

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on 19.05.2026

Pronounced on: 05.06.2026

Uploaded on: 05.06.2026

Whether the operative part or
full judgment is pronounced: Full

WP(C) No.493/2023

Vikar Mustafa Shonthu

.....Appellant(s)/Petitioner(s)

Through: Mr. Syed Faisal Qadiri, Sr. Adv. with
Mr. Sikander Hayat Khan, Adv.

vs

U. T. of J&K and others

..... Respondent(s)

Through: Mr. M. M. Malik, Adv. for No. 3

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner, through the medium of present petition, has challenged enquiry report dated 11.11.2021, communication dated 09.03.2022 whereby the recommendations have been made on the basis of the impugned enquiry report dated 11.11.2021 and approval of the Board of Directors of the J&K Projects Construction Corporation Ltd (for short the respondent-Corporation) accorded on 22.04.2022 to the recommendations dated 09.03.2022. The petitioner has also sought a direction upon the respondents to release his withheld salary since November, 2020 and to release the withheld retiral benefits.

2. As per the case of the petitioner, he was promoted to the post of Deputy General Manager of the respondent-Corporation in the year 2000

and in the year 2015 he was promoted to the post of General Manager (Civil) with the approval of Board of Directors. In terms of order bearing No. 1 of 2018 dated 02.03.2018, the petitioner was asked to perform duties of Managing Director on incharge basis. This order was confirmed by the Board of Directors in its 93rd meeting and a circular to this effect was issued by the Company Secretary on 11.06.2018. The petitioner is stated to have superannuated from service on 30.04.2021 against the post of General Manager of the respondent-Corporation.

3. It has been submitted that when the petitioner was functioning as Managing Director of respondent-Corporation on incharge basis, a fact-finding Committee was instituted by the Government in the year 2018 to look into the certain allegations relating to functions and operations of the affairs of respondent-Corporation and an order to this effect was issued on 28.11.2011. It seems that a report came to be prepared by the members of the fact-finding Committee. In the report, it was mentioned that arrangement made in the respect of the petitioner to work as Incharge Managing Director by virtue of order dated 02.03.2018 deserves to be enquired into by the Crime Branch. Based upon the recommendation of the fact-finding Committee, respondent No. 2 addressed letter dated 03.04.2019 to SSP Crime Branch Kashmir, on the basis of which, FIR bearing No. 10/2019 came to be registered, whereafter, a challan was produced against the petitioner before the court of learned Special Judge, Anti-Corruption, Kashmir

4. Vide order No. 27 of 2021 dated 21.05.2021, the petitioner was placed under suspension. While the criminal prosecution against the petitioner was continuing, he superannuated from service on 30.06.2021. It appears that the respondents also initiated a regular departmental enquiry against the petitioner in terms of order No. 39 of 2021 dated 16.06.2021. A notice to this effect was issued to the petitioner by the Enquiry Officer on 24.06.2021. The enquiry was also initiated against the then Company Secretary of the respondent-Corporation. According to the petitioner, he responded to the communication of the Enquiry Officer vide his communication dated 24.06.2021 and informed him that in the absence of any specific allegations, he is unable to respond or to defend the said allegations and he also sought time to arrange the documents.

5. It has been submitted that the Enquiry Officer, without taking into consideration the response of the petitioner, proceeded ahead with the enquiry without adhering to the principles of natural justice and held the petitioner guilty of the following actions:-

- (i) Ensuring, preparation, finalising and presentation of wrong agenda No. 4 before the Board of Directors meeting.
- (ii) Pressurizing the then Company Secretary to issue wrong circular, which is clearly benefited him.
- (iii) Ensuing putting up back date circular No. PS/MD/644-75 dated 11.06.2018 to benefit him.

6. According to the petitioner, he has not drawn any salary as Managing Director nor has he drawn any charge allowance and this fact is clearly mentioned in the enquiry report. It has been submitted that in spite of the aforesaid admitted position, the respondent Managing Director vide
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his impugned communication dated 09.03.2022, recommended that retiral benefits of the petitioner be withheld till the outcome of the criminal trial or up to framing of the charge by the court. Regarding the Company Secretary, it was recommended that she be reinstated. The recommendations of the Managing Director were placed before the Board of Directors and the Board vide its resolution dated 13.04.2022 approved the said recommendations.

7. It has been submitted that the respondent-Corporation has released only the GP Fund in favour of the petitioner, but leave salary amounting to ₹10 lacs and Gratuity amounting to ₹20 lacs has not been released in his favour. It has also been submitted that the salary of the petitioner with effect from November, 2020 till date of his superannuation has also been withheld by the respondents.

8. The contesting respondent JKPCC has filed its reply. In its reply, it has been submitted that the Enquiry Officer had issued notices to the petitioner vide his communications dated 24.06.2021 and 30.06.2021 and he was given opportunity to agitate his case before the Enquiry Officer. It has also been submitted that while the Company Secretary reported before the Enquiry Officer and got her statement recorded, but the petitioner, instead of appearing physically before the Enquiry Officer, filed his reply dated 26.06.2021 and preferred to remain absent on the scheduled date.

9. The respondent-Corporation in its reply has not disputed the other factual aspects of the matter relating to holding of enquiry, the recommendations made by the Managing Director and the approval

accorded to the said recommendations by the Board of Directors. It has been submitted that the charge sheet in respect of FIR No. 10/2019 stands filed before the court and the charges against the petitioner have been found established. It has also been submitted that irregularity in promoting the petitioner as General Manager and sanction of leave in his favour is being investigated by the Crime Branch in another FIR bearing No. 44/2021 registered with Police Station, Crime Branch Kashmir and the said FIR is still under investigation.

