

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

LPASW No. 171/2018 c/w
CCP(S) No.505/2024

Reserved on: 10.12.2025
Pronounced on: 30.12.2025
Uploaded on : 30.12.2025.

Whether the operative part or
full judgment is pronounced: Full

State of Jammu and Kashmir through Commissioner/Secretary to
Government, GAD, Civil Secretariat, Srinagar.

.....Petitioner

Through: - Mr. Hakim Aman Ali Dy. AG with
Mr. Mohd. Younis Hafiz, Assisting
Counsel.

vs

Ahsan-ul-Haq Khan son of Mohd. Ilyas resident of Rawal Porah
Srinaagar. ...Respondent(s)

Through: - Mr. Azhar Ul Amin Sr. Advocate with
Mr. Numan Shafi Advocate.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR JUDGE**

JUDGMENT

Sanjeev Kumar J

1 This intra-court appeal, filed by the State of Jammu and Kashmir (now Union Territory of Jammu and Kashmir), is directed against an order and judgment dated 05.09.2018 passed by the learned Single Judge of this Court (hereinafter referred to as the "Writ Court") in SWP No. 210/2017 titled *Ahsan-ul-Haq Khan v. State of Jammu and Kashmir*, whereby the writ petition filed by the respondent herein has been allowed. The Writ Court, while allowing the writ petition, has

directed that the writ petitioner (respondent herein) be reinstated and granted all consequential benefits within a period of one month from the date a certified copy of the judgment is served upon the appellants.

2 Briefly stated, the facts leading to the filing of the present appeal are that the respondent was initially appointed as Sectional Officer (now Junior Engineer) in the R&B Department in the pay scale of Rs. 680–1240 vide Government Order dated 01.12.1982. He was posted in various wings of the Engineering Department and was lastly working as AE (Incharge) in Sub Division Zainpora, REW, Shopian. Allegedly due to personal vendetta of one Mohd. Sarwar Tantray, the respondent was falsely implicated in FIR No. 24/2011 for offences under Section 5(2) of the J&K Prevention of Corruption Act read with Sections 161 and 109 RPC, and was placed under suspension vide Order dated 07.12.2011. It is alleged that during investigation, the phenolphthalein-dipped currency notes used in the trap were taken from a box kept in the storeroom of the office, which was not under the control or custody of the respondent. The respondent would allege that in the investigation it revealed that a person other than the respondent was the recipient of the said currency notes, yet the respondent was implicated merely on hearsay evidence. Appreciating the innocence of the respondent and the falsity of the allegations, the respondent was reinstated by the Government vide Government Order dated 21.07.2015. Thereafter, he was posted in R&B Sub Division Handwara.

3 Vide Government Order dated 08.12.2015, the respondent was deputed and posted as AE (Incharge) from R&B Division Handwara to REW Kashmir, and vide Government Order dated

24.02.2016, he was posted as AE (Incharge) in Sub Division Zainpora, REW. Subsequently, vide Government Order dated 21.11.2016, the respondent was given notice of premature retirement from service with effect from the forenoon of 01.07.2015. The impugned order of premature retirement, along with a cheque amounting to Rs. 2,01,192/-, was served upon the respondent vide Office Letter dated 21.11.2016 issued by the Under Secretary to Government. Aggrieved thereby, the respondent approached the Writ Court by filing SWP No. 210/2017, contending that the impugned order was based on no material and that his service record had not been considered by the Government.

4 The writ petition was contested by the appellants, who contended that the competent authority, after considering the record and the evidence collected by the investigating agency, and after applying its mind to the facts and circumstances of the case, accorded sanction for prosecution of the respondent for commission of offences under Section 5(2) of the J&K Prevention of Corruption Act and Sections 161 and 109 RPC in FIR No. 24/2011, vide Government Order dated 27.07.2012. Accordingly, the appellants supported the impugned order and sought dismissal of the writ petition.

5 The Writ Court, after considering the rival submissions and examining the legal position, held that the impugned order could not stand the test of law and reason. It was held that the order was not based on any material from which a reasonable opinion could be formed to conclude that the respondent had outlived his utility as a Government servant or that his conduct was such that his continuance in service would be prejudicial to public interest. The Writ Court

further held that mere registration of one or more cases by the Vigilance Organisation could not form the sole basis for compulsory retirement. Accordingly, vide judgment dated 05.09.2018, the Writ Court quashed the impugned order of compulsory retirement. This is how the appellants are before us to assail the impugned judgment.

