

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

WP(C) No.2126/2023

Wali Mohammad Bhat

.....Petitioner(s)

Through: Mr.Bakht Parvaiz, Advocate

V/s

UT of J&K and Ors

....Respondent(s)

Through :Mr.Ilyas Laway, GA

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

05.05.2026

1. The petitioner through the medium of present petition has sought a direction upon the respondents to settle and release his pension, gratuity and other retiral benefits.
2. As per the case of the petitioner he was working as a Sweeper with the respondents. He has superannuated from service on 01.08.2021 in terms of communication dated 01.06.2021 issued by respondent No.3. The petitioner was appointed as a Sweeper with the respondent Corporation in terms of appointment order dated 03.08.1994 issued by Administrator NAC Sumbal on consolidated salary of Rs.700/-

per month. His services were regularized by virtue of order dated 01.08.2000 and his pay was fixed as Rs.750-940. Pursuant thereto, service book of the petitioner was compiled and entries with regard to his service particulars were made from time to time.

3. It has been submitted that on 24.01.2008, an order came to be issued by the respondents, whereby, the services of the petitioner were declared as quasi permanent in terms of Article 34-A of J&K CSR. According to the petitioner he has rendered more than 21 years of regular and substantive service with the respondents, whereafter he came to be superannuated from service on 01.08.2021, after he had completed 60 years of age.

4. The petitioner is stated to have submitted the original documents, including his first appointment order and the order whereby his services were regularized, to the respondents so that his pension case can be processed. According to the petitioner only GP Fund arrears have been released in his favour but his pension case has not been settled by the respondents, which compelled him to serve a legal notice dated 07.06.2023 upon respondents No.2 and 3.

5. The respondents have filed their reply to the writ petition in which a stand has been taken that basic engagement of the petitioner in the year 1994 and his subsequent regularization in

the year 2000 was made by an incompetent authority. It has been submitted that the regularization of the services of the petitioner was for political considerations and his initial engagement was made on pick and choose basis without adhering to the rules/norms/procedure. It has been submitted that all such cases of illegal engagement/appointment and regularization are being enquired by a Committee constituted by Government vide Order No.103-JK(HUD) of 2021 dated 07.07.2021 and these cases are also subject matter of investigation in FIR No.19 of 2011 registered with Crime Branch Kashmir. On this basis it is being claimed that the petitioner is not entitled to any terminal benefits, including pension.

6. I have heard learned counsel for the parties and perused record of the case.

7. It is not in dispute that the services of the petitioner were engaged by the respondents on 03.08.1994 on consolidated salary, whereafter his services were regularized in terms of order issued on 01.08.2000 and he was placed in regular scale of pay. The respondents have not disputed the fact that the petitioner was declared as quasi permanent in terms of order issued on 24.01.2008. The only contention of the respondents is that initial engagement of the petitioner was de hors the rules and his regularization in service has been made by an incompetent

authority. It is further contention of the respondents that all the engagements similar to the engagement of the petitioner are subject matter of enquiry at departmental level and also subject matter of investigation in FIR No.19 of 2011.

8. The admitted facts emerging from the pleadings of the parties are that the petitioner has been allowed by the respondents to work for more than 21 years and he has also been allowed to superannuate from service. During his service career, the respondents have not conducted any enquiry with regard to the nature of his engagement and even the FIR registered in the year 2011 has not culminated into filing of a charge sheet against the petitioner. In these circumstances, merely on the basis of the assertion of the respondents that engagement of the petitioner was illegal, it is not open to them to withhold the terminal benefits of the petitioner after having extracted work from him for more than 21 years.

9. It is true that Article 168-A and 168-D of Jammu & Kashmir Civil Service Regulations provide for recovery of amount from the pension of an officer/official, if it is found that the action/inaction of the said official/officer has resulted in loss to the Government in judicial or departmental proceedings. However, in the present case, admittedly, no departmental proceedings have been conducted by the respondents for the

purpose of ascertaining loss to them that may have been caused due to negligence or fraud committed by the petitioner during his service career. After registration of the FIR, the charge sheet has not been filed against the petitioner before the Court as yet, meaning thereby, that there is no judicial proceeding pending against him as on date. The respondents, therefore, are not legally justified to withhold the pension and other terminal benefits of the petitioner, as the same would amount to violation of his right to property, which can be denied to him only through authority of law. The action of the respondents in withholding the pension and terminal benefits of the petitioner is, therefore, not sustainable in law.

10. For the foregoing reasons, the writ petition is **allowed** and the respondents are directed to settle the pension of the petitioner and release his terminal benefits within a period of two months from the date of this order, failing which, the amount of terminal benefits due to the petitioner, shall carry an interest @ 6% per annum from the date of filing of this writ petition till realization of the said amount.

(SANJAY DHAR)
JUDGE

SRINAGAR

05.05.2026

Sarveeda Nissar

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No