

Serial No. 34.
Regular Cause List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 1201/2024
CM No. 3312/2024
C/W
CCP (S) No. 94/2025.

MOHAMMAD ASHRAF WANI (SENIOR CITIZEN).

...PETITIONER (s)

Through: Mr. Sofi Manzoor, Advocate.

VERSUS

UT OF J AND K AND ORS.

Through: Mr. Illyas Nazir Laway, GA.

...RESPONDENT(s)

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

ORDER
30.09.2025

01. The petitioner in the instant petition filed under Article 226 of the Constitution states that he came to be appointed as Terminal Tax Collector on 8th of December 1988 in Notified Area, Committee Beerwah by the competent Authority, whereafter the petitioner came to be regularised as Sanitary Supervisor in terms of Order dated 29th of March 2000, while stating further that after rendering more than (24) years of service, the petitioner attained the age of superannuation on 30th of April 2022, whereupon the petitioner became entitled to pension, gratuity and leave salary, and other retiral benefits, and which though claimed by him from the respondents, were not released without any reason. However, of late, the petitioner came to be informed that in connection with his engagement and regularisation, an FIR of year 2011 stands registered and owing to the

said reason, his retiral benefits have been withheld. Although the petitioner states that his name never figures in the said FIR, yet the respondents continue withhold his retiral benefits, this has left the petitioner with no option but to approach this Court.

02. Objections to the petition have been filed by the respondents, wherein it is inter alia contended, that the engagement and regularization of the petitioner was made in violation of law and norms and that the said engagement and regularization besides others became the subject matter of FIR No. 19 of 2011, besides of an inquiry conducted by the enquiry committee constituted for the purpose and owing to the said reason, the retiral benefits of the petitioner could not be released.

Heard counsel for the parties and perused the record.

03. Mr. Sofi Manzoor, learned counsel appearing for the petitioner, during the course of hearing, produced a copy of the judgment dated 22nd of August, 2025, passed in case titled **“Gulzar Ahmad Khan Vs. UT of J and K and Ors”** being WP (C) No. 3342 of 2023, and would submit that the issue raised by the respondents in the present case, regarding the claim of the petitioner’s retiral benefits, has already been settled by this Court in the said petition and the decision therein is squarely applicable to the petitioner’s case.

04. Mr. Ilyas Nazir Laway, learned Government Advocate appearing for the respondents, admits the passing of the judgment/order, supra, in the aforementioned case, however, Mr. Laway would submit that in the said case, the initial appointment of the petitioner, therein, was made with the

approval of the competent authority, whereas in the present case, the petitioner's appointment lacked such approval.

05. Be that as it may, having regard to the aforesaid decision rendered by this Court, as well as the decision of the Apex Court passed in the case titled ***“Devaki Nandan Prasad Vs. State of Bihar & Ors”*** reported in A.I.R. 1971 SC 1409, wherein it has been held that pension is a right and does not depend upon the discretion of the government but is governed by rules, and a government servant entitled to claim pension as a right, while holding further that a grant of pension does not depend on upon ones discretion. Further in case titled ***“Uttar Pradesh State Sugar Corporation Limited Vs. Kamal Swaroop Tondon”*** reported in 2008 (2) SCC 41 the Apex Court has also ruled that the retiral benefits are earned by an employee for a long and meritorious service and gratuity is paid to such an employee for his dedicated and devoted work and that even though departmental enquiry initiated against the government servant after his superannuation, pension can be reduced, gratuity can be withheld, yet 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 to recover any pecuniary loss caused to the Government is from the said Government employee which loss is caused due to the negligence or service mis-conduct of that employee.

06. Perusal of the record available on the file reveals that the respondents have not alleged or demonstrated in the objections filed to the petition that any monetary loss has been caused to the Government attributable to the

petitioner, either on account of his negligence or service misconduct. It also does not appear from the record that the petitioner has been arraigned as an accused in the FIR in question. Under these circumstances, it cannot but be held that the respondents, in law, cannot withhold the pensionary and other retiral benefits of the petitioner, who has superannuated after rendering more than (24) years of service.

07. Viewed thus, the petition succeeds. Consequently, by issuance of Writ of mandamus, the respondents herein are directed to release pensionary and all other retiral benefits of the petitioner, including arrears, if any, preferably within a period of three months from the date the petitioner produces a copy of this order before the respondents. In the event of failure to release the said retiral benefits within the said prescribed period, the petitioner shall be entitled to interest at the rate of 7%, payable by the respondents from the date the retiral benefits became due till the date of actual payment thereof.

08. ***Disposed of.***
CCP (S) No. 94/2025.

01. Having regard to the fact that the petition whereunder the instant contempt petition has arisen is finally disposed of as above, it is deemed appropriate to close the instant contempt proceedings.

02. Ordered accordingly.

(Javed Iqbal Wani)
Judge

SRINAGAR
30.09.2025
Showkat Khan