

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA 37/2026

UNION TERRITORY OF J AND K ...Petitioner/Appellant(s)
AND OTHERS

Through: Mr. Shahbaz Sikander, AAG

Vs.

MOHAMMAD AKBAR DAR ...Respondent(s)

Through: Mr. N. H. Shah, Sr. Advocate with
Ms Saima Ghulam, Advocate None

CORAM:

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

07.07.2026

1. This appeal filed under clause 12 of the Letters Patent by the Union Territory of Jammu and Kashmir and Ors., is directed against an order and judgment dated 25.07.2025 passed by the learned Single Judge of this Court ["the writ Court"] in WP(C) No. 1649/20221649/2022 titled "*Mohammad Akbar Dar vs. UT of J&K and Ors.*", whereby the writ Court has allowed the writ petition filed by the respondent herein and directed the appellants herein to release the retiral benefits along with all consequential benefits which the respondent is found to be entitled to.

2. Before we come to the grounds of challenge urged by Mr. Shahbaz Sikander, learned Additional Advocate General, appearing for the appellants, we deem it appropriate to state brief facts as are germane to the disposal of this appeal.

3. The respondent was working as Plant Line Attendant (Store Khalasee) in the office of the appellants and came to be booked in FIR No. 80/2012 in the year 2012 for commission of an offence under Section 380 RPC., registered at Police Station Boniyar. The respondent was also placed under suspension. The FIR was

investigated and ultimately a challan was presented before the competent court of jurisdiction. The Court of Judicial Magistrate 1st Class, Boniyar, discharged the respondent vide its judgment dated 04.06.2016. Consequent upon its discharge, the respondent was reinstated, subject to the outcome of an enquiry to be conducted by enquiry committee constituted vide order No. JKSPDC/69 of 2019 dated 17.02.2017. The order further provided that the period of suspension of respondent will be decided after the conclusion of enquiry. The respondent, despite having been reinstated, was not allowed to perform his duties, which constrained him to file SWP No. 2066/2017 before the learned Single Judge of this Court. The writ petition was disposed and, in compliance with the order passed by the learned Single Judge, respondent was reinstated and was also given the salary etc. The respondent retired on superannuation w.e.f. 31.03.2018, but his case for pension was not finalized due to the pending enquiry into his conduct. It is with this grievance, the respondents approached the writ Court by way of WP(C) No. 1649/2022 and prayed for following reliefs:

- a) *Writ, order or direction including one in the nature of mandamus, directing the respondents to process the case of the petitioner for release and pensionary benefits and other consequential benefits.*
- b) *Any other writ, order or direction which this Hon'ble Court may deem fit and proper be also issued in favour of the petitioners and against the respondents.*

4. The writ petition was opposed by the respondents on the ground that till the enquiry initiated against the respondent is not concluded, his pensionary benefits cannot be released. The writ Court, having considered the rival stand of the parties and the submissions made by the learned counsel at Bar, came to the conclusion that mere pendency of criminal investigation/prosecution cannot be a ground for withholding the retiral benefits of a Government employee. The writ Court has relied upon couple of judgments to come to such conclusion.

5. We have given thoughtful consideration to the rival contentions of the parties and are of the view that writ Court has rightly allowed the writ petition filed by the respondent and granted the relief prayed for therein. It is true that unless the recoveries against an employee are established in a duly constituted enquiry or civil proceedings, the post retiral benefits available to such an employee under law cannot be withheld.

6. In the instant case, the alleged recoveries against the respondent had not been established in any civil proceedings or even in the duly instituted departmental proceedings and, therefore, there was no warrant for withholding his retiral benefits. To this extent, we wholly concur with a view taken by the writ Court.

7. The reliance placed by the writ Court upon the two judgments referred in paragraph 8, i.e., SWP No. 1954/2017 titled "*Aftab Ahmad Malik vs. State of J&K and Ors.*" and SWP No. 1351/2017 titled "*Qazi Qamara-ud-Din Vs. State of J&K and Ors.*" was not called for in the given facts and circumstances of the case. The case ought to have been decided on its facts i.e., in the absence of any recoveries established in a Court of law or a duly instituted enquiry, the respondents are not entitled to withhold the retiral benefits of the respondent. The conclusion of the writ Court are, of course only to that extent. Indisputably, the recoveries can only be made from the respondents after these are established in accordance with law.

8. For the foregoing reasons, we find no merit in the appeal, and the same is, accordingly, **dismissed**.

(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (Acting)

SRINAGAR:

07.07.2026

Aadil