

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

CJ Court

LPA No. 190/2018(O&M)

State of J&K and others

...Petitioner(s)/Appellant(s)

Through: Ms. Monika Kohli, Sr. AAG

v/s

Basudev Singh

.... Respondent(s)

Through: Mr. Vipin Gandotra, Adv.

LPA No. 210/2018(O&M)

State of J&K and others

...Petitioner(s)/Appellant(s)

Through: Ms. Monika Kohli, Sr. AAG

v/s

Shaheen Akhter

.... Respondent(s)

Through: Mr. M. I. Sherkhan, Adv.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.**

**Judgment
07.08.2025**

1. In view of the fact that common issues were involved, as such, these appeals were considered together and are being disposed of by a common judgment. However, the reference shall be made to facts peculiar to each case, whenever and wherever required.

2. In **LPA No. 210/2018**, the respondent was initially appointed as Teacher in District Cadre Rajouri, after earning promotion rose to the post of Headmaster and was further granted officiating promotion to the post of Incharge, Zonal Education Officer, Rajouri and was retired prematurely by the appellants with effect from 13.02.2012 by invoking the provision of Article 226(2) of J&K Civil Services Regulations. The order was passed on the ground that the respondent had demanded Rs. 30,000/- from Mohd. Hussain, Contractor of Rajouri, who had executed the construction work of a Middle School under Sarv Shiksha Abhiyan, for release of amount due in favour of the Contractor. She was caught red handed while demanding and accepting Rs. 6,000/- as a first installment of the bribe, pursuant to which FIR No. 20/2006 was registered against the respondent for offences under section 5(1)(d) read with 5(2) of the Prevention of Corruption Act and section 161 RPC. After completion of the investigation, the charge sheet was also filed before the competent court of law, which is still pending disposal.
3. The respondent assailed order dated 13.02.2012 in respect of her compulsory retirement on the ground that without waiting for the outcome of the trial, the respondent could not have been retired compulsorily. It was also urged that it is necessary for the Government to form an opinion in terms of Article 226(2) of J&K Civil Services Regulations that it would be in the public

interest to prematurely retire a Government servant on the basis of service record and not on the basis of extraneous, collateral and alien considerations. In the case of the respondent, except the FIR, neither any other case was pending nor there was any other allegation against the respondent.

4. The writ petition filed by the respondent was objected to by the appellants on the grounds that in order to remove deadwood from the Government machinery, a Committee was set up vide Government Order dated 16.05.2011 comprising of senior officers headed by the Chief Secretary to scrutinize the record/activities of such government officers/officials and recommend premature retirement in terms of Articles 226(2) and 226(3) of the J&K Civil Services Regulations, 1956. The respondent was prematurely retired by invoking Article 226(2) of J&K Civil Services Regulations. The service record, reputation, integrity and other attending factors and circumstances were considered by a high powered committee comprising of Chief Secretary, Principal Secretary Home Department, Commissioner/Secretary General Administration Department, Inspector General of Police, Vigilance, Inspector General of Police, CID and Director, School Education. It was reported that the respondent was not enjoying a good reputation in the public. On the previous occasion during her career, based on a specific complaint, a trap was laid against the respondent, who was posted as Zonal Education Officer, Rajouri and was

found demanding and accepting a bribe of Rs. 6,000/- from one Sh. Mohd. Hussain, Contractor of Rajouri, who had executed the construction work of a Middle School under SSA for release of payment in his favour. The appellants, in fact have narrated the details of the charge sheet filed against the respondent. Besides, it is further stated that Annual Confidential Reports (ACRs) of the officer were not formally written but certain comments have been routinely recorded in the Service Book to the effect that the work and behavior of the officer remained satisfactory and the last such comments were recorded in the year 1996-1997 and there have been no comments in the year 1997. However, the comments recorded in the Service Book have clearly been disproved by the subsequent case, where she was caught red handed while accepting the bribe from a private contractor.

5. Precisely the stand of the appellants is that though there were no earlier adverse reports in her Service Book and her ACRs were not written formally for the last couple of years, but because of her involvement in a criminal case, the respondent was ordered to be retired prematurely.
6. The learned Writ Court vide its order dated 19.04.2018 by placing reliance upon the judgment passed in SWP No. 1940/2015, quashed the impugned order dated 13.02.2012 and disposed of the writ petition on the same terms and conditions i.e. the respondent was ordered to be reinstated in service with

all consequential benefits within one month from the date of passing of order i.e. dated 19.04.2018.

