

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

SWP No. 1957/2018

1 Saif Din age 60 years son of Nawab Din, ... appellant/petitioner (s)
resident of Telli Basti, Bari Brahmana;

2. Karnail Singh age 71 years son of Jai Singh
resident of Gurha Salathia, Tehsil and
District Samba.

3. Prem Singh age 60 years son of Baj Singh
resident of House No. 38-E Lane No. 9 Shiv
Nagar Jammu

4. Nathu Ram age 60 years son of Krishan
Dutt resident of Sarwal

5. Khurshid Mohammad age 62 years son of
Sh. Sen Baksh resident of Katal Batal.

6. Yudhveer Singh age 70 years son of
Baskar Singh resident of Gurha Salathia
Tehsil Vijay pur Distrcit Samba

7. Om Parkash age 61 years son of Sh. Tara
Chand resident of Janipur Colony Jammu

Through :- Mr. G.S.Thakur Advocate.

1 High Court of Jammu and Kashmir th. Respondent(s)
Registrar General, Jammu

2. District Judge, Jammu

3. State of Jammu and Kashmir th.
Commissioner Secretary to Government
Department of Law, Civil Secretariat Jammu.

4. Accountant General, Jammu

Through :- Mr. Vastav Sharma Advocate
Mr. Virender Dev Singh Advocate

vice
Mrs Monika Kohli Sr. AAG
Mr. Vishal Sharma DSGI.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT(ORAL)
(19.10.2023.)

Sanjeev Kumar J.

1 This is third round of litigation by the petitioners seeking a direction to the respondents not to effect any recovery on account of the pay drawn by them in the higher pay scale of Process Servers which was erroneously granted to them by the High Court and later on withdrawn.

2 The petitioners have served Subordinate Judiciary as Process Servers and have now retired from service on attaining superannuation. In the year 1988, the petitioners through their Association projected their grievance before the Government that they were being paid salary in the pay scale lower than that granted to the Process Servers serving in the Excise Department of the State. In short, the Association of Process Servers claimed before the Government the benefit of higher pay scale on the principle of 'equal wages for equal work'. The Government did not redress the grievance of the petitioners and, accordingly, they filed SWP No. 1683/1992 seeking a direction to the Accountant General of the State of Jammu and Kashmir to fix the pay scale of process servers of Subordinate Judiciary on a par with the Process Servers of the Excise Department w.e.f 01.01.1982. The writ petition was allowed by a Single Judge of this Court vide order and judgment dated 30.08.1994. The

State of Jammu and Kashmir, as it then was, challenged the order of the learned Single Judge in LPA No. 112/1994. The appeal preferred by the State was also dismissed vide order dated 31.10.1996. The State did not relent and preferred SLP before the Hon'ble Supreme Court. The SLP too was dismissed. Even the review petition filed by State subsequent to the dismissal of the SLP by the Hon'ble Supreme Court was also dismissed vide order dated 05.08.1998.

3 Having been left with no option, the State implemented the judgment and issued Government Order No.194-LD(A) of 1999 dated 26.02.1999 whereby sanction was accorded to the placement of all the Process Servers of the Subordinate Judiciary in the pay scale of Rs.950-1500 i.e the pay scale which was granted to the Process Servers of the Excise Department w.e.f the date of promulgation of the Jammu and Kashmir Pay Revision Rules, 1992. The petitioners along with other Process Servers got the benefit of higher pay scale w.e.f 01.04.1990.

4 It seems that the High Court later on noticed that while implementing the judgment dated 30.08.1994 passed in SWP No. 1683/1992, a serious mistake had been committed. Accordingly, the High Court vide its order dated 28.03.2005 cancelled the In-Situ promotion of the Process Servers granted to them by virtue of Government order dated 26.02.1999 and took away the benefit which had been granted to them on account of such wrong promotion. The Principal District Judges were called upon to furnish a report regarding quantum of amount, if any, drawn by the Process Servers working in

their jurisdiction in excess of their entitlement under pay fixation. They were also called upon to recover the excess draws after affording an opportunity of being heard to the process Servers concerned. The compliance of directions issued by the High Court by the Principal District Judges was pre-empted by the petitioners by calling in question the order of the High Court dated 28.03.2005 in SWP No. 336/2005 which came to be disposed of by a Single Bench of this Court vide order and judgment dated 09.10.2009. The plea of the petitioners that no amount could be recovered from them after re-fixation of their salary in terms of the High Court order was not accepted. However, a direction was issued to the High Court to adjust the amount so paid erroneously instead of recovering it. This judgment of the Writ Court dated 09.10.2009 was called in question by the petitioners-Process Servers in LPA No. 238/2009 which came to be dismissed vide order dated 19.09.2013. The SLP filed by the petitioners before the Supreme Court also failed. Even the review petition filed before the Hon'ble Supreme Court for recalling the order passed in the SLP met the same fate.