10. Regarding non payment of the salary to the petitioner with effect from November, 2020 till his retirement, the respondents have submitted that the petitioner has never approached the Corporation or the General Administration Department with any such request for release of the salary. It has been submitted that the matters relating to petitioner's unauthorized absence and grant of post facto sanction to the regularization of this period and thereafter his promotion as General Manager and his placement as Incharge Managing Director have figured in the high powered fact finding Committee's report, which has led to registration of FIR and initiation of regular departmental enquiry against the petitioner. It has been submitted that all these prosecutions and enquiries have established the charges against the petitioner. Therefore, the impugned action of the respondents is perfectly in accordance with law.

11. I have heard learned counsel for the parties and perused record of the case.

12. Before proceeding to deal with the respective contentions of the parties, it is pertinent to mention here that during the pendency of this writ petition, the petitioner has been discharged in the case arising out of FIR No. 10/2019 of Police Station, Crime Branch Srinagar in terms of order dated 29.08.2025 passed by the Special Judge Anti-Corruption Srinagar and the charge sheet against the petitioner stands dismissed. Thus, as on date, there is no chargesheet relating to any criminal offence pending against the petitioner before any court. However, as per the admitted case of the respondents, the petitioner is facing investigation in FIR No. 44/2021 of Police Station, Crime Branch Kashmir which relates to alleged irregularity in promoting him as General Manager and post facto sanction of leave in his favour.

13. Thus, at this stage, we have against the petitioner a criminal investigation pending before the Investigating Agency and we have against him the report of regular departmental enquiry, which has culminated in acceptance of impugned recommendations dated 09.03.2022 made by the Managing Director of the respondent-Corporation by the Board of Directors in its meeting dated 22.04.2022. As per the decision taken by the Board of Directors, sanction has been accorded to withholding of retrial benefits of the petitioner till framing of the charges by the trial court.

14. As already stated, the charge sheet was laid before the trial court against the petitioner on 16.06.2021 in respect of FIR No. 10/2019, which was also the subject matter of the discussion in the impugned recommendations of the Managing Director, stands dismissed and the

petitioner stands discharged. Therefore, even if, the decision of the Board of Directors is given effect against the petitioner at this stage still then, once he stands discharged, the respondents cannot withhold his retiral benefits. Thus, even if, it is held that the regular departmental enquiry held by the respondents against the petitioner has been conducted in accordance with the procedure prescribed under J&K Civil Services (Classification, Control and Appeal) Rules 1956, still then the respondents have no justification in withholding the retiral benefits of the petitioner once the charge sheet against the petitioner stands dismissed by the criminal court. In these circumstances, going into legality and validity of the enquiry report and the impugned recommendations and the impugned orders passed pursuant to the said enquiry report, would be only an academic exercise which this Court would avoid to undertake in view of the aforesaid subsequent developments that have taken place.

15. The next question that arises for consideration is as to whether merely on the basis that another FIR is under investigation against the petitioner in which charge sheet is yet to be filed, it is open to the respondents to withhold the retiral benefits of the petitioner. In this regard, it is to be noted that as per Article 168-A of the J&K CSR, which is also applicable to the employees of respondent-Corporation once a person has retired from service, no recovery can be made from his pension and retiral benefits, unless it is shown that the employer has instituted departmental proceedings for recovery of the amount on account of losses found to have been caused to the employer by negligence or fraud of the delinquent

officer/official, while he/she was in service. The loss caused to the employer on account of negligence or fraud is required to be established either in the judicial or in the departmental proceedings. Even though the employer is vested with a right to order recovery from the pension of any officer/official of any amount on account of losses found in judicial or departmental proceedings, which may have been caused to the employer by the negligence or fraud of a delinquent employee during his/her service, yet the same can be done only subject to conditions stipulated in Article 168-A of the J&K CSR and such losses must have been determined in departmental or judicial proceedings.

16. Adverting to the facts of the present case, it is not the case of the respondents that in the departmental proceedings, loss to the respondent-Corporation by acts/omissions of petitioner have been assessed. In fact, it is not even the case of the respondents that alleged acts/omissions of the petitioner have caused any loss to the Corporation. Mere pendency of the investigation, without there being a charge sheet laid before the court, cannot be termed as a judicial proceeding. Therefore, as on date, there is no judicial proceeding pending against the petitioner whereby assessment of losses that may have been caused to the respondent-Corporation on account of acts and omissions of the petitioner is being undertaken. In fact, it is admitted case of the respondents that the petitioner has neither drawn the charge allowance nor has he drawn the salary attached to the post of Managing Director. Thus, his alleged actions have not resulted in any monetary benefit to him nor has it resulted in any loss to the respondent

Corporation. Therefore, it is not open to the respondents to withhold the terminal benefits of the petitioner or to withhold his salary dues.

17. For what has been said, analysed and discussed above, the present petition is **allowed** with the direction that the respondents shall release the terminal benefits of the petitioner along with unpaid salary most expeditiously, preferably within a period of two months from the date a copy of this order is made available to the respondents by the petitioner, failing which, the amount due shall carry interest at the rate of 6% per annum from the date of filing of this petition till its realization.

Srinagar,
05.06.2026
Rakesh PS

