

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on : 23.07.2026
Pronounced on: 04.08.2026
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WP(C) No.2410/2023
And
WP(C) No.2142/2023

WP(C) No.2410/2023

1. Union Territory of Jammu & Kashmir
through Commissioner Secretary to Govt.,
Finance Department, Civil Secretariat,
Srinagar/Jammu
 2. Director General Accounts & Treasuries,
Civil Secretariat, Srinagar/Jammu
 3. Deputy Director (Central), Accounts &
Treasuries Haft Chinar Iqbal Park
Srinagar Kashmir.
 4. District Treasury Officer, Kulgam
Kashmir.
 5. Sub Treasury Officer, Qazigund Anantnag
Kashmir.
 6. Chief Engineer, PHE Kashmir.
 7. Executive Engineer PHE Division Qazigund
Anantnag Kashmir. Petitioner(s)
- Through:- Ms. Maha Majeed, Advocate vice
Mr. Mohsin Qadiri, Sr. AAG

Versus

Abdul Wahid Dar
S/o: Gh. Ahmad Dar
R/o: Chadder Tehsil Qaimoh
District Kulgam

...Respondent(s)

Through: Mr. Shuja ul Haq, Advocate

WP(C) No.2142/2023

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through Commissioner Secretary to Govt.,
Finance Department, Civil Secretariat
Srinagar/Jammu.
2. Director General Accounts & Treasuries,

- Civil Secretariat, Srinagar/Jammu.
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Coram: HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE
JUDGMENT

Sanjeev Kumar Chief Justice (Acting)

1. In both these petitions, filed by the Union Territory of Jammu and Kashmir and five others under Article 226 of the Constitution of India, an order and judgment dated 08.02.2023 passed by the Central Administrative Tribunal, Srinagar Bench, Srinagar ["the Tribunal"] in TA No.2314/2021 along with TA No.3368/2021 titled *Abdul Waheed Dar v. State of J&K and others* is under challenge.
2. By virtue of the judgment impugned dated 08.02.2023 (supra), the Tribunal has allowed the TAs of the respondent and directed

the petitioners herein not to initiate any recovery proceedings against the respondent for the period w.e.f. 30.04.2013 to 07.06.2017. The respondent has been held entitled to retain the salary for the aforesaid period on the ground that the respondent had actually performed his duties beyond his date of superannuation and, therefore, is entitled to be compensated for the work which he had done during the period of his overstay in service.

3. Briefly stated, facts leading to the filing of these petitions, as are gatherable from the pleadings of the parties before the Tribunal, are that the respondent was appointed as Accounts Assistant in the department of Finance in the year 1989. While he was in service, a complaint regarding mutilation of date of birth of the respondent was received by the petitioners in the year 2013. In the complaint, it was alleged that the date of birth of the respondent, which was 04.04.1955 had been mutilated/fabricated as 04.04.1958.
4. With a view to verify the date of birth certificate of the respondent, the Director Accounts and Treasuries took up the matter with the J&K Board of School Education [“the Board”]. Vide communication dated 26th March, 2014. The Board furnished a verification report certifying that the date of birth certificate forwarded by the petitioners for verification was genuine. Relying upon the report of the Board conveyed vide

communication dated 26th March, 2014, the complaint was closed.

5. Later, the petitioners received another communication from the Board dated 23.06.2016, certifying that the actual date of birth of the respondent, as per the Board's record, is 04.04.1955 and not 04.04.1958. The Board also declared the certificate of date of birth forwarded for verification as fake and fraudulent. Faced with the aforesaid position, the petitioners once again referred the matter to the Board for re-verification by issuing communication on 19th September, 2016. The Joint Secretary Verification of Kashmir Division of the Board intimated vide its communication dated 02.10.2016 that the verification report forwarded on 23rd June, 2016 was absolutely correct that that the date of birth of the respondent was 04.04.1955. In view of the clear cut report submitted by the Board regarding the actual date of birth of the respondent, the petitioner-department decided to proceed against the respondent in accordance with law. Accordingly, charge-sheet dated 26.10.2016 was served upon the respondent, who was then working as Assistant Accounts Officer in PHE Division, Qazigund, Kashmir.
6. Before the petitioners-department could proceed further, the respondent hurriedly approached this Court through the medium of SWP No.1675/2016, which was disposed of by a Single Bench of this Court vide order dated 08.05.2017, thereby

directing the petitioners to follow due course of law before taking any further action in the matter.

7. In compliance with the order of this Court passed by a Single Judge of this Court dated 08.05.2017, a show cause notice dated 23.05.2017 was served upon the respondent giving him an opportunity of hearing and to present himself before the authorities. He was also directed to furnish documents, if any, in his defence. The respondent neither appeared before the authorities nor did he produce any document in defence within the prescribed period. The enquiry was, thus, concluded vide order No.126-Accts of 2017 dated 07.06.2017. The respondent was directed to have retired from service on superannuation w.e.f. 30.04.2013, on the basis of his actual and correct date of birth i.e. 04.04.1955, as authenticated by the Board vide its communication dated 02.10.2016.
8. Order dated 07.06.2017 came to be challenged by the respondent by way of SWP No.1211/2017. Later on, with a view to prevent recovery of the salary received by the respondent during the period of his overstay in service, the respondent filed SWP No.2588/2018 before this Court. Both the writ petitions came to be transferred to the Tribunal and registered as TA Nos.2314/2021 and 3368/2021, which have been disposed of by the Tribunal in terms of the judgment impugned.

