

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

WP(C) 1648/2023 CM(5825/2025)

Ghulam Mohammad Ganie @ Gulla Ganie

... Petitioner/Appellant(s)

Through: Mr. Lone Altaf, Advocate

V/s

UT of J&K and others

... Respondent(s)

Through: Mr. Irshad Ahmad, Adv. for R2
None for respondents 1, 3 and 4

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

ORDER
10-10-2025

1. The petitioner in the instant petition filed under Article 226 of the Constitution of India claims to have been appointed as Mashki in Municipal Committee, Ganderbal, on consolidated wages pursuance to order dated 7.5.1988 whereafter the services of the petitioner came to be regularized as Sweeper on 1.12.2009 and after rendering more than 25 years of service, the petitioner retired on superannuation on 31.1.2023 whereupon the respondents did not process and settle the pension and retiral benefit case of the petitioner despite being approached repeatedly by the petitioner thus necessitating the filing of the instant petition.
2. Reply stands filed by the respondents.
3. In the reply filed by respondents 1, 3 and 4 the petition is being opposed on the ground that the initial engagement of the petitioner as also his regularisation as Sweeper came to be made in violation of rules, norms and procedure and that similar cases like that of the petitioner became subject matter of an FIR registered by the Crime Branch, Kashmir being FIR no. 19/2011 as such owing to the registration of the said FIR the pensionary and retiral benefits of the petitioner could not be released.
4. In the objections filed by respondent 2 it is being stated that the grant of pensionary and retiral benefits are to be processed and settled by the answering respondent only after receipt of the service record of an employee

and that the service record of the petitioner upon his retirement has not been furnished to the answering respondent by the parent department of the petitioner, as such the pensionary and retiral benefit case of the petitioner could not be processed and settled.

Heard counsel for the parties and perused the record.

5. While making his submissions the counsel for the petitioner produced the copy of FIR No.19/2011 supra and would submit, that even though the FIR came to be registered in the year 2011, it has no bearing upon the case of the petitioner as till date the petitioner has not been arraigned as an accused therein, and that no inquiry before or after his retirement was initiated in the matter by the respondents up till now, and therefore, under these circumstances, the respondents cannot, by any stretch of imagination, withhold the retiral benefits of the petitioner. The counsel for the petitioner in support of his submission, would heavily rely upon the decision of the Division Bench of this Court passed in cases titled as **“Ghulam Mohi ud din Lone Vs. State of J&K and Ors., decided on 11.12.2020”**.
6. On the contrary, the counsel for the respondent 2 would rely upon the stand taken in the objection filed in opposition to the petition.
7. Perusal of the record available on file manifestly suggests that as on date the petitioner herein has not been found involved in the FIR No.19/2011 or else implicated/arraigned, as an accused therein. It has also not been denied by the respondents that any disciplinary proceedings in regard to either the engagement or regularization of the petitioner stands initiated against his either during his service or after his retirement.
8. Though Article 168-A and 168-D of the J&K Civil Service Regulations applicable to the Government employees makes it explicit that the Government is entitled to order the recovery from the pension of an officer any amount on account of loss found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of an such officer during his service, the said Articles however, further provides that if such departmental or judicial proceedings are not initiated against the officer while he is in service or on duty, the same shall not be instituted without sanction of the Government and shall be instituted within a year from the date he was last on duty, and that the proceedings must not pertain to an event which took place not more than one year before the date of which the officer was last on duty.

9. In presence of the aforesaid provisions of the Civil Service Regulations and the aforesaid facts that no judicial or departmental proceedings have had been either instituted or initiated against the petitioner herein while being in service or within one year from the date the petitioner was last on duty, it can safely be said that withholding of the retiral benefits of the petitioner is not tenable in law, in that, law is settled that the retiral benefits of an employee are not bounties to be given by an employer to the employee, as it is earned by the employee by dint of his long, continuous, and unblemished service. The Apex Court in case titled as **“Deokinandan Prasad Vs. State of Bihar”** reported in **AIR 1971 SC 1409** has authoritatively ruled that pension is a right and payment of it does not depend on the discretion of the Government but is governed by the rules and the Government servant coming within those rules is entitled to claim pension as of right while holding further that grant of pension does not depend on anyone's discretion.
10. Further, the Apex Court in case titled as **“U. P. State Sugar Corporation Ltd. And Ors. Vs. Kamal Swaroop Tandon”**, reported in **2008(2) SCC 41**, has also held that retiral benefits are earned by an employee for long and meritorious service, and gratuity is paid to such an employee for his dedicated and devoted work and that even though the departmental inquiry can be initiated against the Government servant after his superannuation, pension can be reduced and gratuity can be withheld, and that such proceedings cannot only be initiated before the employee retires but also continues after his retirement and can be initiated after his retirement as well provided any pecuniary loss recoverable caused to the Government is recoverable from the said Government employee, which loss had been caused due to his negligence or service misconduct.
11. Risking repetition and as has been noticed above, neither any judicial nor any departmental proceedings was initiated/instituted against the petitioner by the respondents while being in service or even after his retirement inasmuch as it is also not alleged that any pecuniary loss has been caused to the Government due to the misconduct of the petitioner. The respondents cannot thus now withhold the retiral benefits of the petitioner, merely on the ground that his initial engagement and regularization was dehors the rules and in the instant case, the said initial engagement admittedly have had been made in the year 1999 and regularization accorded in the year 2007 and the petitioner retired in the year 2024.

12. For the foregoing reasons, the petition is allowed and respondents 1, 3 and 4 are directed to process and settle the pensionary and retiral benefits case of the petitioner preferably within a period of eight weeks from the date a copy of this order is produced by the petitioner before the respondents, whereafter the same be forwarded to respondent 2 who shall take necessary action thereupon and order the release of pensionary and retiral benefits of the petitioner within a further period of four weeks.

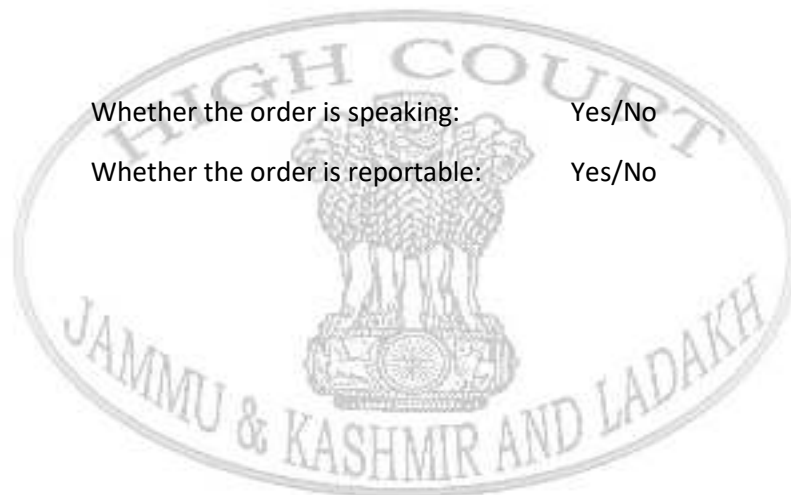
13. In the event the respondents fail to adhere to the aforesaid time frame and delay the payment of pensionary and retiral benefits to the petitioner, the petitioner shall be entitled to the interest @ 7 per cent upon such benefits from the date same became due to him till the date the same are disbursed to the petitioner.

14. Disposed of.

(JAVED IQBAL WANI)
JUDGE

Srinagar
10-10-2025

N Ahmad



Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No