

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)**

SWP No. 2214/2016

Nisar Ahmad Sofi & Ors.

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

Through: Ms. Rehana, Advocate vice
Mr. Z.A. Qureshi, Sr. Advocate.

Vs

State of J&K & Ors.

..... Respondent(s)

Through: Mr. Ilyas Nazir Laway, GA.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER

22.05.2026

01. Impugned in this petition filed by the petitioners under Article 226 of the Constitution of India, is an order bearing No. MC/SBL/Acctt/787-89 dated 02.11.2016, passed by Executive Officer, Municipal Committee, Sumbal (Kashmir), whereby, acting on the report of the audit party, of Director Local Fund, Audit and Pension, he has directed the accounts sections to work out the recoveries to be effected from the petitioners on account of wrong promotions/upgradations ordered by the then Executive Officer, Municipal Committee, Sumbal.
02. In terms of impugned order, a further direction has been issued by the Executive Officer concerned to provide an opportunity of being heard to the petitioners as per the procedure established so as to enable them to explain their position in the matter.
03. The impugned order has been assailed by the petitioners primarily on the ground that the benefit of upgradation given by then Executive Officer, Municipal Committee, Sumbal in the year 2009 cannot be taken away nor recoveries can be effected without following the principles of natural justice.

04. The writ petition is contested by the respondents. In their objections, the stand taken by the respondents is that the benefit of upgradation to the petitioners was granted by the then Executive Officer without any authority of law and in violation of relevant Recruitment Rules issued in the year 2008.
05. It is submitted that the order impugned itself envisages the compliance with the principles of natural justice and therefore, cannot be assailed on the grounds taken by the petitioners in the petition.
06. Having heard learned counsel for the parties and perused the material on record, it seems that the petitioners came to be appointed against different non-gazetted posts in the then notified area Committee Sumbal by the Administrator on the recommendations of the Director Urban Local Bodies in the year 1987-2003. Obviously, all these appointments were back door appointments having been made without any advertisement notification and selection process.
07. Be that as it may, the petitioners continued for long and were given the benefit of upgradation of their pay scales in the year 2009 by the then Executive Officer, Municipal Officer, Sumbal in terms of different orders. It seems that the audit party of the Office of Director Local Fund Audit and Pension noticed the financial irregularities in terms of granting of unauthorized upgradation by the incompetent authority and accordingly, the matter has brought to the notice of the respondents. Acting swiftly on the observations made by the audit party, the Executive Officer, Municipal Committee, Sumbal vide impugned order dated 02.11.2016, directed the Accounts Office of the Committee to work out the recoveries and also take

steps for providing an opportunity of being heard to the petitioners before taking further action.

08. The matter was considered by this Court on 31.12.2016, when this Court while issuing notice to the respondents for filing objections also directed that no recoveries shall be made from the petitioners in terms of the impugned order dated 02.11.2016 till the next date of hearing. In that way no recoveries have been effected from the petitioners nor proceedings in the matter have been taken by the respondents.
09. Having regard to the fact that the petitioners, who may or may not have been granted benefit of upgradation in accordance with law, are entitled to be heard in the matter before taking away the said benefit and ordering recoveries. Although, the impugned order does make mention of providing of opportunity of hearing to the petitioners but the same apparently has not been afforded.
10. In view of the aforesaid, this petition is allowed and the impugned order dated 02.11.2016 (*supra*) is quashed. The respondents are left free to pass an appropriate order in the matter particularly, in the light of observations made by the audit party of the Director Local Fund Audit and Pension, Kashmir after putting the petitioners to show cause notice and affording them an adequate opportunity to put up their defence.
11. Accordingly, the instant petition is '*disposed of*'

(Sanjeev Kumar)
Judge