9. The impugned judgment is called in question by the petitioners primarily on the ground that the Tribunal failed to appreciate that the respondent had overstayed in service beyond his actual date of superannuation on the basis of interpolation/manipulation made in his date of birth certificate. It is submitted that once the date of birth certificate, relied upon by the respondent, was found to be fake by the competent authority i.e. J&K State Board of School Education and the respondent failed to defend the same before the enquiry officer, the respondent could not have claimed the salary he had received by playing fraud.
10. *Per contra*, learned counsel appearing for the respondent would submit that the judgment passed by the Tribunal is in consonance with law, in that, the Tribunal has directed the petitioners not to recover the salary paid to the respondent for the work the respondent had actually performed, may be, beyond the date of his superannuation.
11. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Tribunal is legally flawed and, therefore, cannot be upheld.
12. Indisputably, the respondent was liable to be retired on superannuation w.e.f. 30th April, 2013, as per the actual date of

birth recorded in the records of the J&K State Board of School Education. The respondent relied upon a fake and fabricated certificate of date of birth, which indicated his date of birth as 04.04.1958 instead of his actual date of birth i.e. 04.04.1955. The fraud committed by the respondent would have gone unnoticed and the respondent would have overstayed in service till 07.06.2017 without anybody asking him any question. This, however, did not happen as someone, who knew the manipulation of date of birth by the respondent, made a complaint to the petitioners in the year 2013. The complaint triggered enquiry and verification of date of birth certificate produced by the respondent. The certificate of date of birth produced by the respondent was forwarded to the competent authority i.e. Board, which initially found the same genuine, but later on, upon re-verification came to the conclusion that the date of birth certificate was fake and forged and that as per their records, the date of birth of the respondent was 04.04.1955. The Board even went to the extent of declaring the earlier communication dated 26.03.2014 issued by the Board also a fake piece of document.

13. Be that as it may, the petitioners, after having found the date of birth certificate relied upon by the respondent fake and forged, conducted an enquiry into the matter so as to afford an opportunity of hearing to the respondent. The respondent chose

not to appear before the enquiry office nor did he produce any document in his defence. The petitioners were, thus, left with no option but to accept the two verification reports submitted by the Board and conclude that the date of birth of the respondent was 04.04.1955 and not 04.04.1958, as indicated in the date of birth certificate produced by the respondent.

14. The fraud, manipulation and forgery committed by the respondent or someone on his behalf is not disputed. It is undeniable that the forgery and manipulation of date of birth was clearly to the benefit of the respondent and, therefore, it would not be appropriate to say that the petitioners have not firmly established that the manipulation of date of birth was an act of fraud committed by the respondent and the respondent alone.

15. The respondent also does not dispute this factual position. The Tribunal, however, has shown misplaced compassion, sympathy and benevolence by providing that notwithstanding that the respondent was liable to be retired on superannuation w.e.f. 30.04.2013 on the basis of his actual date of birth and that he overstayed in service on the basis of a forged certificate, he cannot be deprived of the emoluments he had received for the actual work done by him on the post. We are afraid such benevolent view in a clear case of fraud is not tenable and is highly uncalled for.

16. Needless to say that fraud vitiates everything. It is well settled that if any employee continues beyond his superannuation on the basis of a forged document or by committing fraud, no legal right can flow from such fraud and the employer is well within its right to recover the benefits fraudulently drawn by such employee. Once it is established that an employee has manipulated or forged his date of birth and has suppressed the actual date of birth, his continuation beyond his actual date of birth is void and salary and allowances and other monetary benefits drawn by such an employee for the period of fraudulent overstay are recoverable under the principle of restitution.
17. We could understand that if an employee draws excess benefits or payment, which was not payable to him due to an administrative error during his service career, the employer is restrained from making recoveries at the fag end of his career or after superannuation, that too, when such employee is a Class-C or Class-D employee. However, if the benefit is drawn willfully by misrepresentation or committing fraud, employee cannot be permitted to retain such benefit. Allowing such an employee to retain the benefit(s) fraudulently obtained/retained by him would be putting premium on the fraud or misrepresentation committed by him. The Tribunal has not considered all these aspects of the matter and was swayed away only by a singular fact that the respondent had actually worked and, therefore,

needed to be compensated for the work done. We are afraid such approach of the Tribunal cannot be countenanced. The respondent, who had managed his overstay in service by manipulating his date of birth, is not entitled to reap the benefits of his fraud.

18. For the foregoing reasons, both the petitions are allowed. The judgment passed by the Tribunal is set aside. The TAs filed by the respondent before the Tribunal are dismissed.

(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (A)

SRINAGAR
04.08.2026
Vinod, Secy

Whether order is reportable: Yes

