officials of Urban Local Bodies Department in pursuance of a well thought out criminal conspiracy by abuse and misuse of their official position and by adopting corrupt practices have in violation of norms governing the recruitments made appointments to various posts on the basis of fake qualification and DOB certificates and have also made promotion of their favorites to various posts without considering the seniority, merit, qualification etc. Even the consolidated paid Workers who deserved regularization after having completed their service were left out and those who have not completed the prescribed service span were regularized illegally. Further huge funds collected by various Municipal Committees and town Area Committees were embezzled. On this complaint FIR No. 19/2011 under section 420,468,471,120-B RPC r/w 5(2) P.C has been registered in Police Station Crime Branch Kashmir. In light of the allegations levelled in the complaint the period for investigation was taken from the year 2000 to 2011 and investigation as set in motion.

(3) During the course of investigation Circulars, SROs, Govt. Orders and orders issued from Directorate of Urban Local Bodies Kashmir having bearing on the investigation were obtained and placed on record. The relevant record was also obtained from 45 Municipalities of the Kashmir valley except Leh and Kargil. The witnesses were examined and some alleged persons questioned including the beneficiary employees. The investigation conducted has revealed that during the period 2000 to 2011, a huge number of persons have been engaged, appointed, regularized and upgraded etc. by the concerned presidents, Administrators, Ex. Officers and Directors from time to time without adhering to rules and regulations for which engagements, appointments, regularizations and up gradations and regularizations were banned in the Municipalities as per the J&K Municipal Act-2000. The investigation conducted has also revealed that during the period 2000 to 2011, a huge number of persons have been engaged, appointed, regularized and upgraded etc. by the concerned Presidents, Administrators and Ex. Officers of concerned MC's including Municipal Committee, Watergam and director of Urban Local Bodies Kashmir from time to time without

adhering to General rules and regulations of engagements, appointments, regularizations and up gradations and have adopted pick and choose method for the same and these appointments engagements, regularizations and up gradations include their relatives which establishes nepotism in the case.

- (4) During the course of investigation it revealed that Awleena Akhter D/o Mohammad Subhan Mir R/o Rawanpora, Kunzer, Baramulla has been shown as appointed as Sweeper in the year 1997 and then upgraded/promoted as Jr. Assistant in the year 2010 by EO at MC, Tangmarg and subsequently transferred without any competence, willfully ignoring the general rules of recruitment in pick and choose manner and in conspiracy with concerned Executive Officer and beneficiary for obtaining pecuniary advantages benefits and have violated the norms as laid down in the guidelines circulated by the GAD Department from time to time. The service book along with other material is under Forensic examination and the opinion is yet to be received. As per the recruitment rules the appointment was to be made by a selection committee which was competent to appoint Jr. Assistant and the said

post was to be filled 75% by direct recruitment and 25% by promotion with minimum qualification as Graduation and 06 months certificate course in computer from recognized institution.

- (5) It is further reported that the investigation is in progress; however, certain factors stretched the investigation over the years including the floods of year 2014 in which some documents pertaining to the case have been damaged, in fact the records of 45 municipal councils and committees are voluminous and have been seized committee wise and perused. There are instances where various records such as original appointment orders are not available with the committees which have caused the delay in the investigation. The investigation of the case is going on and shall be closed committee wise very soon. The seized service books is a vital piece of evidence to prove the guilt of the accused during the course of trial, as such, if the service books are released in favour of beneficiaries accused or DDO, it is apprehended that the accused beneficiaries/ officers of Municipalities/ concerned will tamper destroy the evidence as it has been found that the service records of these Municipalities

mostly lie with the employees/accused and rarely with the establishment section of the concerned Municipalities. It is also apprehended that the release of these service books may lead to release of monetary benefits which will cause loss to the state exchequer. The release of this vital piece of evidence /service book, will prove fatal for the prosecution to prove the case during the course of trial. Lastly, it is prayed that the service book/s in question may not be released at this stage.

- (6) The ld. APP has objected the application by stating that the seized record forms an important piece of evidence in the matter and is an important tool in the hands of prosecution to prove the commission of offence by the accused in connivance with others involved in the matter; that there is every likely hood of accused to tamper with this evidence in order to weaken the case of prosecution; that in case the seized material is released in favuor of the accused he may tamper with these articles which form an important evidence against the accused. Lastly it is prayed that the application preferred for release of service books may kindly be dismissed in the interests of justice.

