

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

WP(C) 2090/2024

MOHAMMAD RAMZAN SHEIKH **... Petitioner(s)**

Through: Mr. Farooq Ahmad Paul, Advocate

Vs.

UNION TERRITORY OF J AND K AND **...Respondent(s)**
ORS.

Through: Mr. Ilayas Laway, GA

CORAM:
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
04.03.2026

1. Petitioner in the instant petition filed under Article 226 of the Constitution of India states to have been appointed as a Seasonal Sweeper vide order dated 16.05.1988 on monthly wages of Rs. 450/- , whereafter his service came to be regularized in the pay scale of Rs. 255-3200 w.e.f 1st October 2001, and, that after rendering his service successfully, he, the petitioner retired on superannuation, however, his retiral benefits were not released by the respondents owing to the alleged involvement of the petitioner in FIR No. 19/2011 registered with Police Station Crime Branch, Kashmir when infact the petitioner was neither involved in the said FIR nor any sort of inquiry had been either initiated or conducted by the respondents against the petitioner, warranting with holding of his retiral benefits.
2. Objections have not been filed by the respondents to the petition despite availing multiple opportunities.

Heard counsel for the parties and perused the record.

3. While making his submissions the counsel for the petitioner produced a copy of FIR No.19/2011 supra and would submit, that even though the FIR came to be registered in the year 2011, it has no bearing upon the case of the petitioner yet till date the petitioner has neither been during the course of his employment with the respondents implicated/arraigned, as an accused therein nor else even after his retirement so much so no inquiry is or was initiated in the matter against the petitioner, and therefore, under these circumstances, the respondents cannot, by any stretch of imagination, withhold the retiral benefits of the petitioner, or else, refuse to reconstruct his service book and make necessary entries therein. Counsel for the petitioner in support of his submission, would heavily rely upon the decision of the Division Bench of this 3 Court passed in cases titled as **“Ghulam Mohi ud din Lone Vs. State of J&K and Ors., decided on 11.12.2020”**, in violating similar issues which are involved in the instant petition.
4. Perusal of the record available on file manifestly suggests that as on date the petitioner herein has not been found involved in FIR No.19/2011 or else implicated/arraigned, as an accused therein. It has also not been denied by the respondents that any disciplinary proceedings in regard to either the engagement or regularization of the petitioner stands initiated against his either during his service or is pending after his retirement. Though Article 168-A and 168-D of the J&K Civil Service Regulations applicable to the Government employees makes it explicit that the Government is entitled to order the recovery from the pension of an employee any amount on

account of loss found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of an such employee during his service, the said Articles however, further provides that if such departmental or judicial proceedings are not initiated against the employee while he is in service or on duty, the same shall not be instituted without sanction of the Government and shall be instituted within a year from the date he was last on duty, and that the proceedings must not pertain to an event which took place not more than one year before the date of which the employee was last on duty.

5. In presence of the aforesaid provisions of the Civil Service Regulations and the aforesaid facts that no judicial or departmental proceedings have had been either instituted or initiated against the petitioner herein while being in service or within one year from the date the petitioner was last on duty, it can safely be said that withholding of the retiral benefits of the petitioner is not tenable in law, in that, law is settled that the retiral benefits of an employee are not bounties to be given by an employer to the employee, as it is earned by the employee by dint of his long, continuous, and unblemished service. The Apex Court in case titled as **“Deokinandan Prasad Vs. State of Bihar” reported in AIR 1971 SC 1409** has authoritatively ruled that pension is a right and payment of it does not depend on the discretion of the Government but is governed by the 4 rules and the Government servant coming within those rules is entitled to claim pension as of right while holding further that grant of pension does not depend on anyone's discretion.

Further, the Apex Court in case titled as “U. P. State Sugar Corporation Ltd. And Ors. Vs. Kamal Swaroop Tandon”, reported in 2008(2) SCC 41, has also held that retiral benefits are earned by an employee for long and meritorious service, and gratuity is paid to such an employee for his dedicated and devoted work and that even though the departmental inquiry can be initiated against the Government servant after his superannuation, pension can be reduced and gratuity can be withheld, and that such proceedings cannot only be initiated before the employee retires but also continues after his retirement and can be initiated after his retirement as well provided any pecuniary loss recoverable caused to the Government is recoverable from the said Government employee, which loss had been caused due to his negligence or service misconduct.

6. Risking repetition and as noticed above, neither any judicial nor any departmental proceedings have had been initiated/instituted against the petitioner by the respondents while being in service or even after his retirement, the respondents cannot thus withhold the retiral benefits of the petitioner, on any grounds .
7. Viewed thus for the aforesaid reasons, the instant petition deserves to be allowed.
8. Accordingly, by issuance of the writ of Mandamus, respondents are commanded to reconstruct the service book of the petitioner and make all necessary entries therein in accordance with the applicable rules, and consequently release all retiral benefits, including the arrears thereof in favour of the petitioner to which the petitioner is entitled thereto, within a period of two months from the date a copy

of this order is produced by the petitioner before the respondents. Should the respondents fail to carry out the aforesaid directions within a period prescribed above the respondents shall in that event be liable to pay an interest to the petitioner over the retiral benefits and arrears at the rate of 7% from the date same became due to the petitioner till the date of actual payment thereof.

9. *Disposed of* along with all connected application/s

(JAVED IQBAL WANI)
JUDGE

SRINAGAR:
04.03.2026
"S.Nuzhat"

Whether the judgment is speaking ? Yes

Whether approved for reporting ? Yes

