Sr. No. 01

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINGAR

LPA 156/2021 in SWP 1936/2016
CM(6302/2023) CM(7624/2021)
c/w
i)LPA 105/2021 CM(4992/2022)
CM(5590/2021) CM(8458/2021)

UT of J & K & Ors. …Petitioner(s)/appellant(s)

Through: Mr. Alla-ud-din Ganaie, AAG.

Vs.

MUSHTAQ AHMAD WANI AND ORS. ...Respondent(s)

Through: Mr. Molvi Aijaz, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE YASH PAUL BOURNEY, JUDGE

O R D E R
27.10.2026

1. The respondents are in-service and retired employees of the appellant-J&K Sheep & Sheep Products Development Board.
2. The counsel for the appellants submits that the J&K Sheep & Sheep Products Development Board Act, 1979 (hereinafter referred to as "the Act" for short) does not provide for pensionary benefits. He has also drawn the attention of this Court to the order dated 24.03.2008, wherein the issue of viability was considered in the last paragraph, and it was observed that the adoption of service conditions involving financial implications could not take place owing to the non-availability of resources. The relevant portion is reproduced as under:

> *"Now therefore it has been decided by the govt. that in view of non-availability of resources at present in the Board the adoption of service conditions like KVIB involving the financial implication cannot take place unless and until*

sufficient financial support is provided by the Finance Department."

3. The counsel has also relied upon the judgment of this Court titled "***State of J&K & Ors. v. Khurshid Ahmad Mir & Ors***." wherein it was held that pension cannot be claimed as a matter of right in the absence of an applicable legal entitlement. The relevant paragraphs of the judgment read as under:

> *"Be that as it may, the fact remains that the writ petition was entertained and allowed by the writ Court, though on the totally erroneous premise that the writ petitioners were similarly placed with the employees of GLU, who after completion of five years' service on the cut off date, were declared as quasi permanent and ultimately held entitled to pensionary benefits. The mere fact that writ petitioners were Corporation borne employees having been appointed after coming into existence of JKSFC, were not similarly situated with the temporary or permanent employees of GLU, was a factor good enough to non-suit the writ petitioners. GLU, as noted above, was a Government Department and the employees working therein were per-se the government employees. Even the temporary employees working in GLU, a Government Department, were entitled under the J&K Civil Service (Temporary Service) Rules 1985, to be declared as quasi permanent after completion of three years service as temporary employees. It is in keeping with the rule position, the appellants passed orders in the year 1979 and 1983 to declare them as quasi-permanent. Admittedly, the writ petitioners were not the employees of GLU, temporary or permanent and, therefore, a class apart. The decision of the government not to grant them the said benefit and treat them as quasi-permanent employees of GLU, therefore, cannot be found fault with.*
> *65. Having held so, we are of the view that the writ petitioners are similarly situated with the employees of J&K SFC and, therefore, rightly held not entitled to pension. With regard to the employees of State Forest Corporation, we have already rendered a decision in LPASW Nos. 195/2018 and 3/2019 and what is stated therein, on facts and law, would apply on all fours to the instant appeal as well.*

66. For the foregoing reasons, the appeal is allowed. The impugned judgment is set aside and the writ petition dismissed."

4. The counsel for the appellants further submits that there was an application of mind by the appellants, whereby the liability for pension was found to be more than the assets of the Board. However, he could not show any documents in support of the same. The counsel had further submitted that it has been a repeated contemplation regarding the service conditions and the same could not be done and nothing culminated to finality as far as the pension scheme is concerned. He also submits that the Board has been wound up and no further liability towards pensionary benefits survives against the appellants.

5. The Counsel for the Respondents has, however, taken this Court to Section 17(4) of the Act, which reads as follows:

> *"At the close of the financial year the Board shall determine the profits that may have accrued to it during the preceding year and remit the profits into Government exchequer as revenue of the Government: Provided that in determining the profits the Board shall also take into account all expenses due on account of taxes, repayment of loans, interest on loan, liabilities incurred but not redeemed and such reserves as the Government may allow to the Board to build and maintain for smooth running of affairs of the Board."*

6. He has also referred to Section 33 of the Act, which reads as follows:

> *(1) The Board may, with the previous approval of the Government, make regulations not inconsistent with this Act and the rules made thereunder for the administration of the Board.*
> *(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:-*
> *(a) salaries and allowances and conditions of service of the employees of the Board;*
> *(b) time and places of, and the procedure in regard to, the transaction of business in the meetings of the Board;*

(c) any other matter for which provision is to be or may be made in the regulations.

