

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

Case No:- SWP No. 1715/2018
IA No. 1/2018

c/w

Subash Chander

.....Petitioner(s)

Through:- Mr. Anuj Dewan Raina, Advocate.

Vs.

State of J&K and Ors.

..... Respondent(s)

Through:- Mrs. Monika Kohli, Sr. AAG.

SWP No. 1717/2018
IA No. 1/2018

Mulkh Raj

Through:-

.....Petitioner(s)

Mr. K. Nirmal Kotwal, Advocate with
Ms. Surbhi Kotwal, Advocate.

Vs.

State of J&K and Ors.

Through:-

.....Respondent(s)

Mrs. Monika Kohli, Sr. AAG.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT(ORAL)

02.05.2025

The issues involved in the instant clubbed petitions are akin and analogous to each other, as such, are being disposed of by this common judgment and order.

SWP No. 1715/2018

1. The petitioner herein claims to have been engaged as daily wager in respondent- corporation and subsequently, his service converted from daily wager to regular establishment w.e.f 07.06.1994 as work supervisor in the pay scale of Rs.410-10-440-12-560-15-620-EB-16-700 and subsequently, promoted

in the pay scale of Rs. 1200-2040 vide order dated 26.10.1994, subject to the qualifying of ITI examination or putting in not less than 13 years' service and subsequent to the passing of the said examination on 07.12.1995, petitioner was allowed the financial upgradation of the pay scale of Rs. 1200-2040 vide order dated 09.4.1996 and vide order dated 18.07.1996, sanction came to be accorded to the grant of in-situ promotion in his favour in the pay scale of Rs. 1200-2040 w.e.f from 01.01.1995 and on 11.02.1997, as also extended the benefit of SRO 59 dated 18.09.1989 while placing him in the pay scale of Rs. 1200-30-1560-EB-2040 and thereafter, placed in the revised pay scale of Rs. 4500-7000 in terms of SRO 18 dated 19.01.1992 and subsequently, placed in the revised pay scale in terms of SRO 311 dated 09.09.1997 and under SRO 14 dated 15.01.1196 and thereafter, granted in-situ promotion in the pay scale of Rs. 5000-8000 w.e.f 01.04.1999 and vide order dated 11.11.2003, granted 2nd stage of in-situ promotion in the pay scale of Rs. 5500-9000.

2. It is being stated that petitioner superannuated from the services on 31.01.2014 while holding the pay scale of Rs. 5700-100-10100/- (pre-revised) and consequently, the case of the petitioner came to be recommended by the respondents 1 to 4 for settlement and payment of retiral benefits as per the last pay received by the petitioner, however, the respondent 5 herein, instead of, settling and releasing the retiral benefits in favour of the petitioner as per the last pay received by him, settled the retirement benefits of the petitioner on a lower pay scale without the taking into consideration the last pay drawn by the petitioner, aggrieved whereof, the

petitioner filed a petition bearing SWP No. 2212/2017 before this Court, which petition came to be disposed of by this Court vide order dated 08.09.2017 on the analogy of SWP No. 2178/2015, SWP No. 1129/2010, SWP No. 988/2011 and SWP 2059/2017 and that the respondents despite the receipt of the order dated 08.09.2017 passed by this Court in the aforesaid writ petition, did not comply with the direction contained therein, resulting into filing of a contempt petition no. 264/2018, during the pendency of which contempt petition, the respondents herein rejected the claim of the petitioner while issuing order dated 01.02.2018, which, accordingly, resulted into disposal of the contempt petition on 23.05.2018, providing a liberty to the petitioner to challenge the said consideration order, whereupon the petitioner maintained the instant petition against said consideration order dated 01.02.2018.

3. The petitioner has challenged order dated 01.02.2018 (supra), impugned in the instant petition on the multiple grounds including that the respondents overlooked the judgment passed by this Court in similar other cases and while issuing the impugned order, sought recovery from the retiral benefits of the petitioner without lawful justification, inasmuch, as withheld the retiral benefits of the petitioner without any rhyme and reasons.

4. Respondents have filed **objections** to the instant petition, wherein the petition is being opposed, primarily, on the ground that the petitioner has sworn an affidavit before a Judicial Magistrate, authorizing the respondents to make recoveries of the amount drawn by the petitioner without any entitlement and secondly, that the petitioner has availed benefits under SRO

59 without any entitlement, inasmuch as, the in-situ promotion under SRO 40 due to inadvertence on part of the respondents necessitating recovery of the said amount from the petitioner in terms of the provisions of the Financial Code contained Clause 17 Sub-Clause 4.

