

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

WP (C) No. 49/2024

Reserved On: 31st of August, 2026.
Pronounced On: 8th of September, 2026.
Uploaded On: 8th of September, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Gh. Mohd. Dar, (59 Years)
S/O Late Haji Ab. Aziz Dar
R/O Danganpora, Pulwama
Pin Code: 192301
D.O.B.: 01.12.1964.

... Petitioner(s)

Through: -

Mr Sajid Ahmad Bhat, Advocate vice
Mr M. Y. Bhat, Senior Advocate.

V/S

- 1. Union Territory of Jammu & Kashmir,**
Through Commissioner/ Secretary to Government,
Housing and Urban Development Department,
Civil Secretariat, Srinagar.
- 2. Director, Urban Local Bodies,**
Kashmir, Bemina, Srinagar.
- 3. Pay & Accounts Officer,**
Municipal Council, Pulwama/ Tral,
Kashmir.
- 4. Irfan Ah. Wani, Executive Officer,**
Municipal Committee Dooru-Verinag,
Anantnag.

... Respondents

Through: -

Mr Ilyas Nazir Laway, Government Advocate.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioner, through the medium of the instant Writ Petition filed under Article 226 of the Constitution of India, has assailed

communication No. DULB/Acctts/1315-11/32994-98 dated 23rd of November, 2023 issued by the Directorate of Urban Local Bodies, Kashmir/ Respondent No.2 herein, directing the Executive Officer, Municipal Committee, Dooru-Verinag (Respondent No.4 herein) to recover the amount from the salary of the Petitioner in connection with the supply of three Multipara Monitors; as well as communication No. MC/D-V/2023-24/5725-28 dated 22nd of December, 2023 addressed by the Executive Officer, Municipal Committee, Dooru-Verinag (Respondent No.4) to the Pay & Accounts Officer, Municipal Council, Pulwama (Respondent No.3 herein) requesting to deduct an amount of Rs. 1,64,235/- from the salary of the Petitioner.

02. The Petitioner claims to have been appointed as a Junior Assistant in the Respondent-Department way back in the year 1986, whereafter, he was granted several promotions, as a result whereof, he rose to the rank of Executive Officer in June, 2018 and, subsequently, retired from service upon reaching the age of superannuation on 30th of November, 2024. It is stated that the Petitioner exhibited diligence and rendered exceptional services to the Respondent-Department during his entire service career, which was duly acknowledged by the Respondents.

03. It is further averred by the Petitioner that in the year 2023, on 23rd of November, 2023 to be precise, the Respondent No.2 issued communication No. DULB/Acctts/1315-11/32994-98 (impugned herein) to the incumbent Executive Officer of the Municipal Committee, Dooru-Verinag/ Respondent No.4 herein, thereby instructing to recover the amount from the salary of the Petitioner; that the basis for this recovery was stated to have emanated from the Petitioner's tenure as Executive Officer, Municipal Committee, Dooru-Verinag, during which period the said Municipal Committee, while following a resolution, initiated a tender on Government-e-Marketplace Portal (GeM Portal) for the procurement of Multi-Para Monitors and Benches for Sub-District Hospital, Dooru; and that the Petitioner, in his capacity as the Executive Officer, was tasked

solely with the execution of this procurement and the decision-making authority rested entirely with the Municipal Committee, headed by its President.

04. The Petitioner proceeds to plead that, thereafter, a meeting was convened on 2nd of December, 2023 for the purpose of addressing the pending payment complaint relating to the order placed by Municipal Committee Dooru-Verinag for the procurement of Multi-Para Monitors; that the meeting was attended by various officers, including the Petitioner, who articulated his rationale for the aforementioned procurement; that the Petitioner staunchly reiterated his position and clarified that the decision to procure the items was exclusively taken by the Municipal Committee, presided over by its President, through the passage of a detailed resolution; and that the Petitioner emphasized that his role was limited to the execution of the decision to procure the said item and did not extend to the decision-making process.

