

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

Case: LPAW No.93/2012

Reserved on 06.08.2026.

Pronounced on 11.08.2026.

Uploaded on: 11.08.2026

Full Judgment pronounced

State of J&K and ors

.....Appellant/Petitioner(s)

Through :- Ms. Maha Majeed AC vice
Mr. Mohsin Qadri Sr. AAG

v/s

Abdul Sattar Lone

.....Respondent(s)

Through :- Mr. R.A.Jan Sr. Advocate with
Ms. Saba Aziz Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE (ACTING)

HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

CHIEF JUSTICE (A)

1 This intra-court appeal, preferred by the State of Jammu and Kashmir, (now the Union Territory of Jammu and Kashmir), is directed against an order and judgment dated 24.10.2011 passed by a learned Single Judge of this Court (hereinafter referred to as the "Writ Court") in SWP No.889/2007, titled *Abdul Sattar Lone v. State of Jammu and Kashmir and others*, whereby the writ petition filed by the respondent herein has been allowed.

2 Vide the impugned judgment, the Writ Court has directed the appellants to permit the writ petitioner to resume his duties in accordance with

the rules, unless, in the meanwhile, he has been visited with or inflicted any punishment in connection with the inquiry ordered into the alleged embezzlement on 11.03.2006 or any other inquiry which renders his reinstatement impermissible. The appellants were, however, given a liberty to initiate a fresh inquiry into the matter in accordance with law. It was further directed that the period from 14.02.2006 till the date on which the respondent resumes duty be dealt with in accordance with the rules, having regard to the outcome of any inquiry that might be initiated against him.

3. The facts giving rise to the filing of present appeal, briefly stated, are that the respondent, while posted as Head Constable/Cashier in the 8th Battalion, J&K Armed Police, was arrested by the Crime Branch, Jammu, in connection with FIR No.46/2005 registered under Section 409 RPC. He was placed under suspension vide order dated 14.12.2005. The investigating agency, however, could not complete the investigation and present the charge-sheet within the prescribed period, resulting in the respondent being released on bail on 14.02.2006. The allegation against the respondent was that, while functioning as Head Constable/Cashier in the 8th Battalion, J&KAP, he had fraudulently prefixed/added the digit "9" to an arrear bill amounting to Rs.3,51,563/- and thereby misappropriated an amount of more than Rs.90 lakhs from the State Treasury on 10.03.2006. A summary of allegations was served upon the respondent by the Adjutant of the Battalion. The respondent pleaded not guilty and, consequently, a formal charge-sheet came to be served upon him on 11.03.2006.

4 The respondent submitted his reply to the charge-sheet but, at the same time, questioned the initiation of the departmental proceedings by filing

SWP No.1058/2006. His case before the Writ Court was that the substance of the charges levelled against him departmentally was substantially identical to the allegations forming the subject matter of FIR No.46/2005 registered by the Crime Branch under Section 409 RPC and, therefore, the departmental proceedings ought not to proceed till conclusion of the criminal trial. The Writ Court, vide order dated 07.06.2006, stayed the departmental proceedings till the next date of hearing. In the meantime, the respondent was, vide notice dated 17.04.2006, directed to report at the Battalion Headquarters and was informed that failure to do so would entail action in accordance with law. The respondent did not comply with the said notice and continued to remain away from the Battalion Headquarters.

5 The respondent contested the allegations on the grounds set out in his reply. The appellants, nevertheless, decided to hold an inquiry and, vide order dated 08.07.2006, appointed appellant No.8 as the Inquiry Officer. The said order was followed by a fresh summary of allegations, which, , confined the charge to unauthorised absence, apparently for the reason that the inquiry into the allegation of embezzlement had been stayed by the Writ Court in SWP No.1058/2006. The respondent was called upon to submit his response to the said summary of allegations. According to the respondent, the summary was not served upon him personally but was pasted on the door of his residence. This was followed by a formal charge-sheet dated 11.07.2006. The appellants thereafter issued notices dated 04.08.2006 and 11.08.2006 requiring the respondent to respond to the summary of allegations in the affirmative or negative and informing him that, in the event of his failure to do so, action warranted under the rules would follow.

