

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 15.07.2025
Pronounced on: 18.07.2025

LPA No. 131/2023

Mohammad Maqbool Bhat & 51 others

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

Through: Mr. M. M. Dar, Adv.

Vs.

**Union Territory of JK Th. Commissioner/Secretary to
Government, GAD, Civil Secretariat Srinagar/Jammu &
75 others**

...Respondent(s)

Through: Mr. Faheem Nisar Shah, GA

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

J U D G M E N T

Per Sanjeev Kumar, J

1. This intra-court appeal by the appellants is directed against an order and judgment dated 26th April 2023 passed by the learned Single Judge of this Court [the "Writ Court"] in WP (C) No. 78/2020 titled Mohammad Maqbool Bhat & Ors. vs. Union Territory of JK & Ors. whereby the Writ Court has dismissed the petition having found the same devoid of any merit.

2. Briefly stated the facts leading to the filing of this appeal are that the appellants, some of whom have retired on superannuation and some are still in service were/are employees of different Cooperative Societies across the valley. They claim to have made a representation to the Government to make suitable amendment to SRO 233 of 1988 so as to raise the age of superannuation at par with Government employees. Vide Government order dated 28th October 1995, a Committee was constituted to examine the issue.

The Committee deliberated on the issue and made a proposal to the Government for carrying out necessary amendment in SRO 233 of 1988. This is evident from the communication of the Registrar Cooperative Societies, J&K dated 13th May 1997 addressed to the Commissioner/Secretary to Government, Agriculture Production and Cooperative Department. With the grievance that the Government has not acted upon the proposal submitted by the Committee for effecting the amendment to Rule 13 of SRO 233 of 1988 and that the appellants are being retired on attaining the age of 58 years, the appellants filed WP (C) No. 78/2020.

3. In the petition filed before the Writ Court, the appellants claimed *inter alia* a Writ of Certiorari for quashing SRO 233 of 1988 with a further direction to the respondents not to give effect to Rule 13 of SRO 233 of 1988 till the formal consideration is accorded by the Government to the proposal submitted by the Committee constituted vide order dated 28th October 1995.

4. The writ petition was contested by the respondents in which a stand was taken that the writ petition was without any cause of action. It was pleaded by the respondents that in terms of Rule 176 (1) of the J&K Cooperative Societies Act, the Government is empowered to make rules or to carry out amendment to the rules. SRO 233 of 1988, is, thus issued by the Government in exercise of the aforesaid power, and as per Rule 13(1), the age of superannuation of employees of the Cooperative Societies governed by SRO 233 of 1988 has been fixed as 58 years. It was urged by the respondents before the Writ Court that though the Committee constituted to

suggest amendments to SRO 233 of 1988 made certain recommendations, but the same have not been accepted by the Government till date.

5. The matter was considered by the Writ Court in the light of rival contentions and the material available on record and it was held that no case was made out by the appellants to seek a Mandamus to the respondents to necessarily amend SRO 233 of 1988. It was held by the Writ Court that no right to continue beyond the age of superannuation would vest in the appellants unless the proposal made by the Committee is accepted by the Government and necessary amendment to Rule 13 of SRO 233 of 1988 is carried out.

6. It is in this backdrop, the Writ Court did not find any merit in the writ petition filed by the appellants and dismissed the same vide judgment impugned in this appeal.

7. The impugned judgment is assailed by the appellants primarily on the ground that a duty is cast on the Government to consider and take a final decision on the recommendations made by the Committee proposing amendments in SRO 233 of 1988 and, until such decision is taken by the Government, they are entitled to be treated at par with the Government employees of J&K insofar as the age of superannuation is concerned.

8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Writ Court is in consonance with law and does not suffer from any error of law or fact.

9. Admittedly, the appellants are the employees of the Cooperative Societies registered under J&K Cooperative Societies Act, 1989 [“the Act”]

and the service conditions of the employees of Cooperative Societies are governed by their respective Bye-laws. It is not disputed before us that as per Bye-laws, the age of superannuation in the case of appellants is 58 years. That apart, with a view to constitute a common service of some Cooperative Societies, the Government in exercise of the powers conferred by Section 124 of the Cooperative Societies Act, 1960, [the “old Act”] framed the J&K Cooperative Societies Service Rules 1988. The rules were applicable to the cooperative district whole society/cooperative marketing society/cooperative sale and supply society/cooperative multipurpose societies etc. and as per Rule 13 thereof, the age of superannuation was fixed as 58 years.

10. It seems that when the Government raised the age of superannuation with respect to its employees from 58 years to 60 years, there was clamour amongst the employees serving in various Cooperative Societies. With a view to examining their grievance, the Registrar Cooperative Societies constituted a Committee to examine the provisions of SRO 233 of 1988 and suggest amendments, if any, required. The Committee upon deliberation made its recommendations to the Registrar, which were forwarded by the latter to the Commissioner/Secretary to Government, vide its communication dated 04.01.1997. There is no clarity as to whether any decision has been taken by the Government on the recommendations made. Be that as it may, if the recommendations of the Committee made in the year 1997 have not been accepted and as a consequence whereof, no amendment to SRO 233 of 1988 has been carried out, no right much less a right to continue beyond superannuation would vest in the appellants.

11. SRO 233 of 1988 whereby J&K Cooperative Society Services Rules, 1988 have been framed is a piece of subordinate legislation made by the

Government deriving its power from Section 124 of the J&K Cooperative Societies Act, 1960 which has been saved under the J&K Cooperative Societies Act, 1989.

12. It is trite law that this Court cannot, in the exercise of writ jurisdiction issue Mandamus to the respondents to legislate. It is upto the Government to amend or not to amend SRO 233 of 1988. The Government is well within its powers to amend/alter or even rescind SRO 233 of 1988, but no Mandamus would lie to compel the State to amend a statute in a particular manner. The prayer of the appellants seeking a direction to the Government to act upon the recommendations of the Committee and effect necessary amendments to Rule 13 of SRO 233 of 1988 is grossly misconceived and cannot be accepted. The appellants who are admittedly the employees of Cooperative Societies are governed by their own Bye-laws subject to the provisions of SRO 233 of 1988 and, therefore, cannot seek parity with the Government employees working in connection with the affairs of the Government of J&K.

13. For the reasons which the Writ Court has elaborately given in its judgment as also for what we have stated hereinabove, we find no merit in this appeal, the same is accordingly dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
18.07.2025
Altaf

Whether the order is speaking?	Yes
Whether the order is reportable?	Yes