05. The Petitioner has further pleaded in his Petition that, subsequent to the aforementioned meeting, he received a communication dated 21st of December, 2023 from the Respondent No.4, wherein various concerns regarding payment claims of Municipal Committee Dooru-Verinag were raised and a clarification was sought from the Petitioner with regard to those claims; that, upon receipt of the aforesaid communication, the Petitioner promptly claims to have responded to the same on the very next day, vide letter dated 22nd of December, 2023, requesting for providing him photostat copies of all payment files for which Objections had been raised by the Accounts Officer and for which justification/ explanation was being sought from the Petitioner by the Executive Officer; and that, however, on the very same day when the Petitioner sought the aforementioned documents, the Respondent No.4 issued the impugned communication No. MC/D-V/2023-24/5725-28 dated 22nd of December,

2023 to the Respondent No.3, thereby requesting to deduct an amount of ₹1,64,235/- from the salary of the Petitioner.

06. Upon notice having been issued, the Respondents have filed their Objections, *inter alia*, stating therein that the Writ Petition is not maintainable as the Petitioner has not approached the Court with clean hands and has suppressed the material facts; and that the Petitioner, while posted as Executive Officer, Municipal Committee, Dooru-Verinag, has utilized the municipal funds contrary to law and rules as he has installed three (03) Multipara Monitors and Multi-seated Bench at Sub-District Hospital, Dooru which amounted to diversion of municipal funds for the purpose not coming within the jurisdiction of the Committee.

07. It has been further stated by the Respondents in their Objections that, as per Section 48 of the Jammu & Kashmir Municipal Act, 2000, the powers and function of a Municipality relates to around 18 subjects mentioned in the twelfth Schedule of the Constitution of India as well as in the aforesaid Section of the Act of 2000, as such, the municipal funds cannot be utilized for any purpose which do not fall within the purview/ domain of the Municipal Council/ Committee in view of their powers and functions enumerated under the aforesaid provisions of law; that the development of the Hospitals is coming under the administrative control of the Health and Medical Education Department and, therefore, the Municipal Council/ Committee has no authority to allot municipal funds for any purpose beyond the subjects mentioned in the twelfth Schedule of the Constitution of India and Section 48 of the Act of 2000; and that a Committee was constituted to enquire into the matter, wherein it has emerged that the Petitioner has diverted the funds and that the procurement was contrary to the norms and loss is liable to be recovered from the salary of the officers/ officials involved in such diversion of funds.

08. The Petitioner has also filed a Supplementary Affidavit pursuant to Order dated 13th of February, 2026. In the said Affidavit, it has

been stated that the Petitioner has retired from service upon reaching the age of superannuation on 30th of November, 2024, as notified vide notification dated 5th of October, 2024 issued by the Respondent No.2, whereafter, he was granted vigilance clearance on 14th of October, 2024; that a 'No Demand Certificate' was also issued by the Respondent No.2 in favour of the Petitioner and, accordingly, after obtaining all the requisite NOCs, pension was also sanctioned in favour of the Petitioner vide Order dated 18th of November, 2024; that no enquiry of any nature whatsoever was held by the Respondents and the impugned orders/ communications were issued at his back, after he had been transferred from Municipal Committee, Dooru; and that the Petitioner was never ever associated with any enquiry and no notice was ever issued to him, however, he, on his own, submitted a representation before the Respondent No.2 clarifying that he had not indulged in any misconduct, whatsoever.

09. Heard and considered.

10. It appears that the Directorate of Urban Local Bodies, Kashmir constituted a Committee to enquire into various issues pertaining to Municipal Committee-Dooru-Verinag in the light of observations raised by the then Pay & Accounts Officer as well as response submitted by the then Executive Officer to the said observations/ issues (under enquiry). The said Committee, which comprised of Mr Zahoor Abass Choudhary, Deputy Legal Remembrancer, Urban Local Bodies, Kashmir and Mr Mohammad Gulzar Parrey, Pay & Accounts Officer, Municipal Council Anantnag, summarized the findings and made recommendations against each of the issues placed before the Committee. At S. No. 5 of their report, submitted vide No. DULB/LR/Lit/04 dated 11th of January, 2025, which was pertaining to purchase of three number of Multi-Para Monitors for Hospital, the Committee, after recording the finding that there was no requisition from SDH Dooru on record and that the purchase had been recommended by the Council in its meeting held on 6th of March, 2023 for installation of