6 The respondent again approached the Writ Court by filing SWP No.1163/2006, questioning, inter alia, the competence of appellant No.8 to require him to attend the office. The Writ Court, vide order dated 31.08.2006, directed that the notices requiring the respondent to attend the office/Battalion Headquarters shall remain in abeyance. The writ petition was, however, ultimately dismissed on 18.04.2007. The Writ Court held that although a suspended employee was not required to attend to official work, he was nevertheless under an obligation to remain available at the place of posting so as to facilitate the departmental inquiry.

7 The judgment dated 18.04.2007 was assailed by the respondent in a Letters Patent Appeal. During the pendency of the said appeal, the Deputy Inspector General, Jammu, vide order dated 11.05.2007, dismissed the respondent from service with effect from 14.02.2006, i.e., the date from which he was alleged to have remained absent from duty.

8 The respondent challenged the said order of dismissal on several grounds. It was, inter alia, contended that the order of dismissal was inconsistent with the earlier decision of appellant No.2 conveyed vide communication dated 03.04.2007, whereby the suggestion made by appellant No.3 vide order dated 25.01.2007 for termination of the respondent's services had not been accepted. According to the respondent, once appellant No.2 had directed that the criminal case be brought to its logical conclusion for judicial determination, appellant No.5 could not have proceeded to dismiss him from service. It was further contended that the order of dismissal had been passed during the subsistence of the stay granted by the Writ Court on 07.06.2006 in SWP No.1058/2006. The order was also assailed as arbitrary and

unsustainable, particularly because it had been given retrospective effect from 14.02.2006, notwithstanding the fact that the respondent was in police custody on the said date. It was also urged that the inquiry contemplated under Rule 359 of the J&K Police Rules, 1960, which was required to precede an order of dismissal, had not been conducted in accordance with the said Rule. The respondent further alleged violation of Article 311 of the Constitution of India.

10 On the aforesaid grounds, the respondent sought quashing of the order of dismissal dated 11.05.2007 by issuance of a writ of certiorari.

11 The appellants, in their reply, denied violation of any fundamental or statutory right of the respondent and maintained that the writ petition disclosed no sustainable cause of action. It was contended that the questions raised by the respondent were essentially factual in nature and could not appropriately be adjudicated in exercise of writ jurisdiction. According to the appellants, the order dated 07.06.2006 passed in SWP No.1058/2006 had stayed only the departmental proceedings relating to the alleged embezzlement of Government money and did not authorise the respondent to remain absent from duty or to avoid handing over charge. It was further contended that, notwithstanding his suspension, the respondent was required under the applicable rules to remain available at the place of posting and attend the roll call. His failure to report for duty after his release on bail on 14.02.2006, despite repeated notices, according to the appellants, furnished sufficient justification for initiating departmental proceedings against him for unauthorised absence. The appellants also pointed out that the order dated 31.08.2006, whereby the notices dated 04.08.2006 and 11.08.2006 requiring

the respondent to report to the office had been kept in abeyance, stood vacated upon dismissal of SWP No.1163/2006 on 18.04.2007. Consequently, there was, according to them, no impediment in proceeding with the inquiry. The communication dated 03.04.2007 directing finalisation of the criminal case for judicial determination was stated to have been issued with a view to securing recovery of the Government money and was not intended to preclude termination of the respondent's services, if otherwise warranted under the rules. The appellants have further submitted that the respondent had himself failed to comply with the directions of the Court requiring him to report to the office and had continued to remain absent, thereby frustrating the departmental inquiry. The order of dismissal, according to the appellants, had been passed by the competent authority and had no bearing upon, or interference with the investigation or trial in FIR No.46/2005. It was, therefore, contended that the respondent, having repeatedly failed to report for duty despite notices and the directions issued by the Court, could not subsequently question the order of dismissal on the ground that the inquiry had not been conducted in accordance with Rule 359 of the J&K Police Rules, 1960.

12 The Writ Court, upon consideration of the rival submissions and the applicable legal position, allowed the writ petition. The main reason which weighed with the Writ Court was that a substantial part of the departmental inquiry into the charge of unauthorised absence had been conducted during the period when the notices requiring the respondent to report to the office were kept in abeyance pursuant to the order dated 31.08.2006 passed in SWP No.1163/2006. The Writ Court observed that, during the subsistence of the

said order, the Inquiry Officer ought not to have proceeded with the inquiry. According to the Writ Court, the proper course for the Inquiry Officer was to keep the inquiry in abeyance until the writ petition and the Letters Patent Appeal arising therefrom were finally decided and the respondent was required to attend the office and facilitate the inquiry.