SWP No. 1717/2018

5. In the instant petition, the petitioner claims to have been engaged as a Work Supervisor by the respondents on daily wage basis in the respondent-corporation on 27.08.1977 and brought on regular establishment on 12.06.1986 as Work Supervisor in the pay scale of Rs. 345-410, whereafter the said pay scale came to be upgraded to Rs. 775-1025 and subsequently, to the pay scale Rs.950-1500 in terms of orders dated 28.06.1994 and 11.02.1997 and thereafter, petitioner was placed in the 1st higher standard pay scale in terms of SRO 14 of 1996 of Rs. 1200-2040 w.e.f from 01.01.1995 by incorporating 50% daily wage service in terms of SRO 311 dated 09.09.1997 and, accordingly, pay of the petitioner came to be re-fixed and thereafter in terms of order 18.06.2000, the petitioner was placed in the pay scale of Rs. 4500-7000 w.e.f 01.02.2000 and vide Government Order no. 84, the petitioner came to be placed in the pay scale of Rs. 5000-8000 and subsequently, in terms of order dated 05.05.2004 in the pay scale of Rs. 5150-8300 w.e.f from 01.01.2001.

6. It is next stated that the petitioner superannuated from the services on 28.02.2014 in the pay scale of Rs.5150-8300 (pre-revised) and though his case came to be recommended for settlement and payment of

pensionary and retiral benefits, yet the respondent 5 settled the pension case of the petitioner in lower pay scale without taking into consideration the pay scale last drawn by the petitioner, aggrieved, whereof the petitioner maintained SWP no. 2189 of 2017 before this Court on the analogy of various other petitions and the said petition came to be disposed of on 06.09.2017 with a direction to the respondents to finally settle the pension case of the petitioner having due regard to the recommendation and rules governing the matter, as also the judgments passed by this Court in SWP nos. 2178/2015, SWP No. 1129/2010, SWP No. 988/2011 and SWP No. 2059/2017 and that the respondents did not comply with the order dated 06.09.2017 passed by this Court, resulting into filing of contempt petition bearing no. 259/2018, however during the pendency of the same, the respondents issued a consideration order dated 13.01.2018, whereupon the said contempt came to be closed on 23.05.2018, while providing liberty to the petitioner to challenge the order in question dated 30.01.2018, impugned in the instant petition.

7. The petitioner herein has maintained the instant writ petition on the multiple grounds including one that the respondents have overlooked the judgment passed by this Court in similar other case and while issuing the impugned order, sought recovery from the retiral benefits of the petitioner without lawful justification, inasmuch, as withheld the retiral benefits of the petitioner without any rhyme and reasons.

8. Respondents have filed objections to the instant petition, wherein the petition is being opposed, primarily, on the ground that the petitioner has

sworn an affidavit before a Judicial Magistrate, authorizing the respondents to make recoveries of the amount drawn by the petitioner without any entitlement. It is also being stated in the objections that the petitioner has availed benefits under SRO 59 without any entitlement inasmuch as, in-situ promotion under SRO 14 due to inadvertence on part of the respondents necessitating recovery of the said amount from the petitioner in terms of the provisions of the Financial Code contained Clause 17 Sub-Clause 4.

Heard learned counsel for the parties and perused the record.

9. Learned appearing counsels for the petitioners while making their respective submissions in line and tune the case set up in the respective writ petitions invited the attention of this Court to the judgment passed by this Court in case titled as “*Vinod Kumar V/s UT of J&K and Ors.* being WP(C) No. 846/2020 decided on 23.02.2024 and would contend that the said judgment is squarely applicable to the case of the petitioners herein and would, as such, seek disposal of the instant petitions on the similar lines, on which the judgment (supra) came to be passed.

Learned counsel for the petitioners would also submit that the judgment passed in Vinod Kumar’s case (supra) has even been upheld by the Division Bench of this Court upon being thrown challenge to by the respondents in LPA no. 243/2024, which LPA came to be dismissed on 04.03.2025.

The copies of the aforesaid judgments came to be produced by the counsel for the petitioners and copies thereof are claimed to have been furnished in advance to the counsel for the respondents.

