

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

Reserved on: 25.04.2025
Pronounced on: 09.05.2025

**RPN0.34/2025
in LPA No.26/2020**

KHURSHID AHMAD NAQEEB **...PETITIONER(S)**

Through: - Mr. R. A. Jan, Sr. Advocate, with
Mr. Adil, Advocate.

Vs.

STATE OF J&K & OTHERS **...RESPONDENT(S)**

Through:- None.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

Per Sanjeev Kumar 'J'

1) The petitioner seeks review of judgment dated 20th March, 2025, passed by a Division Bench of this Court in LPA No.26/2020 titled "***State of J&K and others vs. Khurshid Ahmad Naqeeb & another***"

2) Review of the judgment (supra) is sought, primarily, on the following grounds:

- (I) That the Division Bench while disposing of LPA vide judgment dated 20th March, 2025, has not taken note of the Government instructions appended to Article 1-A, Article 185-D(iv) and Article 177 of J&K

CSR, 1956 Vol. I and, therefore, committed an error apparent on the face of the record.

(II) That this Court also committed another error apparent on the face of record, in that, the Court, despite there being ample material on record, erroneously held that the petitioner, at the time of his retirement, was not holding any pensionable post.

3) Before we advert to the grounds of challenge reproduced hereinabove, a quick recollection of the review jurisdiction of this Court would be necessary.

4) Apart from the ground enumerated in Order 47 Rule (1) of the Code of Civil Procedure, on which review by an aggrieved party can be sought, there is ample power vested in this Court even under Article 226 of the Constitution of India to review or recall its orders where it is necessary to prevent miscarriage of justice or to correct the grave and palpable errors apparent on face of record committed by it. Such power inheres in every Court of plenary jurisdiction. It is trite that review can be sought broadly on three grounds, i.e.:

(I) Discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the knowledge of the person seeking review or could not be produced by him at any time when an order or judgment was made;

- (II) There is some mistake or error apparent on face of record;
- (III) Any other sufficient cause.

The “sufficient cause”, of course, has to be *Ejusdem Generis* to other two grounds.

5) Obviously, the cause, projected by Mr. Jan on behalf of the review petitioner, is in reference to ground (II), i.e. ‘an error apparent on the face of the record’.

6) The contention of Mr. Jan, learned senior counsel, is that the failure of this Court to refer to and discuss the provisions of Government instructions appended to Articles 1-A, 185-D(iv) and 177 of the J&K CSR, has resulted in an error in the judgment which is apparent on face of record. Reliance is placed by Mr. Jan on the judgment reported in (2020) 2 SCC 338.

7) We have given our thoughtful consideration to the arguments of Mr. Jan and do not find any merit or substance therein. There are no Government instructions appended to Article 1-A, as was contended by Mr. Jan. However, Government instructions appended to Article 4 deal with a situation where a Government servant is confirmed in a post from retrospective date and provides that such Government servant should be deemed to have held the post substantively from such date and benefits, if

any, by virtue of such confirmation on account of increase in pay and allowances or pension, reckoned under rules in vogue from time to time should be allowed to him notwithstanding the provisions of Article 4(b).

8) From bare reading of the Government instructions appended to Article-4 of the J&K CSR, it becomes abundantly clear that what is provided therein pertains to a Government servant who is appointed temporarily and is later confirmed on the post with retrospective date.

9) We have, in the judgment under review, clearly held that the petitioner was never appointed to any civil post under the Government and, therefore, was not a Government servant at any point of time. The petitioner was an employee of SKICC, a society registered under Societies Registration Act. We also fail to understand as to how Articles 185-D and 177 would be attracted in respect of the employees of a Society registered under Societies Registration Act which is governed by its own bylaws. Article 185-D(iv) deals with pensionary benefits in respect of Government servants who are transferred to an Autonomous Body/Public Sector Undertaking and provides that such Government servants shall have an option to retain the pensionary benefits available to them under the Government rules or to be governed by the rules

of the Public Sector Undertaking/Autonomous Body, as the case may be. Article 177 deals with qualifying service of a Government servant.

10) We, thus, fail to understand as to how the reference to aforesaid regulations of the CSR had any relevance with the controversy which had arisen for determination in LPA No.26/2020. We have in paragraph 14(i) of the judgment under review given a clear finding that the post held by respondent No.1 (review petitioner herein) was never filled up on substantive basis by following any regular selection process or otherwise and that there was nothing on record to suggest that the services of respondent No.1 (review petitioner herein) were ever regularized against any substantive post. Similar position was reflected in paragraph-15 of the judgment, wherein we have clearly held that though the Government Order dated 28th September, 1988, cannot be construed as an order of regularizing the services of the review petitioner herein, that too with retrospective effect, yet even if we were to assume that the said Government order confirms the services of the petitioner, it would mean that from 04.12.1981 to 05.02.1988, he could be treated as a Government employee. However, the petitioner ceased to be a government employee, the moment he accepted

appointment in the society i.e. SKICC after its constitution vide Government Order No.13-TSM of 1988 dated 05.20.1988. It is because of these reasons we found the reference to the aforesaid Articles of J&K CSR uncalled for. The failure to refer to and discuss all the Articles of the J&K CSR referred to by the review petitioner, which had no bearing on the controversy raised in the appeal, cannot be said to be an error apparent on face of record. As discussed above, the reference and discussion of the Articles of J&K CSR relied upon by the review petitioner would not have changed the result of the appeal.

11) The other ground of challenge urged by Mr. Jan is equally not tenable in law. The review petitioner cannot be permitted to re-agitate the matter on merits in the review petition. We have, on the basis of material on record, come to a definite conclusion that the review petitioner was not holding any pensionable post in the pensionable service at the time of his superannuation and, therefore, cannot be held entitled to pension, in that, pension scheme was introduced for the first time in the Corporation in the year 2014, whereas the review petitioner stood retired with effect from 31st May, 2010. We have given elaborate reasons in the judgment to hold that the classification between the employees of the Society retiring prior to

01.01.2014 and the employees retiring on and after 01.01.2014 is neither arbitrary nor discriminatory in nature.

12) For the foregoing reasons, we do not find any merit in the review petition and the same is, accordingly, dismissed.

(MOHD. YOUSUF WANI) (SANJEEV KUMAR)
JUDGE JUDGE

Srinagar,
09.05.2025
"Bhat Altaf-Secy"

Whether the JUDGMENT is reportable: Yes/No