7. Being aggrieved of the order dated 19.04.2018, the appellants have assailed the same on the grounds *inter alia* that the analogy drawn by the learned Writ Court *qua* the judgment passed in SWP No. 1940/2015 vis a vis the present case was not justified, as in the said case, the delinquent employee was involved in the case of possessing disproportionate assets to his known source of income and further that the learned Writ Court has not rightly appreciated the contentions of the appellants that the respondent was caught red handed, while accepting the bribe, regarding which she had been facing trial before the criminal court.
8. Ms. Monika Kohli, learned Sr. AAG appearing on behalf of the appellants has argued that the learned Writ Court has not rightly appreciated the stand of the appellants and has further erred in directing the appellants to pay all consequential benefits to the respondent even for the period, she did not work with the appellants.
9. On the contrary, learned counsel for the respondent has submitted that the learned Writ Court has rightly considered the controversy and there is neither any illegality nor impropriety in the judgment of the learned Writ Court. He has further submitted that the respondent would have otherwise retired in the year 2024, had she not been retired prematurely, but still the

respondent is willing to accept 50% of the monetary benefits till her superannuation in due course and further that the pensionary benefits be granted to her in accordance with the rules.

10. Heard and perused the record.
11. A perusal of the record reveals that the Committee constituted by the Government vide Government order dated 16.05.2011 examined the case of the respondent and in the deliberations of the Committee, it was recorded that Annual Confidential Reports of the respondent have not been written formally and the last comments were recorded only in 1996-97. The Committee recorded that “the officer does not enjoy good reputation in public and is generally known to have a bad reputation”. Besides recording the above observations, the Committee took note of the allegations referred in FIR No. 20/2006 of Vigilance Organization, Jammu and recommended that the respondent be retired from Government service in public interest in terms of Article 226(2) of J&K Civil Services Regulations and she be given three months’ pay and allowances in advance. Acting on the said recommendation, the order dated 13.02.2012 came to be issued by the appellants, whereby the respondent was retired prematurely.
12. This Court need not reiterate the settled proposition of law with regard to compulsory retirement in public interest that the order of compulsory retirement does not tantamount to punishment and principles of natural justice are not required to be observed

before passing any such order of compulsory retirement. The scope of judicial review when a challenge is thrown to the order of compulsory retirement is limited only to the extent that the order does not suffer from the vice of *mala fide*, arbitrariness and perversity and there must be material to support the subjective satisfaction recorded by the employer that it is in the public interest to retire the employee but at the same the courts cannot sit as appellate court over the decision of employer.

13. In this context, it would be appropriate to take note of the judgment of the Hon'ble Supreme Court of India in **State of Gujarat v Umedbhai M. Patel, (2001) 3 SCC 314**, wherein it has been observed as under:

“(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead- wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

14. So far as the present case is concerned, it is evident that the order impugned has been passed by the appellants in absence of the ACRs of the respondent as they were not recorded for the last many years and the respondent has been prematurely retired solely on the basis of the FIR registered against her in respect of alleged demand of Rs. 6,000/- from one contractor. The respondent is still facing trial before the criminal court, meaning thereby, that the criminal proceedings have not concluded and the culpability of the respondent has not been determined finally as yet by the criminal court. In such view of the matter, it would be appropriate to take note of the judgment of this Court in State of Gujarat v. Suryakant Chunilal Shah, (1999) 1 SCC 529, wherein it has been held as under:

"27. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a government servant or that he had lost his efficiency and had become a dead wood, **he was compulsorily retired merely because of his involvement in two criminal cases pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would**

constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee."

(Emphasis supplied)

15. Further, Coordinate Bench of this Court in **State of J&K and others vs. Abdul Majid Wani, LPA No. 95/2017, decided on 06.10.2017**, has held as under:

"21. That being so, the contention of learned Advocate General that the Government is competent to formulate an opinion with regard to compulsory retirement of a public servant solely on the basis of registration of an FIR or a criminal case, under certain set of facts and circumstances like apprehending the public servant demanding and accepting bribe red handed in a trap laid for the purpose, cannot be accepted.

22. The other contention of learned Advocate General that apart from the criminal case registered against the respondent under the Jammu and Kashmir Prevention of Corruption Act, the Screening Committee also took into consideration that the respondent did not enjoy a good reputation due to his consistent conduct over a period of time, is equally devoid of any merit. First of all, as admitted by the learned Advocate General that there was no material before the Committee to come to such a satisfaction and secondly, even if it is accepted, as contended by the learned Advocate General, that the assessment of the Committee was on the basis of spoken reputation, in that eventuality also, it was mandatory for the Committee to have spelt out the same in the minutes of meeting conducted for the purpose.