7. He has also taken us to Section 28 of the Act which reads as follows:

> *"The Chairman and the members of the Board or its employees shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the State Ranbir Penal Code Samvat 1989."*

8. The Counsel has also referred to Government Order/Notification No. 46-ASH of 2008 dated 24.03.2008, which reads as follows.

> *"Whereas J&K Wool Board employees association approached the High Court for grant of service conditions at par with other Boards i.e, K.V.I.B. under SWP No. 1231/03;*
> *Whereas J&K sheep & Sheep Products Dev. Board neither falling under the category of public sector Undertakings nor a company but is purely an autonomous statutory body constituted under an Act No. IX of 1979 of J&K Sheep & Sheep Products Dev. Board as a local authority under chapter II clause 3.*
> *Whereas the matter was placed in the 38th B.O.D meeting at Agenda item No. 38.12 and a committee was framed comprising of Ch. Nizam-ud-din, MLC, Secretary Animal/Sheep Husbandry Department, Representative of Finance Department and Managing Director Wool Board and subsequently a Govt. order to this effect was issued under No. 76-ASH of 2004 dated 23.06.2004 to look into the Service conditions of Board employees;*
> *Whereas Hon'ble High Court while passing order on 8.04.2004 recorded that *"I find that submission made by learned Counsel is just and reasonable. In the facts and circumstances of the case and having regard to the Board of Directors whereby Sub. Committee has been constituted and it is directed that exercise of consideration be completed within a period of six months form the date certified copy of this order is made available to the Managing Director of the Board. In view of the above Writ Petition stands disposed off";*

Whereas the committee so constituted under Govt. Order No. 76-ASH of 2004dated 23.06.2004 gave its findings in 2 sittings i.e 18.10.2004 and 27.06.2005 and recommended that J&K CSR and financial code with pensionary benefits as in vogue in the KVIB be adopted. However, with regard to the pay scales identical posts, it was further recommended that fixation of scales should be done in terms of Articles 77 (a) II besides implementation of DA in place of Cola it was recommended that DA should be paid proportionate to cola drawn by them so that there will be no immediate financial implication on the change of pattern. However, this will not apply in the future increase in DA which shall be released as a matter of course therein;

Whereas the recommendation of the committee was placed in the Board of Directors meeting, where in it was decided that the matter be referred to Finance Department;

Whereas the Sub Committee report along with the requisite documents were submitted to the Finance Department by the Administrative Department.

Whereas the Finance Department after scrutiny of the document conveyed their approval under No. UO No. A/104 (206)-I-329 dated 4.4.2007 which reads as under;

"(i) Finance department convey agreement to notification of pension scheme for the employees of J&K Sheep & Sheep Products Dev. Board on the pattern of KVIB as notified by KVIB order No. KVIB/340 of 1993 dated 16.12.1993.

(ii) Finance Department also convey agreement to adoption/notification of the following rules which are financially neutral:-

a) Adoption of J&K P.W Account code.

b) J&K Reservation Rules, 1994.

c) J&K Employees conduct Rules.

(iii) The other rules which have substantial financial implication shall be considered after Animal/Sheep Husbandry Department works out the financial implication in detail and identifies resources from which these could be met by the Sheep & Sheep Products Dev. Board."

