
(2019) 11 J&K CK 0054

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2883 Of 2019, IA No. 01, 02 Of 2015, 01, 02 Of 2016

Abdul Ahmad Dar

APPELLANT

Vs

State Of Jammu And Kashmir & Ors

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Jammu And Kashmir Civil Services Regulations Volume I — Article 168D(1), 240G
Jammu And Kashmir Civil Services Regulations Volume II — Rule 7A, 33A

Citation : (2019) 11 J&K CK 0054

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : H. Aman Ali, A.S. Sodhi

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

1. In the instant petition, the petitioner prays for the following reliefs;

a) "A writ, order or direction including one in the nature of Mandamus, commanding upon the respondent to compute and workout all the retiral benefits due to the petitioner and release all the benefits and pension etc. due to the petitioner forthwith.

b) Any other writ, order or direction which this Hon'ble Court may deem fit and property may also be passed in favour of the petitioner and against the respondents."

2. On notice, Respondent No. 2- Director Finance, Financial Organization, PDD, J&K, Srinagar has filed the reply. Paragraph 3 and 4 of the reply being relevant are taken note of;

"3/ In answer to the averments of para 3 of the writ petition, it is submitted that the petitioner prior to his posting in the answering respondent office was working

in the Civil Construction Division, Bandipora (Kishan Ganaganga Hydel Project), which was under the control of J&K Power Development Corporation. Reportedly, misappropriation of huge funds has taken place in the execution of construction works of the project. Accordingly, the General Administration J&K has sanctioned prosecution vide order No. 4-GAD (Vig) of 1998 dated 27-07-1998 against 54 officers/officials after submitting the final investigation report by the Commissioner Vigilance Organization to Government vide letter No. CV-FIR-1/97/K-922-23 dated 03.03.1998. The delinquents in the scam include Chief Engineer, Executive Engineers, AEEs, AEs, JEs, Draftsmen, DFA & CAOs, AAOs, Accounts Assistants, Senior Assistant, Junior Assistant, among whom the petitioner Mr Abdul Ahmad Dar working as Cashier in the project is also figuring at S. No. 39 of the said prosecution order. The case is subjudice in the court of Anti-Corruption Judge.

4/ In reply to Para 4 of the writ petition, it is submitted that;-

(i) The petitioner has retired on superannuation on 31-05-2006. While retiring from Government service in view of pendency of legal proceedings pending against him in the court of law, the pension case of the petitioner has strictly been processed/sanctioned in accordance with the statutory provision laid down in Article 168 D(1) of Civil Services Regulations (Volume-I) (Provisional Pension) - Para-4 of Government instruction under Article 240-G of CSR (Volume-I) (DCRG) read with rule 7-A and Rule 33-A (commutation) of Schedule-X of J&K CSR (Volume-II) and sent to the Accountant General J&K Srinagar under the cover of letter No. FA&CAO/PP/FC/Adm-04/521-23 dated 20-06-2006 for authorization and fixation of pension in favour of the petition in provisional basis. As such, the case has been dealt by the answering Respondent No. 2 in accordance with the rules and regulations governing the filed.

(ii) The status of provisional pension as per the said provisions and Government instruction shall not change till the competent court finally exonerates the petitioner of the charges leveled by the Vigilance Organization in their report.

It is further submitted that the averment that the petitioner has been denied from pensioner benefits of the pretext of pendency of the case before the court of Anti-Corruption is not correct. The available official record reveal that the petitioner is regularly drawing monthly pension on provisional basis as per rules, besides the pensionary benefits i.e. Leave Salary due to him has been paid in full by the answering respondent office. However, other pensionary benefits were sanctioned under rules and as per prescribed provisions of law in his favour keeping back payable gratuity/commutation withheld and prescribed portion of monthly pension, which may be disposed/released soon after the final proceedings of the case from Vigilance Organization are finally settled. However, it is in place to mention here that the answering respondent office has already taken up the matter with the Vigilance Organization for intimation of latest status of the case vide office letter No. DIR/FIN/FO/PDD/1404-05 dated 11.02.2012."

3. Mr A.S. Sodhi, learned appearing counsel for the Respondent No. 3-Accountant General, Jammu and Kashmir, Srinagar submits that they have authorized the provisional pension of the petitioner as sanctioned by the Pension Sanction Authority vide No. FA&CAO/PP/FA/Adm-04/521-23 dated 20.06.2006, which is detailed out reply. Relevant portion of reply is extracted as under;-

"That due to the lack of any response from the office of Pension Sanction Authority the office of the answering respondent has already authorized the provisional pension of the petitioner as sanctioned by the Pension Sanction Authority vide No. FA&CAO/PP/FA/Adm-04/521-23 dated 20.06.2006, vide provision PPO No. 1144 dated 30.01.2010".

4. In view of the above, unless, the petitioner's criminal matter is settled, he cannot claim regular pension and other benefits. In that view of the matter, the instant writ petition shall stand settled. Interim direction, if any, shall stand vacated.