6 We have heard learned counsel for the parties and perused the material available on record. The record produced by learned Deputy Advocate General has also been perused.

7 The law governing premature retirement is no longer res integra. Article 226(2) of the Jammu & Kashmir Civil Services Regulations empowers the Government to prematurely retire an employee only upon forming a bona fide opinion that such retirement is in public interest. This power is circumscribed by executive instructions issued under SRO 246 dated 30.06.1999 and OM dated 25.10.2010, which mandate consideration of the entire service record, including APRs, disciplinary history, vigilance inputs, audit paras, and other relevant material.

08 The Supreme Court, in a catena of judgments including **M.S. Bindra v. Union of India, (1998) 7 SCC 310 & State of Gujarat v. Suryakant Chunilal Shah, (1999) 1 SCC 529**, has consistently held that the premature retirement cannot be used as a shortcut to dispense with a regular inquiry; mere involvement in a criminal case does not establish guilt; suspicion, conjecture or general reputation unsupported by material cannot form the basis of compulsory retirement; and failure to follow self-imposed guidelines amounts to malice in law.

9 The premature retirement of a Government servant in the then State of Jammu and Kashmir (now UT of Jammu and Kashmir) is governed by Regulation 226(2) of the J&K Civil Services Regulations (“CSR”), which authorizes the Government to retire a Government servant at any time after he has completed 22 years of service or attained the age of 48 years, in public interest. This power is exercised by the Government to weed out such Government servants who have turned deadwood and are inefficient and persons with doubtful integrity. For facility of reference, Regulation 226(2) of the CSR is set out below:

"226 (2) Notwithstanding anything contained in these Regulations Government may, if it is of the opinion that it is in the public interest to do so, require any Government servant other than the one working on a post which is included in Schedule n of these Rules, to retire at any time after he has completed 22 years/44 completed six monthly periods of qualifying service or on attaining 48 years of age; provided that the appropriate authority shall give in this behalf a notice (in one of the forms prescribed in annexure A and B hereto as to the case may be), to the Government servant at least 3 months before the date on which he is required to retire or 3 months of pay and allowance in lieu of such notice. Such a Government servant shall be granted pensionary benefits admissible under these rules on the basis of qualifying service put in by him on the date of such retirement....."

10 With a view to giving effect to the provisions of Regulation 226(2) of the CSR, the Government has prescribed certain norms which are required to be followed by the Screening Committee while evaluating the utility or otherwise of the Government servant for the purpose of taking action under Article 226(2) of the CSR. The norms are as follows:

(i) The Annual Performance Report of the Non-Gazetted employees are neither normally written very carefully nor are they fully available in a large number of cases. The Screening Committee should, therefore, consider the entire service record including all material and relevant information available on record about the employee before coming to any conclusion.

(ii) The Government employees whose integrity is doubtful should be retired. For the purpose of establishing that the integrity of the Government servant is doubtful the following information/records could be considered:

(a) Number and nature of complaints received, if any, against the Government servant pertaining to doubtful integrity or corruption.

(b) Number and nature of various audit paras pending, if any, against the Government servant in which concerned government servant is found to be involved.

(c) Number and nature of vigilance cases pending inquiry, if any, against the Government servant.

(d) Adverse entries in the APRs concerning doubtful integrity, if any.

(e) Number and nature of departmental inquiries/preliminary inquiries, if any, which are going on against the concerned Government servant.

(f) Number and nature of administrative censure/warnings/punishment pertaining to corruption/doubtful integrity against the Government servant, if any.

(g) corruption/doubtful integrity against the Government servant, if any.

(h) General reputation of the employees.

(iii) Government employee who is found to be ineffective should be retired. The basic consideration in identifying such employees should be fitness/competence of the employee to continue in the post, which he is holding. If he is not found fit to continue in his present post, and then his fitness/competence to continue in the lower post from where he had been previously promoted should be considered.

(iv) The specific norms for efficiency/effectiveness cannot be really laid down since they pertain to the nature of the work in each particular department would vary from department to department. However, these norms should be similar to norms laid down in the APRs of the employees concerned relating to his performance and efficiency/effectiveness. Specific norms on two to three

parameters should be laid down for specific jobs. An illustrative list of norms is given below:

(a) For Teachers the pass percentage achieved by their students.