Whereas the financial implication with regard to the other rules was worked out and submitted by the Administrative department to the Finance

Department with the recommendations that there is no specific source of income presently available with the Board to meet the expenditure and request the Finance Department to provide the financial support in this regard till sufficient resources are generated from the diversification of activities;
Now therefore it has been decided by the govt. that in view of non availability of resources at present in the Board the adoption of service conditions like KVIB involving the financial implication cannot take place unless and until sufficient financial support is provided by the Finance Department.
By order of the Government of Jammu and Kashmir"

9. He has also taken us to the Award passed by the competent authority which is the controlling authority under the Payment of Gratuity Act, 1972. The relevant portion reads as under:

"With regard issue No.2 which is the fundamental issue in the case, the non-applicant maintains; i) that the applicant is not a workman within meaning of section 2 of the Act and ii) that the Board has yet to finalize the service rules of the employees employed in the Board though the draft rules stand already submitted to the Govt for approval in 1982-83. He further holds that the claim of the applicant cannot be considered till the rules are approved by the Govt. It is a very strange and a sad state of affairs that the draft rules of the Board employees have been submitted for approval in 1982 i,e 25 years before but could not be got approved so far. It is quite un-intelligible that in the present fast running times, where the work of years is done in months, and months' work is done in days and the work of days is finished in hours but the rules of the board employees could not be completed in a long span of one forth of century. This amounts to highest degree of exploitation in disguise and encourages a situation where dictates of the employer are forced to be obeyed as "sacred Law" by the suppressed labour class which in the modern democratic set up of the society and state has no place to subsist. The absence of the service rules of the Board is not a good defence for non payment of Gratuity to the employees because the Parliament has already enacted the Payment of Gratuity Act, 1972 even before creation of Board, which takes into its clutches all the enterprises in public and private sector for the purpose of

compulsory payment of gratuity from the September 1971, when Payment of Gratuity Act, 1972 has come into force. Non-formulation of rules is no excuse for deferring the payment of gratuity. The Hon'ble Supreme Court of India while commenting on nature of gratuity has laid down that "gratuity Under the Payment of Gratuity Act, 1972 is no longer in the realm of charity but a statutory right given to the employees. The mandate of the statute is that gratuity is to be paid to the employee on his retirement or to his dependents on his death. .....

The statutory obligations under the Act cannot be left high and dry on the whims of the employer". Balbir Kour v/s Steel Authority of India Ltd. (2000) 6-Sec 493. In another case titled State of Kerala V/S P. Nair 1985 (1) SC-429 the apex court has held that "gratuity is not a bounty but a valuable right and property".

The applicant is an "employee" within the meaning of Section 2(e) of the Act and falls within the ambit of Payment of Gratuity Act, 1972. However, as per this definition the employees who hold a post under Central/State Govt and is governed by any other Act or rules providing for payment of gratuity are excluded, which the applicant is not. It is held that the applicant is an employee and is entitled to gratuity under Payment of Gratuity Act, 1972.

The applicant has put in 22 years of service in non-applicant Corporation and his monthly wages were Rs.21,132/- as per LPC submitted to Court issued to him by the non-applicant. Both these things have been endorsed by the non-applicant as well and as such these issues need not to be proved by any evidence. For the purpose of computation of gratuity the wages last drawn by the applicant comes to Rs.18774/= in terms of Section 2(s) of the Act. Accordingly the applicant is entitled to Rs.2,38,285/= from the non-applicant.

The payment of gratuity in terms of Section 7(2)(3) of the Act was payable to the applicant within one month from the date of his retirement which has not been done for which, in terms of Section 7(3A) of the Act the non-applicant is liable to pay simple interest @ 10% p.a on the amount of gratuity. The payment of interest payable comes to Rs.81380/= from 01-06-2004 to 31-10-2007.

It is directed that the non-applicant shall deposit the gratuity amount of Rs.2,38,285/= together with interest of Rs. 81380/= aggregating to Rs.3,19,665/= in this Court within one month failing which the interest shall continue

to accrue till the amount is deposited or it is recovered as arrears of land revenue as the case may be."

