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

SWP No. 803/2013
c/w
SWP No. 918/2012

Reserved on: 30.03.2026
Pronounced on : 02.04.2026
Uploaded on : 02.04.2026
Whether the operative part or full judgment is pronounced: Full

Ishfaq Ahmad Wani

....Petitioners

Through:- Mr. U.K. Jalali, Sr. Advocate with
Ms. Prachi Sharma, Advocate.

V/s

Chairman Legislative Council
& Ors.

.....Respondents

Through:- Mrs. Monika Kohli, Sr. AAG with
Ms. Chetna Manhas, Advocate.

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

(JUDGMENT)

01. Through the medium of the present judgment, the afore-titled two connected petitions filed by the writ petitioner are proposed to be disposed of.

02. Vide SWP No. 918/2012, the petitioner has challenged Order No. 467-LC of 2011 dated 15.09.2011 whereby two annual increments of the petitioner have been forfeited whereas, vide SWP No. 803/2013, the petitioner has

challenged Order No. LD (PAB) 2011/Comp. dated 03.04.2013 whereby a committee has been constituted for holding an enquiry against the petitioner with regard to submission of fake date of birth certificate.

03. As per case of the petitioner, he is working as Special Assistant to Chairman, J&K Legislative Council. It has been submitted that a complaint, alleging that the petitioner had produced a fake date of birth certificate at the time of his initial appointment by projecting his date of birth as 28.03.1975 instead of 28.03.1973, was made against the petitioner. It has been submitted that the Council Secretariat constituted an Enquiry Committee vide Order No. 393/LC/2006 dated 04.10.2006 to ascertain the actual date of birth of the petitioner. The Committee is stated to have made a recommendation that the petitioner should be reverted to his next lower post but the competent authority, the Chairman, J&K Legislative Council.

04. The Chairman, J&K Legislative Council disagreed with the recommendation of the Enquiry Committee and instead administered a warning to the petitioner to be careful in future. It was also directed that correct entries with regard to date of birth of the petitioner be recorded in his service book after proper verification. Accordingly, vide Council Secretariat Order No. 261/LC/2007 dated 20.03.2007, the petitioner was

warned to be careful in future and he was further directed to produce correct date of birth certificate. Accordingly, the petitioner furnished the correct date of birth certificate.

05. It has been submitted that Government of J&K General Administrative Department in the meantime issued Circular No. 14 GAD/2007 dated 19.04.2007 granting amnesty to the employees, who had indulged in manipulation of their recorded date of birth. The Scheme of amnesty was available till 30.05.2007. It has been contended that the petitioner's case is covered by the said Scheme, though even before coming into effect of said Scheme, he had furnished the correct date of birth certificate pursuant to Order dated 20.03.2007 issued by the Council Secretariat whereby he was warned to be careful in future.

06. It has been further submitted that another complaint came to be filed against the petitioner on the basis of same allegations. The petitioner made a representation to the Minister of Law, Justice and Parliamentary Affairs in which it was mentioned that enquiry against him had already been closed and he had been warned to be careful in future. However, an order bearing No. 453/LC/2011 dated 24.01.2011 came to be issued whereby a recommendation was made for taking action against the petitioner for submitting fake matriculation certificate. This order came to be

challenged by the petitioner by way of writ petition bearing SWP No. 367/2011.

07. It has been submitted that during the pendency of the aforesaid writ petition, a fresh enquiry under Rule 33 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 (hereinafter to be referred to as **"Rules of 1956"**) came to be initiated against the petitioner whereafter a report was submitted to the competent authority on 24.05.2011. It was recommended that no action could be taken against the petitioner but at the same time, the Committee recommended the stoppage of annual increments of the petitioner till the conclusion of criminal case against him. The competent authority, on the basis of the recommendations made by the Committee, passed the impugned order whereby two annual increments of the petitioner were directed to be forfeited with cumulative effect.

08. By way of SWP No. 918/2012, the petitioner has challenged the said order on the grounds that once the competent authority had decided to close the case against the petitioner, it was not open to the respondents to re-open the same on the basis of same allegations. It has been submitted that no further enquiry could have been initiated against the petitioner on the basis of the allegations, which were subject matter of the earlier enquiry. It has been further contended

that once the Government had, under a policy, granted amnesty to those, who had submitted correct date of birth certificates, the respondents could not have re-opened the issue.

09. It seems that during the pendency of SWP No. 918/2012, vide the impugned Order No. LD (PAB) 2011/Comp. dated 03.04.2013, a Committee has been constituted to go into the issue with regard to date of birth certificate of the petitioner. It has been contended that during the pendency of the writ petition SWP No. 918/2012 whereby the petitioner had called in question the action of the respondents to impose the punishment of forfeiture of two annual increments, it was not open to the respondents to initiate a third enquiry on the same issue. It has been contended that the impugned action of the respondents smacks of malafides and that the same is not tenable in law. It has been further contended that the petitioner cannot be subjected to repeated enquiries and punishments on the basis of same allegations.