Multi-Para Monitors at SDH Dooru (including multi-seater Benches) @ ₹3.00 lacs out of GIA, accordingly, administrative approval was accorded vide Order dated 13th of March, 2023 by invoking Government Order No. 52-JK HUDD dated 14th of February, 2022, recommended that the competent authority may take a view/ decide the matter *vis-à-vis* the irregularity committed, settlement of the due claim of the supplier/ contractor regrading release of his bill payment. The Committee had also observed that such an expenditure was not permissible by the Municipal Council under Section 48 of the Municipal Act, 2000, with further remarks that the utilization of municipal fund for the support of health care of people cannot be construed as misuse of funds and that the Accounts Officer of the Municipality, instead of stopping the payment, should have cross-checked it from the Hospital Administration to avoid any double drawer.

11. The report of the Committee, as aforesaid, does not appear to have returned a specific finding that the expenditure incurred by the Municipal Committee, Dooru-Verinag, where the Petitioner was working as Executive Officer at the relevant point of time, amounted to any illegality by diverting the municipal funds for the expenditure incurred on purchase of three number of Multi-Para Monitors for the Hospital.

12. It appears that the Directorate of Urban Local Bodies, Kashmir, vide impugned communication dated 23rd of November, 2023, directed the Executive Officer, Municipal Committee Dooru-Verinag that the amount incurred for the supply of Multi-Para Monitors may be recovered from the Executive Officer out of his salary for its payment to the concerned agency as the expenditure does not fall within the ambit of municipal services as envisaged in the J&K Municipal Act, 2000 and other instructions conveyed by the competent authorities from time to time.

13. In compliance to the aforesaid direction, the Executive Officer, Municipal Committee Dooru-Verinag, vide impugned communication dated 22nd of December, 2023 addressed to the Pay and Accounts Officer,

Municipal Council, Pulwama, had requested that an amount of ₹1,64,235/- may kindly be deducted from the salary of the Petitioner, who was at that point of time working as Executive Officer, Municipal Committee, Tral.

14. It is sufficiently clear from the record that neither any finding had been returned by the Committee constituted indicting the Petitioner herein nor any regular enquiry was conducted against him, for having incurred expenditure in contravention to the provisions of the J&K Municipal Act, 2000, by purchasing three number of Multi-Para Monitors for being installed in the Sub-District Hospital Dooru, though having been authorized by the Municipal Council. The Directorate, however, by its impugned communication dated 23rd of November, 2023, had directed recovery of the amount incurred from the Petitioner's salary without seeking his explanation or giving him any right of being heard against the legal principle of "*Audi alteram partem*". The Respondents had every right to proceed against the Petitioner with regard to the allegation of having unauthorizedly incurred an expenditure by placing order for the purpose of the aforesaid three number of Multi-Para Monitors for being installed in Sub-District Hospital, Dooru as a Principal Officer of the Municipal Committee Dooru-Verinag, however, he could not be condemned unheard. The Petitioner, in such circumstances, has a legal and constitutional right of being heard on the subject, before taking a final decision in the matter. It was incumbent upon the Respondents to proceed in the matter by holding a proper enquiry, after a show cause notice to him and seeking his reply in the matter, so that he could explain his position. However, the Respondents proceeded to issue the impugned communications directing recovery of the amount from the salary of the Petitioner, without affording any opportunity of hearing to him. That being so, the impugned communications are unsustainable in law and are liable to be quashed.

15. Viewed thus, the instant Writ Petition is **allowed** and the impugned communication No. DULB/Acetts/1315-11/32994-98 dated 23rd

of November, 2023 issued by Respondent No.2 and No. MC/D-V/2023-24/5725-28 dated 22nd of December, 2023 issued by Respondent No.4 are hereby quashed. However, the Respondents shall be at liberty to proceed in the matter relating to unauthorized purchase of three Multi-Purpose Monitors in Municipal Committee, Dooru-Verinag for their installation in Sub-District Hospital Dooru, in accordance with law, if they so choose.

16. Writ Petition is, thus, **disposed** of on the above terms, along with connected CM(s).

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

September 8th, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting?

Yes.

