
(2025) 05 J&K CK 0347
In the Jammu And Kashmir High Court
Case No : CDLSW No. 68 Of 2018

State of J&K through Principal Secretary	APPELLANT
Vs	
Wali Mohd Ganai	RESPONDENT

Date of Decision : 27-05-2025

Acts Referred:

Indian Penal Code, 1860 — Section 120, 467, 471
Jammu and Kashmir Prevention of Corruption Act, 1949 — Section 5(2)

Citation : (2025) 05 J&K CK 0347

Hon'ble Judges : Arun Palli, CJ;Rajnesh Oswal, J

Bench : Division Bench

Advocate : Monika Kohli, Rahil Raja, Ajay Kumar Gandotra

Final Decision : Disposed Of

Judgement

Arun Palli, CJ

1. Initially, the services of the respondent were terminated on account of unauthorized absence from Battalion (JKAP 9th Bn.). The order of termination of services was quashed in a writ petition bearing SWP No. 1616/2019 vide order dated 11.02.1999, and thereafter the respondent was reinstated into service in terms of order No. 493 of 2000 dated 17.07.2000. The respondent was subsequently placed under suspension vide order dated 27.09.2002 on account of getting higher pay as Selection Grade Constable w.e.f. 01.06.1992, whereas no such order in respect of his promotion to the rank of Selection Grade Constable was available on the records of JKAP 9th Bn. Thereafter, departmental inquiry came to be initiated against the respondent. The matter was also referred to the Crime Branch, Srinagar and FIR No. 42 of 2003 under Sections 467, 471 & 120 RPC, read with Section 5(2) of the J&K Prevention of Corruption Act came to be registered against the respondent by then Commanding Officer of the Battalion. The investigation ultimately culminated into filing of the challan against the accused persons including the respondent, which is pending before the competent court of law.

2. The respondent challenged his aforesaid suspension order through the medium of writ petition bearing SWP No. 2773/2002. The learned Single Judge vide judgment dated 14.11.2008 held the respondent entitled to subsistence allowance as "Selection Grade Constable" and directed for conclusion of enquiry within a period of three months and on failure thereof, the order of suspension was deemed to have been revoked. In compliance to the directions of the Court, the respondent was reinstated into service vide order dated 30.09.2009 and fresh inquiry was ordered. Inquiry culminated into the submission of inquiry report dated 19.08.2010 and order of acceptance dated 15.01.2011.

3. The respondent filed yet another writ petition bearing SWP No. 137 of 2011, thereby impugning the inquiry report dated 19.08.2010 as well as order of acceptance dated 15.01.2011 and also sought a direction to the appellants to allow him to continue as "Selection Grade Constable" in the J&K Armed Police in terms of APHQ's Order No.

400 of 1992 dated 11.06.1992 with all the consequential benefits.

4. The writ petition came to be disposed of by the learned Single Judge vide order dated 08.02.2018 in terms of the following directions:

"In the preceding analysis, impugned inquiry report dated 19.08.2010 as well as order dated 15.01.2011 passed by respondent No. 4, by which inquiry report was accepted by the disciplinary authority, are hereby quashed. In view of the fact that the petitioner has been re-instated on the post of Selection Grade Constable, needless to say that he is entitled to salary for the post of Selection Grade Constable. It is made clear that payment of salary to the petitioner on the post of Selection Grade Constable shall be subject to the result of criminal case, which is pending against him as well as Departmental inquiry which may be initiated against the petitioner after conclusion of the criminal case, in accordance with Rule 138(2) of the J&K Police Rules, 1960."

5. Appellants through the medium of this intra-court appeal have impugned the order dated 08.02.2018 passed by the learned Single Judge on various grounds, including the one that enquiry was conducted in accordance with law and the order of promotion dated 11.06.1992 was fake order.

6. Mr. Rahil Raja, learned counsel for the respondent has submitted that the respondent has already superannuated during the pendency of this intra-court appeal, as such, at this stage it is not permissible for appellants to conduct fresh enquiry in terms of order of acceptance dated 15.01.2011, even if the appellants succeed in this appeal. He has further submitted that he has instructions to submit before this Court that the respondent shall not lay any claim to the post of Selection Grade Constable on the basis of alleged forged order of promotion dated 11.06.1992, but as in terms of order dated 15.01.2011, Additional DGP AP/M&O was requested to consider the case of the respondent for next promotion, as and when the same becomes due to him in accordance with promotion rules, the appellants be directed to consider the same.

7. In response thereto, Mrs. Monika Kohli, learned Sr. AAG has submitted that the appellants are ready to consider the claim of the respondent for next higher post in accordance with the order dated 15.01.2011. She has also submitted that the trial in the above-mentioned FIR is still pending.

8. As the parties have agreed for the settlement of the dispute, this intra-court appeal is disposed of in terms of the following directions:

i) The respondent shall be paid dues and the pensionary benefits, as payable to him for the post of Constable in accordance with the prevalent rules.

ii) The appellants shall consider the claim of respondent for next promotion from the post of Constable in accordance with rules in terms of order dated 15.01.2011, which the respondent would have otherwise earned in the normal course. For any further grievance, the respondent shall be at liberty to avail appropriate remedy as available under law.

iii) The abovementioned benefits shall remain subject to the outcome of criminal trial in FIR No. 42 of 2003 under Sections 467, 471 & 120 RPC, read with Section 5(2) of the J&K Prevention of Corruption Act, registered with P/S Crime Branch.

9. The appeal is, accordingly, disposed of.