10. The respondents have contested both the writ petitions by filing their reply. In their reply, the respondents have submitted that the first enquiry on the basis of which the competent authority took a lenient view and let the petitioner off with a warning was only a preliminary enquiry. It has been submitted that the enquiry initiated vide Order dated

24.01.2011 was a regular enquiry under Rule 33 of the Rules of 1956 whereas, the previous enquiry initiated vide Order No. 393-LC of 2006 dated 04.10.2006 was only a preliminary enquiry, as such, there was no legal impediment in holding a fresh departmental enquiry. It has been submitted that the grievance of the petitioner is misconceived.

11. According to the respondents, another complaint against the petitioner was received pursuant whereto vide communication dated 27.12.2012, respondent No. 2 asked the legislative council to hold a fresh enquiry under Rule 33 of the Rules of 1956. After holding the fresh enquiry, on the basis of the findings of the Enquiry Officer, the competent authority accepted the findings and issued impugned order dated 15.09.2011 whereby two annual increments of the petitioner were forfeited with cumulative effect.

12. Regarding the impugned decision whereby a third Enquiry Committee has been constituted by the respondents, it has been submitted that the competent authority (respondent No. 1) did not agree with the earlier decision taken by his predecessor, as such, at the instance of the competent authority, a high level enquiry committee was constituted in terms of impugned communication dated 03.04.2013 and two officers of department of Law, Justice and Parliamentary

Affairs were included in the Committee for conducting enquiry against the petitioner.

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

14. So far as factual aspects of the case are concerned, the same are not in dispute. It is an admitted case of the parties that in the year 2006, a complaint came to be filed against the petitioner alleging therein that he had produced a fake matriculation date of birth certificate showing his date of birth as 28.03.1975 though his actual date of birth was 28.03.1973. This was done by the petitioner during his initial years of entering the service. It seems that an enquiry was conducted by the respondents and it was found that the certificate of date of birth submitted by the petitioner was fake. A recommendation was made by the Enquiry Committee that the petitioner should be reverted to next lower post. The same was placed before the competent authority, namely, Chairman, J&K Legislative Council. The competent authority while agreeing with the findings recorded by the Enquiry Officer considered the explanation tendered by the petitioner whereafter it decided to take a lenient view probably because the petitioner at the relevant time was still a young person in his mid thirties. Accordingly, it was decided by the competent authority that the petitioner should be warned to be careful in

future and that correct entries with regard to his date of birth be made in his service record.

15. Pursuant to the approval accorded by the competent authority, the respondents issued order dated 20.03.2007 whereby the petitioner was warned to be careful in future and he was advised to produce the correct date of birth certificate so that the same could be recorded in his official records. It is not in dispute that pursuant to order dated 20.03.2007, the petitioner produced the correct date of birth certificate and necessary entry was made in the service record.

16. Another development, which took place was issuance of Circular No. 14 GAD of 2007 dated 19.04.2007. Vide the said Circular, all government employees, who had indulged in manipulation of their recorded date of birth, were granted general amnesty in case they produce correct date of birth certificates on or before 30.05.2007. The petitioner prior to the aforesaid date, had already produced the correct date of birth certificate before his employer. It is also not in dispute that the criminal case registered against the petitioner being FIR No. 78 for offences under Sections 420, 467, 471, 201 and 120-B RPC registered with Police Station, Crime Branch, Kashmir in which the alleged fake matriculation certificate produced by the petitioner was subject matter of determination, came to be quashed by this Court vide

judgment dated 11.03.2014 passed in petition 561-A CrPC No. 134/2013. The said judgment has acquired finality.

17. In the face of the aforesaid admitted facts, the question arises is as to whether, it was open to the respondents to initiate a fresh enquiry against the petitioner with regard to same allegations relating to his date of birth certificate and issue the impugned order dated 15.09.2011 thereby directing forfeiture of two annual increments of the petitioners with cumulative effect. Further issue that arises for determination is whether it is open to the respondents to subject the petitioner to third enquiry by constituting a committee of officers in terms of impugned communication dated 03.04.2013.

18. The stand taken by the respondents in their reply is that initial enquiry, which resulted in administering a warning to the petitioner, was only a preliminary enquiry and, therefore, it was open to the respondents to hold a fresh regular enquiry in accordance with the provisions contained in Rule 33 of Rules of 1956. The stand taken by respondents appears to be misconceived because even if it is assumed that the initial enquiry conducted by the respondents was a preliminary enquiry, still then because the competent authority while considering the report of preliminary enquiry instead of deciding to go for a regular departmental enquiry

against the petitioner, decided to administer a warning to the petitioner. From this, it can be inferred that the competent authority, after examining the report of preliminary enquiry and the representation of the petitioner, thought it appropriate that the petitioner does not deserve to be imposed a major penalty. It is to be noted that it is only in case a major penalty is to be imposed upon a delinquent employee that the competent authority is mandated to hold a regular departmental enquiry against such employee by following the procedure provided under Rule 33 of the Rules of 1956. Once the competent authority thought it appropriate in its wisdom to not to impose a major penalty upon the petitioner, there was no need to hold a regular departmental enquiry against the petitioner and, therefore, the decision taken by the competent authority in this regard has to be treated as final.