13 It was on this reasoning that the Writ Court allowed the writ petition and issued the directions noticed hereinabove. The State and its functionaries, being aggrieved of the said judgment and order dated 24.10.2011, have preferred the present intra-court appeal

14 The appellants have assailed the judgment of the writ Court on the ground that the writ Court has not appreciated correctly that unauthorised absence of the respondent from duties was firmly established and, therefore, it was not a case of violation of the rule of *audi alteram partem*. The respondent, it is contended, was given ample opportunities to resume his duties and remain available for inquiry, but he deliberately chose to remain absent. The judgment is also assailed on the ground that the writ Court has erroneously held that there was infraction of Rule 359 of the J&K Police Rules, rendering the entire inquiry proceedings leading to issuance of the order of dismissal of the respondent vitiated in law.

15. We have heard learned counsel for the parties and perused the material available on record. The record produced by learned Deputy Advocate General has also been perused.

16 There is not much dispute on facts. In the year 2005, the respondent was working as Cashier-cum-Pay Clerk in Headquarters, JKAP 8th Bn., Channi Himmat, Jammu. There was an allegation against the

respondent that he fraudulently drew and embezzled more than Rs. 90 lacs from Saddar Treasury, Srinagar, in the month of February 2005 by preparing fake arrears bills. The Department of police lodged a complaint with the Crime Branch and, as a result whereof, FIR No. 46/2005 under Sections 409, 420, 467, 468 & 471 RPC was registered against the respondent in Police Station Crime Branch, Jammu. He was placed under suspension vide Office Order No. 1142 of 2005 dated 14.12.2005. The respondent was arrested by the Investigating Agency on 15.12.2005 and was released on bail on 14.02.2006. The respondent, who, as per the appellants, was supposed to report to the Bn. Headquarter immediately, did not turn up and instead went to his home on his own. Accordingly, his absence was recorded in the daily diary w.e.f. 14.02.2006. The respondent was informed through the concerned Police Station, Chattabal, Srinagar, vide signals dated 28.02.2006, 03.03.2006, 10.03.2006 and 10.04.2006 to resume duty forthwith. The respondent, however, failed to respond and resumed his duty. The attendance notice was also served upon the respondent through Constable Mohd. Latief, who was deputed to his residence vide Movement Order dated 24.04.2006, with a copy to the SHO, Police Station, Chattabal, through speed post vide office letter dated 17.04.2006. The respondent failed to comply with the directions and did not report back to the Bn. Headquarter. Having failed to persuade the respondent to report back to the Bn. Headquarter and hand over the records of the Accounts Section which were in his possession, the Commandant of the Bn. initiated departmental action against the respondent for unauthorised absence from duties and non-compliance of the orders and entrusted departmental inquiry to Sh. Amarjeet Singh, Dy. SP (Q), Headquarters of the

Bn. This was done by the Commandant vide order dated 14.06.2006. The Enquiry Officer served upon the respondent a summary of allegations through Constable Mohd. Latief, to which he pleaded not guilty. He was subsequently charge-sheeted by the Enquiry Officer and served with a charge-sheet through Constable Ali Mohd., who was deputed to his residence at Chattabal for service of the charge-sheet. The respondent did receive the charge-sheet and submitted his reply. The respondent did not plead any cause or gave any explanation for his unauthorised absence except that he, being under suspension, could not be called upon to report for duties or join back in the Bn. He also raised a plea that, in the absence of release of subsistence allowance, he was not in a position to defend himself before the Enquiry Officer.

17 With a view to avoid the conduct of the inquiry and to avoid handing over the charge, the respondent filed SWP No. 163/2006, in which the respondent, *inter alia*, questioned the competence of the appellants to require him to attend the office during suspension. The writ Court vide order dated 31st August 2006 kept in abeyance the notices issued to the respondent to attend the office/Bn. Headquarter. This was an interim order. The writ petition was ultimately dismissed on 18.04.2007. Admittedly, even after dismissal of the writ petition, the respondent did not attend the office and join the inquiry. He instead preferred a Letters Patent Appeal against the judgment of the writ Court, which appeal was also dismissed by the Division Bench. The Enquiry Officer, having found the respondent in complete defiance of the orders and notices issued from time to time and having offered no legally sustainable defence, concluded the inquiry proceedings and recommended the

dismissal of the respondent. The inquiry report submitted by the Enquiry Officer was accepted by the Commandant, who vide order dated 26.08.2006 dismissed the respondent from service w.e.f. the date he absented himself on 14.02.2006. In the context of this admitted factual position, we need to examine as to whether, in the matter of conducting the inquiry by the Enquiry Officer, there has been breach of *audi alteram partem* rule, as also whether Rule 359 of the Police Rules, which ensures adequate opportunity to the delinquent to defend himself, has been breached in the instant case.