10. On the contrary, learned counsel for the respondents would insist that the judgments referred to and relied upon by the learned counsel for the petitioners passed by this Court in Vinod Kumar's case (*supra*) and upheld by the Division Bench are not applicable to the case of the petitioners for two-fold reasons; one that the petitioners have had sworn an affidavit, authorizing the respondents to effect recoveries thereof qua the excess amount drawn by them due to inadvertence of the respondents and secondly, the recoveries are permissible from the petitioners in terms of Rule 17 Clause 4 of the J&K Financial Code.

11. Insofar as the aforesaid judgments relied upon by the learned counsel for the petitioners are concerned, a closer examination of the same reveals that the issues involved therein in the said judgments are similar and identical to issues involved in the instant petitions and, thus, the said judgments are squarely applicable to the cases in hand. Yet having regard to the aforesaid plea raised by the learned counsel for the respondents that the petitioners could not derive any benefit therefrom the aforesaid judgment in view of swearing of an affidavit by them, is concerned, this Court is of the considered opinion that the affidavit would not operate **as bar** or an impediment thereto against the petitioners from seeking similar relief, which have had been granted by this Court in Vinod Kumar's (*supra*) on the

principle law laid down by the Hon'ble Supreme Court in case titled as ***“Central Inland Water Transport Corporation Ltd. and Another V/s Brojo Nath Ganguly and Another*** reported in *AIR 1986 SC 1571*”, wherein it has been, *inter-alia*, held that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the parties who are not equal in bargaining power. While providing that the said principle will apply where the inequality of bargaining power is the result of great disparity in the economic strength of the contracting parties or where the inequality is the result of circumstance, whether of the creating of the parties or not and also will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them and would also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however, unfair unreasonable and unconscionable a clause in that contract or form or rules may be and that the said type of contracts to which the principle formulated above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the Court, as they are opposed to public policy and required to be adjudged void.

12. Even otherwise also, the respondents cannot effect any recovery from the retiral benefits of the petitioners, in that, the petitioners have not admittedly drawn the alleged excess amount of salary by paying any fraud or misrepresentation and the plea of swearing of affidavits by the petitioners, authorizing the respondents to recover the alleged excess amount cannot also said to have been sworn by the petitioners except in distress in order to receive their retiral benefits after their superannuation being left with no choice and option, as record reveals that admittedly, the petitioner superannuated in the months of January and February, 2014 and the respondents indisputably did not release the retiral benefits in their favour after a period of more than four months, having left the petitioners without any sustenance while withholding their retiral benefits. Thus, in view of the aforesaid principle of law, the swearing of the affidavits cannot but said to be unfair, unreasonable and not operating as a bar or estoppel against the petitioners in the matter for seeking the reliefs sought in the instant petition.

13. Insofar as next plea of the learned counsel for the respondents seeking qua application of Rule 17 Clause (4) of the J&K Financial Code qua the effecting of recoveries from the petitioners is concerned, the same cannot be even pressed into service in the instant cases in view of the aforesaid judgment passed and the principle of law laid down by the Apex Court noticed and relied upon therein.

14. Viewed thus, the aforesaid contention and pleas of the learned counsel for the respondents pale into significance, rendering the judgment

passed by this Court in Vinod Kumar's case (supra), *mutatis mutandis* applicable in the case of the petitioners herein in its entirety.

15. Accordingly, for what has been observed, considered and analyzed hereinabove, the instant petition succeeds and impugned orders bearing **Nos. 08 of 2018 dated 01.02.2018 & 07 of 2018 dated 30.01.2018** issued by the respondent 5-Deputy Director, Local Fund Audit & Pensions, Jammu are quashed, as a consequence whereof, the respondents are commanded to release the entire retiral benefits in favour of the petitioners forthwith, preferably within a period of six weeks from the date of receipt of a certified copy of this judgment and order, along with interest @7.5% from the date, the amount was withheld by the respondents till the date of its actual payment.

As regards the fixation of the pension is concerned, the respondents shall be free to fix the same on the basis of last pay drawn by the petitioners after deducting the benefits granted under SRO-59 dated 16.02.1990.

16. ***Disposed of*** along with connected applications.

17. A copy of this judgment shall be placed on the record file of each petition.

(Javed Iqbal Wani)
Judge

Jammu
02.05.2025
Javid Iqbal

<i>Whether the judgment is speaking?</i>	<i>Yes/No</i>
<i>Whether the judgment is reportable?</i>	<i>Yes/No</i>