5 Indisputably, the judgment passed by a learned Single Judge dated 09.10.2009 has attained finality.

6 It seems that the petitioners once again approached this Court through the medium of SWP No. 348/2018 in a bid to stall the implementation of the judgment passed by a Single Judge of this Court in SWP No. 336/2005. In the petition, the petitioners contended that they had moved a representation dated 05.06.2017 before the High Court which was not being decided by the

High Court. The petitioners, therefore, invoked the writ jurisdiction of this Court to seek a direction to the High Court to consider and dispose of their representation. The writ petition was, accordingly, disposed of by a Division Bench of this Court vide order dated 19.07.2018 directing the respondent-High Court to consider and decide the representation of the petitioners having regard to the averments made in the writ petition and the judgments, if any, relied upon. It is in compliance with the judgment dated 19.07.2018, the matter was considered and one of the petitioners was intimated that the representation which was filed by them on 05.06.2017 stood already decided vide endorsement dated 15.11.2017 of the Hon'ble Chief Justice and that the directions of the High Court have already been complied with. It was also made known to one of the petitioners that the result of the representation had already been conveyed to Ex-President, J&K Subordinate Judicial Process Servers Welfare Association, Srinagar vide communication dated 18.11.2017. The petitioners were also advised to seek review of judgment passed in SWP No. 336/2005 in accordance with law. It is this representation read with communication of the Deputy Registrar (Administration), High Court of Jammu and Kashmir dated 18.11.2017 as also the consequential recovery notices issued by the office of Accountant General which are called in question by the petitioners in this petition.

7 Mr. G.S. Thakur, learned counsel appearing for the petitioners submits that by way of representation made by the petitioners subsequent to the judgment of the learned Single Bench dated 09.10.2009 attaining finality, the

petitioners had prayed before the High Court to review its decision of recovery and adjustment of the salary drawn by the petitioners erroneously on the ground that the legal position expounded by the Hon'ble Supreme Court in similar cases was supportive of the view that the recovery of the arrears of salary drawn by employees erroneously during their service career could not be later on withdrawn particularly after their superannuation. He submits that such directions have been made by the Hon'ble Supreme Court in relation to the employees belonging to the lower rungs of the service. He submits that the High Court while adverting to the representation made by the petitioners did not advert to the legal position and erroneously refused to withdraw the order whereby the Principal District Judges had been called upon to make recoveries which were later on converted to 'adjustments' on the intervention of this Court.

8 Having heard learned counsel for the parties and perused the material on record, the only question that arises for consideration, in the given facts and circumstances of the case, is whether the concluded judgment of this Court can be reopened on the ground that the earlier judgment passed by the Court had not taken note of the correct legal position enunciated by the Supreme Court in various judgments rendered under similar set of circumstances.

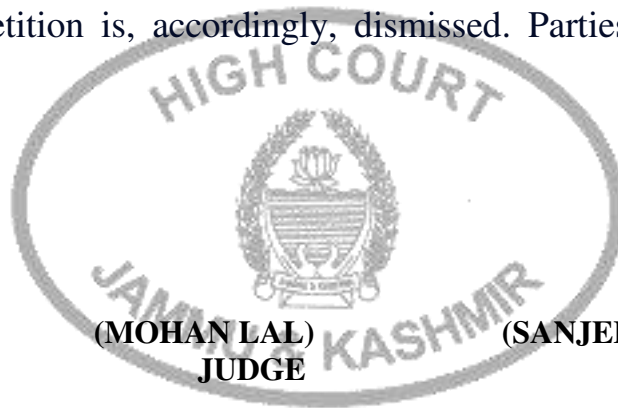
9 We are afraid that such question which has somehow arisen for determination in this petition needs any in-depth scrutiny.

10 Indisputably, the judgment passed by a learned Single Bench of this Court directing the respondents to adjust the arrears instead of recovering them, has attained finality. The appeal preferred against the judgment before the Division Bench of this Court, the SLP and, thereafter, review before the Hon'ble Supreme Court stand already dismissed. The judgment of the Single Bench, which has attained finality, has to be given effect to and the same cannot be sought to be reviewed, recalled, modified or altered by filing a fresh writ petition on the ground that there is a change of law subsequent to passing of the judgment or that the law as was obtaining on the date of passing of the judgment was not considered by the Single Bench disposing of the petition. If, as is contended by learned counsel for the petitioners, the writ petition of the petitioners i.e SWP No.336/2005 was not correctly decided by the learned Single judge, the aggrieved petitioners had remedy of challenging the same before the Division Bench. Not only did they avail the remedy of appeal, but they even took the matter to the Supreme Court.

11 There is no dispute with regard to the fact that the LPA, SLP and subsequently the review petition filed before the Hon'ble Supreme Court have been dismissed. A final judgment by a Single Bench which has attained finality cannot be sought to be reopened, recalled, modified or altered by filing a fresh writ petition. As a matter of fact, the writ petition i.e SWP No. 348/2018 was itself grossly misconceived. However, the Court, having regard to the prayer made by the petitioners that their representation is pending before the High Court, disposed of the same by calling upon the respondent-High

Court to consider and dispose of the representation, if any, pending before it. The direction by a Division Bench of this Court to the High Court to dispose of the representation cannot be construed to mean that respondent High Court was under an obligation to consider the representation and dispose of the same acting contrary to and in violation of the final judgment of this Court.

12 For the foregoing reasons, we find this petition utterly misconceived. We were inclined to dismiss this petition by imposing a very heavy costs, but having regard to the fact that the petitioners before us are class-IV employees and have since retired on superannuation, we refrain from doing so. The petition is, accordingly, dismissed. Parties to bear their own costs.



(MOHAN LAL)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
19.10.2023
Sanjeev

Whether order is reportable: Yes/No