

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 3009/2022

Ghulam Mehdi

...Petitioner(s)

S/O. Shakoor Ali

R/O. Baroo Colony, Kargil.

Through: Mr. M.Tufail, Advocate.

Vs.

01. UT of Ladakh, through, Chief
Secretary to Govt. UT Secretariat,
Leh-Ladakh.

...Respondent(s)

02. Deputy Commissioner/Chief
Executive Officer, LAHDC, Kargil.

03. Projects Director/CEO, DRDA,
Kargil.

04. Chief Projects Officer,
Desert Development Agency, Kargil
Kargil.

05. Projects Officer Wages (ACD) Leh
Ladakh.

06. Projects Officer, Self-Employment
DRDA (ALL), Leh Ladakh.

07. Projects Officer, DRDA, Leh Ladakh

08. Block Development Officer (HQ),
Directorate of Rural Development,
Kashmir Srinagar.

Through: Mr. T.M.Shamsi, DSGI, with Ms. Yasmina, Adv.
Mr. Bidramdeep Singh, Dy.AG.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

ORDER
30.04.2025

(Oral)

01. Mr. M.Tufail, learned counsel appearing for the petitioner
submits that the instant petition survives only to the extent of

settlement of pension case of the petitioner in terms of Government Order dated 1st September, 2015, keeping in view the mandate of Communication dated 27th April, 2018, and the information furnished vide another Communication dated 28th April, 2018.

02. The specific case of the petitioner which has been projected through the medium of the instant petition is that all the agency borne employees, who have been absorbed in the Rural Development Department w.e.f. 1st April, 2005 notionally vide Government No. 233 (RD/PR) of 2015 dated 1st September, 2015, are entitled to pension and other retiral benefits, but no pensionary benefits have been extended to the petitioner which constrained him to file the instant petition, as the petitioner has made various requests from time to time to the department for releasing the pensionary benefits in his favour in terms of the Government Order dated 1st September, 2015.

03. Learned counsel further submits that vide Order dated 21st December, 1979, the petitioner was initially appointed in terms of SRO 75 dated 30th March, 1992, and his pay was fixed in the revised pay scale of Rs. 1200-2040 with the date of next increment i.e. 1st January, 1993. Accordingly, the petitioner was granted to the 1st In-situ pay scale of Rs. 1400-1800-2300 w.e.f. 1st September, 1995, and after completing the eighteen years service period against the post of Driver, he was granted 2nd In-situ promotion to the 2nd higher standard pay scale of Rs. 5000-150-8000 w.e.f. 1st January, 1998. It is further case of the petitioner that in terms of Order dated 14th January,

2005, he was declared quasi permanent and, accordingly, vide Order dated 22nd June, 2009, 3rd In-situ promotion w.e.f. 1st January, 2007 was granted to him and placed in the pay scale of Rs. 5150-8300.

04. Learned counsel of the petitioner, with a view to substantiate his case, has placed reliance on SRO 92 of 2009, as pleaded in the writ petition, whereunder the pay of the petitioner was fixed in the revised scale as on 1st January, 2006 @ Rs. 11820-2400 = 16020 with date of next increment on 1st July, 2006. Learned counsel further submits that the petitioner has superannuated from services on 31st May, 2009, and, thus, was entitled to the pensionary and other retiral benefits and in the instant case since the Rural Development Department has neither absorbed the petitioner in the said department nor has paid him the pensionary and other retiral benefits and, thus, his legal and fundamental rights have been violated.

05. *Per contra*, the response stands filed on behalf of the respondents by Mr. T.M.Shamsi, learned DSGI, in which, the respondents are not disputing the eligibility of the petitioner for receiving such pension. However, a specific stand has been taken by the respondents that since the name of the petitioner was not listed in the Annexure to Government Order dated 1st September, 2015, inadvertently, the left out cases including the case of the petitioner was taken up with the Secretary, Rural Development Department and Panchayati Raj, J&K Civil Secretariat Srinagar vide Communication dated 23rd March, 2019, to take a final call. The further stand of the

respondents is that in the wake of re-organization of J&K State in August, 2019, the issue remained unattended and it is the precise reason that the decision could not be taken and the pension could not be released.

06. The respondents, while filing the reply affidavit, have also submitted that the case of the petitioner was submitted to the Accountant General (A&E), J&K, Srinagar, vide Communication dated 2nd November, 2011 and later on the Accountant General (A&E), J&K, Srinagar vide Communication dated 1st March, 2012 has addressed to the Project Director /CEO, DRDA, Kargil, who has returned the pension papers along with Service Book by stating that the agency is not covered under Pension Scheme and Project Director was asked to take up the matter with the concerned Authorities. In the aforesaid backdrop, the Project Director, Kargil, has re-submitted the pension case to the Account General (A&E), J&K, Srinagar vide Communication dated 22nd September, 2015, with the remarks that as per the Government Order dated 1st September, 2015, the services of the agency borne employees have been regularized w.e.f. 1st April, 2005 and shall qualify for the pensionary benefits as envisaged at Para XI of the Government Order.