18 So far as the argument of learned Senior Counsel appearing for the respondent in regard to breach of principles of natural justice in the inquiry is concerned, the same is devoid of any merit and substance and deserves to be rejected outrightly. The respondent, who was released on bail by the competent Court and released from the police custody on 14.02.2006, was under an obligation to report to the Bn. Headquarter not only for the purpose of handing over the charge but also to remain available for the purpose of inquiry. As narrated above, he was put on several notices, some of which were served upon him through the concerned Police Station and some through special messengers. It is not the case of the respondent that he did not receive any notice requiring him to attend the office from the appellants. His case, however, is that during the period of suspension he was not obliged to comply with the orders of his employer and attend his office for any purpose whatsoever. This was his understanding and he stuck to it till he was dismissed from service by the competent authority. Fearing adverse order and to avoid handing over the charge, despite having been placed under suspension, the respondent knocked the doors of this Court by filing SWP No.

1163/2006. His plea before the writ Court was that he was not supposed to comply with the orders of his employer and attend the office during his suspension. He succeeded in persuading the Court to pass an interim order staying the notices requiring him to attend the office of the Bn. Headquarter. The writ petition was ultimately dismissed on 18.04.2007. The writ Court held that even during the period of suspension the delinquent employee was required to attend the office to remain available for inquiry, etc. Though the interim order which is obtained by a party is purely at the risk of such party, yet, in the instant case, the respondent chose not to appear before the appellants even after dismissal of his writ petition and rejection of his plea. He filed a Letters Patent Appeal to avoid the situation but failed before the Division Bench as well. There was no interim stay granted by the Division Bench. The respondent took a calculated risk of not appearing before the appellants as also the Enquiry Officer. He was aware of the inquiry having been initiated against him and had received several notices in this regard. He even submitted a reply to the charge-sheet through post but remained adamant not to appear before the Enquiry Officer. His stand in reply to the charge-sheet was that he was not supposed to appear during the suspension even for the purpose of inquiry. He, though, pleaded that in the absence of subsistence allowance paid to him, he was handicapped to contest the inquiry.

19 The stand of the appellants herein, as is reflected in the pleadings, was clear and unequivocal that subsistence allowance was released in favour of the respondent while he was in police custody, but later it could not be released for the reason that he failed to attend the office and even avoided, by his absence, to hand over the necessary and urgent charge of Accounts

Section. The writ Court has not appreciated this aspect of the matter and has erroneously concluded that the Enquiry Officer had not provided the respondent an adequate opportunity of being heard.

20 Equally untenable is the plea of learned Senior Counsel appearing for the respondent that non-payment of subsistence allowance handicapped the respondent from contesting the inquiry. As is the clear stand of the appellants, the subsistence allowance was released in favour of the respondent while he was in police custody, but later it could not be released for the reason that he failed to attend the office despite having been served with multiple notices. It is not the case where non-payment of subsistence allowance has caused any prejudice to the respondent, nor has it rendered the respondent handicapped in contesting the inquiry. Acceding to the argument of Mr. Haqani, learned Senior Counsel, would be tantamount to giving the benefit to the respondent of his own wrong, which is not permissible in law.

21 In so far as compliance with Rule 359 of J&K Police Rules is concerned, we do not find the argument substantiated by reference to any material particulars. The writ Court has elaborately enumerated the steps required to be taken in the inquiry in compliance with Rule 359 of the Police Rules. It is true that different steps have been laid down in Rule 359 with a view to provide adequate opportunity to the delinquent to meet the charge and offer his defence. In the instant case, the things speak for themselves and no adjudicatory process was required to determine any disputed questions of fact. It is not a case where the respondent was ever deprived of an opportunity of being heard. It is a case where the respondent himself assumed that during his suspension and without release of subsistence allowance, he was neither

obliged to attend the office or hand over the charge nor was he liable to appear before the Enquiry Officer to defend the charge. Having shown complete defiance to the process issued by the Enquiry Officer, the respondent has lost opportunity and ground to allege that the inquiry was conducted in violation of Rule 359 of the J&K Police Rules. The unauthorised absence was never disputed by the respondent and, therefore, no evidence, documentary or oral, was required to determine this aspect. It is not a case of the respondent that he was prevented from attending the office, handing over the charge and remaining present in the inquiry due to reasons beyond his control. Rather, his case is that he was not supposed to respond to the notices of the appellants to attend the office, hand over the charge and participate in the inquiry proceedings on the ground that law, as he understood, did not oblige him to do so.