- (7) Heard the arguments at length and also perused the application, report of crime branch and objections filed by Ld. APP.
- (8) The perusal reveals that the instant FIR No.19/2011 was lodged in Police Station Crime Branch in the year 2011 under Section 420,468,471,120-B RPC r/w 5(2) PC Act for engaging appointing, regularizing and upgrading of huge number of persons in 45 Municipalities/Town Area Committees of Kashmir Valley illegally and in violation of prescribed rule and regulations from 2000 to 2011 and during the course of investigation beside affecting the seizer of orders of engagement, appointment regularization and promotions the service books of the beneficiaries of about 4000 persons were also seized and the same were subjected to FSL. The perusal further reveals that before the present petitioners many others have also approached this Court with the same prayer and this Court beside directing the investigating agency to expedite the investigation has also directed to complete the process of conducting and completing FSL of service books within a stipulated time and through various orders

has also released the service book of many of the beneficiaries with various terms and conditions.

(9) It is important to note that even after 11 years of lodging of FIR the investigation is not completed, although the investigation of the case like in hand where the record of 45 municipalities /committees of Kashmir valley is under scrutiny is not an easy task but at the same time the pendency of the matter for decades together is also not justified. As per the report of Crime Branch the beneficiaries are in thousands and the period of such illegal engagements, appointments, promotions is reckoned from 2000 to 2011 and even in 2022 neither the investigation is completed nor the investigating agency has placed any report before the Govt. on administrative side or any report is placed before the competent courts for seeking any order/direction with regard to continuity of services of the beneficiaries and nothing is brought on record to suggest any prompt action on the part of the concerned department to that effect. While as there are various pronouncement of Hon'ble apex Court and the Hon'ble High Courts of the country that continuity of service of an employee beyond certain period entitles him for

regularization and other service benefits. In the present case perhaps the investigating agency is either not aware or is not realizing that delay on its part is also causing loss to Govt. exchequer and they are equally responsible for causing of loss to Govt. exchequer. Thus, in the given circumstances without touching the merits and discussing the role of investigating agency the investigating agency is reminded to realize the importance of the matter under investigation and the consequences of delay in completion of investigation.

(10) So far as the aspect of release of service books of present petitioners is concerned, before coming to that it is important to note that the service book of an employee beside being used for maintaining the record of all types of leaves availed by the employee is also used for keeping record of pay scale, increments and other monetary benefits like allowances and arrears of an employee and in addition to that the same is also used to keep record of place and period of positing on various places of posting during service of an employee and all these are not only important for the employee but are also important for the employer/concerned department and the Govt. as a whole,

but it is unfortunate that neither the investigating agency has realized it so far nor the concerned department has taken any step of its own level or the matter is taken up with the Govt. for taking call of the Govt. with regard to fate and future of the beneficiaries nor the case is brought before the Court by way of charge sheet. At the one hand it is alleged that about 4000 persons are illegally engaged, appointed, promoted and regularized on various posts in violations of rule and regulations from 2000 to 2011 in 45 municipal committees but even up to this time and at the other hand there is no report about any action with regard to termination or keeping on hold the services of the beneficiaries or giving of monetary benefits to them and it appears that the department and the investigating agency are interested in lingering on the matter rather than to conclude the same to its logical end.

(11) In view of the importance of service book of a Govt. Servant in his service carrier the seizer/withholding of the service books of thousands of employee for decades together as discussed earlier is not justified and the silence maintained by the concerned department and the Govt. is also not justified whereas it is high time for the

investigating agency, the concerned department and the Govt. to take a final call on the matter, otherwise the delay of each day will not only go on multiplying the miseries of the persons against whom the investigating is in progress but will also go on shaking the conduct and credibility not only of investigating agency but also of those who are at the helm of affairs in the Govt.

(12) Therefore, in totality of the circumstances, like pendency of investigation since decades and in view of the fact that the service books of many of the other similar situated employees are already released by this Court and others courts of the Kashmir Province including Hon'ble High Court. I am of the considered opinion that a case is made out for release of service books of the petitioners and accordingly the Investigating Officer, concerned/Crime Branch Kashmir is directed to release the service books of the petitioners/applicants herein through their concerned DDO against proper receipt after retaining the Photostat copies, attested by the receiving DDO.

(13) However, it is made clear that the entries made in the service book/s shall be subject to the final outcome of the

investigation and decision of the competent Court of law and before making any entry in the service books of the petitioners/applicant herein, the DDO concerned shall ensure filing of affidavit by petitioners/applicant herein attested by the 1st Class Magistrate, to the effect that the entry/entries made in his/her/their service book/s shall be subject to final order/decision of the case and in case he/she/they is/are found guilty he/she/they shall remit the monitory benefits obtained by him/her/them and it is made clear that the DDO shall not make any entry regarding regularization/confirmation of any employee including petitioners/applicants herein without obtaining proper order/s from competent authority or from competent Court. The concerned DDO /Executive Officer of M.C /Custodian of the service books shall also produce the service book/s before the Investigating Officer and the Court as and when required/directed. The application/petition is accordingly disposed of, be consigned to records after its due completion.

Announced
17.12.2022

Spl. Judge, Anti-corruption,
Baramulla, Kupwara & Bandipora
1st. Addl. Sessions Judge, Baramulla