(b) For Revenue staff, norms relating to revenue work, such as mutations attested, jamabandies completed, revenue pass books issued etc.

© For engineering staff, norms relating to timely project implementations without time and cost over-runs etc. The concerned Administrative Department should, for each specific category of employees under its control, identify two to three key result areas/norms against which the efficiency/effectiveness of the Government employees should be considered. These norms should be communicated to the screening committee by the Administrative Department in advance.

(v) While the entire record of the employee should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness, if his services during the preceding 5 years, or where he has been promoted on higher post during 5 years his service in the higher post have been found satisfactory.

(vi) No employee should ordinarily be retired on grounds of ineffectiveness, if in any event he would be retiring on superannuation within a period of one year from the date of considering of his case.

(vii) This provision of Rule for premature retirement should not be used for reduction of surplus staff or an economy measure. Similarly, it should not be used to retire a Government servant on grounds of specific act of misconduct as a shortcut to initiating formal disciplinary proceedings against him, The appropriate authority shall not, however, be precluded to take action against a Government servant to retire him prematurely at the relevant time, even at that time, a specific act of misconduct has come to notice.

(viii) Once a decision has been taken under the relevant service rule to retain a Government servant in service beyond the prescribed age or beyond the prescribed length of service, he shall ordinarily continue in service till he attains the age of superannuation.

11 The power of premature retirement, also known as compulsory retirement, is intended to be exercised in public service to maintain efficiency and integrity in Government service and to weed out those whose continuance has become a liability to the

administration. Such power is neither punitive in nature nor does it entail any civil consequences by way of stigma. The satisfaction of the authority that the premature retirement of a particular Government servant is in public interest is, though subjective in nature, yet it must be based on cogent material derived from the employee's entire service record, with greater emphasis on the later years of service. Doubtful integrity is a relevant factor for arriving at such satisfaction. Even uncommunicated adverse entries can also be considered. The satisfaction arrived at by the competent authority that weeding out an inefficient Government servant or a Government servant having doubtful integrity is necessary must be based on cogent material and must not rest on irrelevant, extraneous, or mala fide grounds. Judicial review in such matters is limited and permissible only where the decision is shown to be mala fide, arbitrary, or based on no evidence, or where relevant material has been ignored or extraneous considerations have crept in. Once it is demonstrated that the competent authority, upon consideration of the service record, has arrived at a bona fide satisfaction that premature/compulsory retirement of the employee is in public interest, the Court would not sit in appeal and substitute its own opinion for that of the competent administrative authority.

12 In *Union of India v. Col. S.N. Jha*, (1970) 2 SCC 458, the Hon'ble Supreme Court held that compulsory retirement involves no civil consequences and embodies one of the facets of the pleasure doctrine enshrined in Article 310 of the Constitution. It was further held that while a minimum service is guaranteed to a Government servant, the Government has the power to energise its machinery and

make it more efficient by weeding out deadwood. It was also held that compulsory retirement does not deprive a Government servant of the benefits earned by him till the date of his retirement.

13 In *Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another*, (1992) 2 SCC 299, the Supreme Court, after surveying the case law on the subject, laid down the following principles:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is Passed (a) mala fide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

14 In *State of Gujarat and another v. Suryakant Chunilal Shah*, (1999) 1 SCC 529, the Apex Court held that, with a view to deciding whether a Government servant had outlived his utility and was required to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of his overall performance had to be taken, which would be possible only on the basis of his entire service record. Paragraphs 24, 25, and 27 of the judgment are relevant and are set out below.

"24. The performance of a Govt. servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the efficiency, honesty or integrity of a Govt. servant is to look to his character roll entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall categorization of the employee is poor and there is material also to cast doubts upon his integrity, such a Govt. servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "Integrity". If this is missing the whole bundle would disperse. A Govt. servant has, therefore, to keep his belt tight.

25. Purpose of adverse entries is primarily to forewarn the Govt. servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the Govt. servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance."

"27. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a Govt. servant or that he had lost his efficiency and had become a deadwood, he was compulsorily retired merely because of his involvement in two criminal cases pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But

before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee."