07. Heard learned counsel for the parties and perused the material on record.

08. It is well settled that the pension or post retiral benefits payable to an employee on superannuation, is not a bounty to be granted by

the employer but is a right vested in the employee, provided he holds a pensionable post under the employer. It is not mandatory for the employer to make a provision for payment of pension in the rules governing the service conditions of its employees. The employer may, in its wisdom, opt to compensate his employee on superannuation by making a provision for payment of GPF/CPF, gratuity, or other fixed sums. It is only where the rules governing the service condition of an employee envisage grant of pension upon superannuation, the employer cannot arbitrarily and without any authority of law withhold the same. It is only in this context, the Hon'ble Supreme Court, in its umpteen judgments, held that the right to receive pension is a vested right of an employee and the same cannot be withheld by the employer by way of an executive fiat. The mandate of judgments passed by the Supreme Court on this aspect, do not lay down a thumb rule that all employees, irrespective of the rules governing their service conditions, are entitled to pension and other retiral benefits. Rather, these judgments unequivocally clarify that it is only in the cases where the rules governing the service conditions of an employee envisage the pensionary benefits on superannuation, the same cannot be denied or withheld by the employer without any justifiable reasons. With regard to right to pension for an employee in the absence of service rules envisaging the benefit of pension, has already been discussed by a Division Bench of this Court in [*State and others vs. Hamidullah Andrabi and others*](#), (LPA No. 10/2019 and other connected matters, decided on 11.11.2021. The relevant portion whereof is reproduced as under:-

“Right to pension is not a fundamental right guaranteed by any Article of Part III of the Constitution of India. It is a mere condition of service. Whether or not an employee of the Government or a Statutory Corporation is entitled to pension, is determined by the terms and conditions of his employment. These terms and conditions may be contractual or statutory in nature. No employee of the Government or of any Public or Private Corporation can claim retirement pension de hors the rules and regulations governing conditions of his service”

09. With the consent of learned counsel for the parties, this petition is taken up for final disposal at this stage. Since the grievance of the petitioner for release of the pensionary benefits has not been denied by the respondents and it was only due to an inadvertent mistake on the part of the Administrative Department that the name of the petitioner was not listed in the Government Order, due to which, the pension could not be released. Thus, for all practical purposes, any inadvertent mistake on the part of the respondents, the petitioner can in no way be penalized and the decision ought to have been taken by the respondents within some time frame, which till date the respondents have not taken.

10. Since the respondents have admitted in the reply affidavit that the issue, which has been raised by the petitioner for release of pensionary benefits, has remained unattended since 2019 and the pensionary benefits could not be released in favour of the petitioner as the decision was required to be taken by the Secretary Rural Development Department and Panchayati Raj and due to inaction on part of the respondents, the petitioner has been deprived of the

pensionary benefits as on date and has been left out by the concerned department.

11. At this stage, Mr. M. Tufail, learned counsel appearing for the petitioner, submits that the Accountant General (A&E), J&K Ladakh, has already been impleaded as party-respondent in the instant petition on 4th February, 2025, on whose behalf, Mr. Mubashir Malik, learned Dy.AG, had caused appearance and was directed to file response, which till date has not been filed. However, on the asking of the Court, Mr. Bikramdeep Singh, learned Dy.AG. has caused appearance on behalf of the newly added respondent no.9 [Accountant General (A&E) J&K, Ladakh], who assures this Court that the decision for the release of pension on the basis of similarly situated employees will be taken within a period of four weeks from today positively.

12. In the light of the assurance extended by Mr. Bikramdeep Singh, learned Dy.AG, no fruitful purpose would be served to keep this petition alive and is, accordingly, **disposed of** by directing the respondent no. 1 to take a decision with regard to the pension case of the petitioner on the touch stone of the Government Order No. 1st September, 2015(*supra*) in the light of the fact that the services of the agency borne employees (similarly situated) have already been regularized w.e.f. 1st February, 2005 and a decision has been taken by the respondents that they shall qualify for the pensionary benefits as envisaged at Para XI of the Government Order.

13. It is further made clear that pursuant to the decision which is likely to be taken by the respondent no. 1, with regard to the pension case of the petitioner, the same thereafter be referred to the Account General (A&E), J&K, Srinagar, to settle the pension case of the petitioner on the basis of Government Order mentioned supra and issue PPO in favour of the petitioner within two weeks thereafter with further direction that respondent no. 9 shall also make necessary entries in the service book of the petitioner. The entire exercise be completed by the said respondents within a period of six weeks from the date a copy of this Order is served upon them.

14. **Disposed of** in the aforesaid terms.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

30.04.2025

"Shamim Dar"

<i>Whether the Judgment is reportable?</i>	<i>No</i>
<i>Whether the Judge is Speaking?</i>	<i>Yes</i>