

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

SWP No. 2872/2017

Date of Pronouncement: 30.10.2025

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Tej Krishan Bhat, aged 61 years
S/o Sh. Shambu Nath Bhat
R/o Village Murran Tehsil and
District Pulwama, At present: Jagti
Nagrota, Tehsil and District
Jammu

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

Through: Mr. Aman Bhagotra, Advocate

vs

1. State Bank of India through
Deputy General Manager
Administrative Officer
Rail Head Complex, Jammu.

..... Respondent(s)

2. Regional Manager
Regional Business Office,
Region-III, State Bank of
India, Administrative Office,
Rail Head Complex, Jammu

Through: Mr. M.P. Gupta, Advocate

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

ORDER(ORAL)

1. The petitioner, in the instant petition, filed under Article 226 of the Constitution of India, states that he joined the respondent-Bank as a Cashier-cum-Clerk in the year 1978 and upon migration from the Kashmir Valley in the year 1990, came to be posted and adjusted in Jammu and consequently attained superannuation in the year 2013, and that while performing his duties in the respondent-Bank, the petitioner was communicated with an order No. R-111/HR/GKS/1183 dated 20.01.2012, pursuant to which order the petitioner was informed that he has been unauthorizedly absent from duty

w.e.f. 01.02.2011, in response to which the petitioner, submitted his reply, yet the respondents issued a notice/order dated 20.01.2012 with regard to the non-payment of salary of the petitioner, aggrieved whereof, the petitioner preferred. SWP No. 1300/2012 before this Court which petition came to be disposed of on 03.08.2017 with the direction to the respondents to take decision with regard to the recovery of amount inadvertently stated to have been paid to the petitioner for the period, he was unauthorizedly absent commencing from 01.02.2011 to 31.12.2011, only after compliance of the principles of natural justice and after giving an opportunity of hearing to the petitioner, and that subsequent to the passing of the said order by this Court on 03.08.2017, the respondent-Bank issued an order dated 12.10.2017 communicated to the petitioner vide letter dated 17.10.2017, wherein it came to be stated that the amount underlying in the bank account of the petitioner be appropriated and remitted to the relevant department of the respondent-Bank while simultaneously rejecting the claim of the petitioner for release of his salary w.e.f January 2012 up to September 2012.

2. The petitioner has called in question the order dated 12.10.2017 read with communication dated 17.10.2017, in the instant petition *inter alia*, on the grounds that the same are illegal and arbitrary and also in contravention of the law laid down by the Apex Court in case titled ***“Rafiq Masih Vs. State of Punjab and others”*** and that the petitioner has a large family to support and effecting of recoveries from his saving bank account, put under lien by the respondent-Bank would violate his right to life and of his family and that even otherwise also no enquiry can be held in law against an employee who has retired from service for effecting any monetary recovery as such, the impugned order/communication is illegal.

3. Reply to the petition has been filed by the respondents-Bank wherein the petition is being opposed on the premise that the petitioner, while working with the bank remained unauthorizedly absent since 01.02.2011, however, inadvertently came to be paid the salary for the said period of absence commencing from 01.02.2011 up to the month of December 2011 and since the petitioner did not discharge any duties with the bank for the said period, the petitioner, as such, is not entitled to any salary on the principle of “No Work No Pay, and that the fact the petitioner remained absent from duty for the said period was never disputed by the petitioner, and that the petitioner earlier filed SWP No. 1300/2012 before this Court calling-in-question the putting of lien on his saving bank account, in the bank which writ petition came to be disposed of on 03.08.2017, leaving it open for the respondent-Bank to take action in the matter against the petitioner, however, only after compliance of the principle of natural justice, whereafter, the petitioner came to be served with a notice dated 07.09.2017 calling upon him to present himself for personal hearing, as also to present his defence in writing followed by another notice dated 26.09.2017 as the petitioner failed to respond to the notice dated 07.09.2017, however, the petitioner yet again failed to respond to the subsequent notice dated 26.09.2017, whereafter, the competent authority respondent-2 herein after taking overall consideration of the matter passed the order under challenge.

Heard learned counsel for the parties and perused the record.

4. Perusal of the record available on the file in general, and the order and judgment of this Court passed in WP(C) No. 1300/2012 (supra) filed by the petitioner earlier suggests that the issue of alleged unauthorized absence from duties of the petitioner from 01.02.2011 till 31.12.2011 was an issue

before the Court therein in the said petition, as also, the payment of salary by the respondent-Bank inadvertently thereto to the petitioner for the said period inasmuch as the process of recovery effected thereof and the Court after considering the rival pleadings of the parties therein in the said petition, and after observing that since the question of payment of public fund is involved, it shall be open to the respondent-Bank to take action in the matter, but only after the compliance with the principle of natural justice and that the decision with regard to the recovery of the amount inadvertently stated to have been paid to the petitioner for the period of absence i.e., 01.02.2011 up till 31.12.2011 as also the entitlement of payment for the period from January 2012 to September 2012 to the petitioner and to conclude the said exercise within a period of 3 months from the date of receipt of copy of the order.

5. Further perusal of the record available on the file reveals that the petitioner came to be served a notice by the respondent-Bank in furtherance of the order dated 03.08.2017 passed by this Court (supra) through registered post followed by another notice dated 26.09.2017 as well sent to the petitioner through registered post which notices stand delivered to the petitioner as per the tracking report of the Postal Department, Government of India and the petitioner has nowhere in the petition contended that he did not receive the said notices which notices, called upon the petitioner to present his case in writing or else to present himself before the bank. The petitioner indisputably, as per the record available on the file, did not either choose to present himself before the respondent-Bank personally or else submit any response to the said notices, thus resulting into the issuance of order communication under challenge. The petitioner, however, instead of joining an issue with regard to the contention of the respondent-Bank of his

unauthorized absence, as also drawl of salary for the said period, has contended that no recovery in this regard can be effected by the bank from his saving account, put under lien by the bank, in view of the law laid down by the Apex Court in case titled “*Rafiq Massih v. State of Punjab and others*” (supra) in as much as in view of his having superannuated from the services of the bank. However, a deeper examination of the said judgment reveals that the principles laid down therein are not applicable to the case of the petitioner owing to the fact that the respondent-Bank was permitted by this Court to provide the petitioner an opportunity of hearing before effecting any recoveries from the petitioner qua the salary received by him for the period the petitioner had remained absent from his duties from 01.02.2011 till 31.12.2012 and the respondents, as has been noticed in the preceding paras, seemingly have complied with the mandate of the direction passed by this Court in the petition (supra) filed by the petitioner and thus, cannot be said to have faulted or committed any illegality while issuing the impugned order communication.

6. In view of aforesaid position obtaining in the matter, the instant petition is found to be without any merit and is accordingly **dismissed**.

(Javed Iqbal Wani)
Judge

Jammu
30.10.2025
Rahul Sharma