22. The writ Court has not considered the matter from this perspective and has given the benefit of pure technicalities of procedure. Apart from the charge of unauthorised absence which stood conclusively proved and led to his dismissal from service, the respondent is also facing serious charges of embezzlement of more than Rs. 90.00 lacs drawn by him from the Government treasury by allegedly forging the pay bills. Rs.40.00 lacs is stated to have been recovered from the respondent. The appellants could not proceed against him departmentally in view of pendency of a criminal case against him. The charge in the instant case was restricted only to the unauthorised absence and, therefore, allegations of embezzlement and the criminal case pending against the respondent were cited by the appellants only

to demonstrate the conduct of the respondent and, therefore, have nothing to do with the charge of unauthorised absence.

23 This brings us to the last submission made by Mr. Haqani, learned Senior Counsel appearing for the respondent, that the order of dismissal could not have been passed by the appellants with retrospective effect. He would argue that the order of dismissal against the respondent was passed on 11.05.2007, but the same was given retrospective effect from 14.02.2006, which course is not permissible in law.

24. We have given our thoughtful consideration to the argument of Mr. Haqani, learned Senior Counsel appearing for the respondent. The ordinary rule is that any order, particularly an order of dismissal, must take effect only from the date of the order. Retrospective operation would require specific authority in the statute or applicable service rules. The misconduct may undoubtedly relate back to 14.02.2006, and the period of unauthorised absence may be dealt with separately under the applicable rules, but the punitive severance of the employer-employee relationship ordinarily takes effect from the order of dismissal and not from the date on which the misconduct commenced. The distinction between the date of misconduct and the date from which the dismissal can operate needs to be appreciated. The position may, however, be different where the governing statutes or rules expressly contemplate retrospective operation. In a case where unauthorised absence is established, the Disciplinary Authority must distinguish between: *(i) determining that the employee was unauthorisedly absent from a particular date; (ii) deciding how that period is to be treated for salary/leave/service purposes; and (iii) imposing dismissal as a penalty.* The third consequence

would normally operate prospectively unless the governing rules permit the imposition of the penalty with retrospective effect.

25. We have gone through the J&K Police Rules extensively, but could not find any specific provision authorising the Disciplinary Authority to impose the penalty of dismissal from a retrospective date. We are, therefore, in agreement with Mr. Haqani that the appellants could not have dismissed the respondent retrospectively from 14.02.2006, i.e., the date of unauthorised absence attributed to the respondent. Since the order of dismissal was passed by the Disciplinary Authority only on 11.05.2007, therefore, the relationship of employer and employee shall stand severed only on the said date and not from any date anterior thereto. Simply because the order of dismissal has been given retrospective effect by the Disciplinary Authority without any sanction of law would not render the entire order of dismissal vitiated in law. The order of dismissal could still be sustained from the date it was passed.

26. **In R. Jeevaratnam v. The State of Madras, AIR 1966 Supreme Court 951**, the Hon'ble Supreme Court has held that an order of dismissal which purports to operate retrospectively is, in substance, a valid dismissal from the date of the order coupled with an invalid direction giving it retrospective effect. The Supreme Court held that the retrospective part is severable and the order can be held valid from the date of the order of dismissal.

27. For the foregoing reasons, we uphold the order of dismissal impugned in the writ petition as valid from the date of the order, i.e., 11.05.2007. The appellants shall, therefore, be well within their right to treat the period from 14.02.2006 to 11.05.2007 as a period of unauthorised absence

and to deal with the same in accordance with the applicable rules. Consequently, the judgment of the Writ Court, holding the order of dismissal bad in its entirety, is set aside, and the writ petition is dismissed. The appeal is, accordingly, allowed and disposed of in the above terms.

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
CHIEF JUSTICE(A)

JAMMU
11.08/2026
SANJEEV

Whether judgment is reportable: Yes