10. The counsel has further drawn the attention of this Court to Agenda Item No. 46.03, relating to the Implementation of Service Conditions, in which the consideration, contemplation and the resolution has been read out by the learned counsel for the appellants. The relevant portion reads as under:

Agenda Item No. 46.03:	***<u>Implementation of Service Conditions:</u>*** *The J&K Sheep & Sheep Products Development Board stands established under an Act passed by the State Legislature and in pursuance to Section-33 of the Act, the Board was supposed to frame Service Rules & Regulations at the very inception of the organisation, but in absence of defined Service Conditions the employment has been made, though the recruitment rules have been framed, but the Service Conditions are still in abeyance*	*The M.D. Informed the house that since the inception of the Board, there are no defined Service Conditions for the employees of the Board. About seventeen employees have so far retired without taking any sort of pensionary benefits like gratuity which is applicable even in the private sector under Labour laws. The non-existence of the rules has created great*	*a) It was decided that the Pension Scheme, on the pattern of J&K KVIB, as already approved by the Finance Deptt., be notified by the Adm. Deptt. for immediate implementation in the J&K SSPDB.* *b) It was also unanimously agreed to by the Hon'ble members and decided that let the Board management submit a comprehensive*

	resulting in chaos and confusion among the existing staff, so much so the employees who die in harness, the next of their kin could not get death-cum-retirement benefits. There are number of such cases wherein the employees have retired, but could not get benefit in absence of defined Service Conditions which otherwise were due to them that too when the status of the Board is of a 'Local Authority' like J&K Khadi & Village Industries Board wherein all Civil Service Rules are in force. *In order to redress the long pending grievance of the employees, the Board is requested to kindly pass the following resolution:*	*unrest, anguish, chaos and confusion among the employees. He requested the Hon'ble members to consider this issue purely on humanitarian grounds. Meanwhile it was pointed out by the Principal Secretary, Finance as to how it is possible to pass a resolution without going into details, to which the M.D. informed that all the working has already taken place wherein the Finance Deptt has conveyed their approval vide UO*	*proposal to the Finance Deptt. through Adm. Deptt. immediately depicting therein all Service Conditions along with financial implication and thereafter the Finance Deptt will extend all financial assistance as is required under implementation of Service Conditions.*

11. Then, Counsel for the respondents submits that the respondents have repeatedly raised the issue of the scheme before the Court and the impugned order is totally based on the decision reflected in the Government Order dated 24.03.2008, following the approval conveyed by the Finance Department. The narrow compass where the Court is examining the impugned order, we find that the Hon'ble Court has gone with the communication dated 05.05.2007, whereby the Government Animal Sheep Husbandry Department has conveyed the approval of the Finance Department to the notification of pension scheme for the employees of the Board, in the pattern of KVIB as notified by J&K KVIB order No. KVIB/340 of 1993 dated 16.12.1993.

12. This Court also takes note of the Government order dated 24.03.2008, the relevant portion of which has already been reproduced hereinabove. The record reflects that the Board is an autonomous statutory body constituted under the Act and that the question of extending pensionary benefits to its employees was considered at various levels by the Board and the Government authorities. The Committee constituted for examining the service conditions included a representative of the Finance Department. Following scrutiny of the relevant documents, the Finance Department conveyed its agreement vide U.O. No. A/104(2006)-I-329 dated 04.04.2007 for the notification of a pension scheme for the employees of the J&K Sheep & Sheep Products Development Board.

13. The other service rules involving substantial financial implications were required to be worked out but a fundamental policy decision was taken and was never been revoked thereafter. The counsel for the appellants has not shown even a single document where the revocation of the order of 2008 can be gathered.

14. In light of a clear policy decision as well as the clear contemplation and approval by the Finance Department for the pension in light of the order dated 24.03.2008, there is no reason to interference with the impugned order.

15. This Court finds that the requirement to constitute a committee and submit a report regarding the resources vis-à-vis the benefits to be conferred has not been done by the respondents till today.

16. Since the 2008 policy has been invoked, the appellants have not been able to point to any averment in the pleadings or produce any document demonstrating that the said policy or the approval conveyed by the Finance Department was subsequently revoked. Nor have the appellants been able to demonstrate any subsequent application of mind or consideration of the matter that could have led to a reasoned decision, based on viable grounds, either to grant or to deny pensionary benefits.

17. In the aforesaid circumstances, no interference in the impugned order is called for.

18. Both the appeals are **dismissed**, along with the connected application(s).

(YASH PAUL BOURNEY)
JUDGE

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

SRINAGAR
27.10.2026
Hilal

Whether the judgment/order is reportable? Yes