15. From a plain reading of the judgment in *Surya Kant case* (supra), it becomes abundantly clear that the Supreme Court has clearly held that merely because a person is shown to have been involved in a criminal case would not *per se* mean that he was guilty of having committed that offence, and that the guilt would necessarily have to be established in the trial. The Court further holds that before a person is tried by the competent court of law and is served justice, it would be improper to deprive him of his livelihood merely on the basis of his involvement.

16 It is true that in the latter part of paragraph 27 of the judgment (supra), the Supreme Court has clarified that the involvement of a Government servant in a criminal case may not be the sole basis of premature/compulsory retirement, but it would definitely constitute relevant material for arriving at satisfaction with regard to the continuous utility of the officer in Government service. It would, however, depend upon the circumstances of each case and the nature of the offence allegedly committed by the employee.

17 Viewed in the light of the legal position discussed above, particularly the principles laid down in *Surya Kant's case*, we find that in the instant case no material other than the involvement of the respondent in FIR No. 24/2011 has been taken into consideration. The record produced by the learned Government counsel reveals that apart

from the aforesaid FIR, no other material worth the name has been considered. There is no reference to any exercise undertaken by the Screening Committee to look into the past antecedents of the respondent. Although, as is indicated in the minutes of the Screening Committee, the APRs of the respondent were not available, yet no attempt has been made by the Committee to screen through his service book to find out as to how the respondent had conducted himself during his long career in service. There is, of course, an observation by the Screening Committee that the respondent did not enjoy a good reputation in public and that the overall perception in the general public was that the respondent was a corrupt officer. The observation of the Committee sans any material on record from where it had inferred about the reputation of the respondent. It is trite that for the purpose of assessing the reputation of a Government servant, the material to be relied upon must be cogent and should emanate from the service record of such an employee. The opinion of the officers under whom such employee has worked from time to time would be relevant to be taken into consideration. A sweeping statement, without being supported by any material worth the name, is not good enough to ruin somebody's reputation.

18 From a reading of the entire record produced before us, we could find that the only basis of the competent authority arriving at the satisfaction that the further continuation of the respondent in service was not in public interest is the registration of the FIR and no other material. The Committee constituted by the Government to screen the credentials of the Government servants to be weeded out of service did

not at all consider the relevant material to base its recommendations to the competent authority for the premature retirement of the respondent. The competent authority has seemingly not applied its mind and has accepted the recommendations of the Committee without application of mind and without arriving at its satisfaction independently.

19 Viewed from any angle, the order impugned in the writ petition passed by the appellants was vitiated in law. The writ Court has committed no infirmity or illegality in accepting the writ petition and quashing the order impugned in the writ petition.

20 For the foregoing reasons and the settled legal position on the issue, we are not inclined to take a view different from the one taken by the writ Court. The appeal is found to be without any merit and is, accordingly, dismissed.

Interim directions, if any, shall stand vacated.

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21 This contempt petition has been filed seeking initiation of contempt proceedings against the appellants/respondents in the contempt petition for alleged wilful disobedience of the judgment dated 05.09.2018 passed by the Writ Court in SWP No. 210/2017, read with the order dated 31.08.2023 whereby the appeal filed against the said judgment was dismissed for non-prosecution.

22 It is not in dispute that though the appeal was initially dismissed for non-prosecution on 31.08.2023, yet the same was subsequently restored vide order dated 04.09.2025. Upon restoration, the appeal has now been heard on merits and dismissed by us vide

judgment of even date, upholding the judgment passed by the Writ Court dated 05.09.2018.

23 In view of the dismissal of the appeal on merits, the judgment of the Writ Court dated 05.09.2018 has attained finality. Consequently, the obligation of the respondents to comply with the directions contained therein survives and is enforceable. However, keeping in view the fact that the appeal remained pending after restoration and has only now been finally decided, we are of the considered view that the alleged non-compliance during the pendency of the appeal cannot, at this stage, be construed as willful or deliberate disobedience so as to warrant initiation of contempt proceedings forthwith. Accordingly, the contempt petition is disposed of with a direction to the respondents to comply with the judgment dated 05.09.2018 passed in SWP No. 210/2017, as affirmed by this Court, within a period of **eight weeks** from today. It is made clear that in the event of failure to comply with the aforesaid directions within the stipulated time, it shall be open to the petitioner to seek revival of the contempt petition, in accordance with law.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
30.12.2025
Sanjeev Uppal

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**