19. It is a settled law that a quasi judicial authority has no power to review its own decision unless the rules provide for the same. A disciplinary authority, while taking a decision on the basis of the enquiry report submitted before it, acts as a quasi judicial authority. Therefore, unless the Rules of 1956 vest power to review with the disciplinary authority, the decision taken by the said authority cannot be reviewed. Unfortunately, in the present case, the Rules of 1956 do not vest power of review with the disciplinary authority. Therefore,

the person, who replaced the disciplinary authority, had no power to review the decision taken by his predecessor.

20. In the above context, it would be appropriate to refer to the ratio laid down by Punjab and Haryana High Court in the case of **State of Haryana Vs. Roshan Lal Sharma, 1970 (4) SLR 739**. Paragraph 18 of the said judgment is relevant to the context and the same is reproduced as under:

> *"18. MR. Bhagirath Dass as a last resort argued on the basis of observations made in paragraph 11 in Pradyat Kumar Bose v. The Honble Chief Justice of Calcutta High Court (A. I. R. 1956 S. C. 285) that the exercise of the power to appoint or dismiss an officer is that exercise not of judicial power but of an administrative power, and so the impugned order of Mr. Grewal reviewing certain charges against the respondent was not open to question by the Court. The distinction made by Mr. Bhagirath Dass is unreal. It has been held in Bachhittar Singh v. State of Punjab and Anr. (A. I. R. 1963 S. C. 395) that proceedings in an departmental enquiry held against a Government servant cannot be divided into (a) the enquiry and (b) taking action against him and after so dividing the first point cannot be treated as involving a decision on the evidence and described as judicial while the latter as purely an administrative decision liable to be changed by the State. Both the stages are equally judicial and the second stage of the proceeding is no less judicial then the earlier one. If as held by the Supreme Court in this case, any action taken in a departmental enquiry against an officer is to be a judicial order not liable to be varied at the will of the authority which is empowered to impose a punishment equally the dropping of certain charges*

against the public servant meaning the exoneration therefrom is a quasi judicial order and no liable to be varied at the will be fo the authority unless the relevant statute or the rules give the authority the power to review. Not only the Full Bench of this Court in Deep Chand v. Additional Director Consolidation of Holdings, Punjab Jullundur (1964 P. L. R. 318) but also the Supreme Court in Harbhajan Singh v. Karam Singh and Ors. (A. I. R. 1966 S. C. 6 1) has held that in the case of a quasi judicial order unless the statute grants express power of review that order cannot be recalled or reviewed by the authority which made it however erroneous or unjust it may eventually be discovered to have been."

21. The aforesaid ratio was reiterated by Andhra Pradesh High Court in the case of **A. Gopala Rao Vs. Post Master General, Andhra Circle, Hyderabad, (1970) 2 SLR 370** and it was held that once an enquiry was conducted in accordance with rules and it has ended in favour of an employee, a further enquiry cannot be conducted.

22. Again a Bench of Punjab and Haryana High Court in the case of **Dr. P. Kumari, P.C.M.S Class II Vs. The State of Punjab and anr, 1981 SCC Online P&H 366** has, while considering the issue as to whether in a case where warning was issued to an employee after holding an enquiry, a fresh enquiry can be initiated against him, observed as under:

"4.So far as the question of not holding a formal enquiry prior to the awarding of this punishment is concerned, it may be that the enquiry held against the petitioner was

not a regular one; but it is not disputed that the charges or the statement of allegations which resulted in infliction of punishment of warning vide order Annexure 'B' was on the basis of the same facts which are now contained in Annexure 'C'. If that is so as already indicated, it is not disputed—then obviously the petitioner cannot be punished for the second time for the same lapse or on the same charges. In this view of the matter the charge-sheet Annexure 'C' and any proceedings taken on the basis of the same are hereby quashed."

23. In the face of the aforesaid legal position, it is manifest that once a disciplinary authority has, on the basis of the report of enquiry made by the Enquiry Officer, taken a particular decision, the same cannot be reviewed by the said authority unless the rules provide for the same. In the instant case as already stated, the Rules of 1956 do not vest power of review in a disciplinary authority, therefore, howsoever bad decision may have been taken by the disciplinary authority while letting off the petitioner with a warning, the same could not have been reviewed by the disciplinary authority at a later point of time.

24. Apart from the above, while holding the second enquiry, which the respondents claim to have conducted in terms of Rule 33 of the Rules of 1956, the procedure prescribed in the said rule has not been followed by the respondents. The record produced by the respondents does

not indicate that any memo of charges has either been framed against the petitioner or served upon him while conducting the enquiry. There is nothing on record to show that the petitioner has been called upon to respond to the charges. In the face of this position, the enquiry report and the decision taken thereon by the disciplinary authority get vitiated.

25. For what has been discussed hereinbefore, both the writ petitions are allowed and the impugned order dated 15.09.2011 whereby punishment of forfeiture of two annual increments with cumulative effect has been imposed upon the petitioner is quashed. Further the decision of the respondents to hold a third enquiry by constituting a committee of officers in terms of impugned communication dated 03.04.2013 is also quashed.

26. The record produced be returned to learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

JAMMU
02.04.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**