23. In response to the query put by this Court, the learned Advocate General fairly conceded that there is no such observation or finding recorded by the Committee nor is there any communication of any controlling officers of the respondent speaking about the reputation of the respondent. In the absence of such material on record and even the observations about the conduct of the respondent, it can safely be held that such observations made by the Committee were only as a matter of routine and just to lend justification to the otherwise unsustainable order of compulsory retirement of the respondent.

24. Corruption, no doubt, is a menace, eating into the vitals of our society. An employee, who is found to have indulged in such practice, has to be dealt with iron hands. Such a public servant, if found guilty, has to be punished and shown the door but not compulsorily retired allowing him to get

away with all the retiral benefits. The compulsory retirement provision has been enacted to achieve a different purpose, i.e., to weed out inefficient and corrupt public servants whose continuance in service is prejudicial to public interest. This, however, has to be adjudicated upon on the basis of the work and conduct of the employee during his whole service career though attaching more importance to his work and conduct during last some years preceding his compulsory retirement. This power based on the pleasure doctrine of the sovereign should not be used for collateral purpose. The Supreme Court as well as different High Courts of the country including this Court have laid down broad principles from time to time which were summarized by the Supreme Court in the case of Umedbhai M. Patel's case (supra)."

16. Similarly, in the case of **State of J&K v Bhumesh Sharma, 2023(1) JKJ**, the Coordinate Bench has observed that *compulsory retirement cannot be sustained merely because an FIR was lodged against the writ petitioner by the Vigilance Organization. The practice followed by the State in directing compulsory retirement of the writ petitioner was completely unwarranted because that would violate the basic maxim of 'innocent until proved guilty'. Thus, via the impugned order of compulsory retirement, the State has applied this principle in the reverse.* With these observations, the order of the learned Writ Court quashing the order of compulsory retirement of the respondent therein was upheld. SLP preferred against the above said decision was dismissed by the Hon'ble Apex Court.
17. In this view of the matter, we are of the considered view that the approach of the appellants in prematurely retiring the respondent merely on the basis of FIR registered against her and without waiting for the outcome of the trial, in absence any

other material, warranting the retention of the respondent in the service detrimental to the public interest, cannot be held to be justified and as such, the order of compulsory retirement of the respondent has rightly been quashed by the learned Writ Court.

18. We have examined the judgment impugned and we do not find any illegality or impropriety in the same that may necessitate indulgence of this Court. However, as submitted by the learned counsel for the respondent, the judgment dated 19.04.2018 of the learned Writ Court is modified to the extent that **the respondent shall be entitled to 50% of the monetary benefits from the date of her premature retirement till the actual date of her superannuation. Besides, she shall be entitled to pensionary benefits as permissible under law.**

19. In **LPA No. 190/2018**, the respondent, who was working as a Helper (Meter Reader) with the Power Development Department, was prematurely retired vide Government order dated 30.06.2015 with effect from 01.07.2015, after the Committee constituted vide Government Order dated 20.05.2015 examined the case of the respondent and took note of the registration of FIR No. 13/2013 with Vigilance Organization, Jammu in respect of demand of Rs. 2,000/- from one Chet Ram for settling his electricity bill and consequent recovery of the money from him. The Committee also observed that the employee does not enjoy good reputation in the public and is generally known to have bad reputation.

20. The appellants have filed the response before the Writ Court but it appears that the learned Writ Court has not taken into consideration the reply filed by the appellants, though has considered the stand of the appellants to object to the writ petition.
21. We need not delve deep into the merits of the claim as well as counter claims of the parties, as the very edifice i.e. registration of FIR culminating in to filing of charge sheet, leading to issuance of order of compulsory retirement of the respondent has been removed in view of the acquittal of the respondent by the court of Additional Sessions Judge (Anti- Corruption) Jammu vide judgment dated 17.02.2024. The only issue that remains is with regard to monetary benefits which the respondent is entitled to for the period he did not work with the appellants.
22. The learned counsel for the respondent has met the argument raised by the learned Sr. AAG that the respondent is not entitled to any monetary benefit for the period, he has not worked, by submitting that the respondent is willing to accept 50% of the monetary benefits from the date of his premature retirement till the actual date of his superannuation. Therefore, the order of the learned Writ Court be modified accordingly.
23. In view of the above, while upholding the judgment passed by the learned Writ Court dated 02.07.2018 *qua* the quashing order dated 30.06.2015, in respect of the compulsory retirement of the respondent, **the same is modified to the extent that the**

respondent is held entitled to 50% of the monetary benefits from the date of his premature retirement till the date of his actual retirement and further he shall be entitled to pensionary benefits as admissible under rules.

24. Both Appeals are accordingly disposed of.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

JAMMU:
07.08.2025
Rakesh PS

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**

