Serial No. 14

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

LPA 78/2024 IN [SWP 1786/2013]
CM (1836/2024) CM (4661/2025)

UNION TERRITORY OF J&K AND ORS.

….. Appellant/petitioner(s)

Through: -

Mr. Ilyas Nazir Laway, GA

V/s

GHULAM MOHAMMAD SHEIKH

….. Respondent(s)

Through: -

Mr. B. A. Zargar, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

(Per Sekhri, J)

01. Appellants have invoked Letters Patent of this Court against order dated 02.05.2023, passed by learned Single Judge of this Court [hereinafter referred to as the "writ Court"], in SWP No. 1786/2013, titled "*Ghulam Mohammad Sheikh Vs. State of J&K and Ors.",* whereby writ petition preferred by the respondent for his promotion in substantive capacity, with all consequential benefits came to be allowed.

02. Before a closer look at the grounds urged in the memo of appeal, it shall be expedient to have an overview of some admitted facts of the case, those are stated thus:

2.1. The respondent along with one Khazir Mohammad Shah came to be engaged as daily wager in the Municipal Committee, Sopore, in

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

the year 1980. Their services came to be regularized by the appellants in the year 1988. While both of them were working as Sweepers, Khazir Mohammad Shah came to be promoted in the year 1994, as Jamadar/Sanitary Supervisor, but the respondent, though similarly situated and regularized along with Khazir Mohammad Shah in the year 1988, was not given the similar treatment.

2.2. The respondent approached this Court by way of SWP No. 1614/1995, which came to be disposed of in terms of Judgment dated 06.08.1999, with a direction to the appellants to consider the claim of respondent for the post of Jamadar/Sanitary Supervisor along with other eligible candidates, if any, from the date Khazir Mohammad Shah was promoted, provided the rules would allow.

2.3 Instead of implementing the said Judgment dated 06.08.1999, passed in SWP No. 1614/1995, the Executive Officer of then Town Area Committee, Sopore, in the year 2000, allowed the respondent to work as Assistant Sanitary Jamadar in his own pay and grade and without any financial benefits. Respondent was directed from time to time to discharge the duties of Sanitary Supervisor in different beats of the Town Area Committee, Sopore, which was evident from various orders produced by the respondent before the writ Court.

2.4 Subsequently, the respondent approached this Court by way of SWP No. 567/2002, for a mandamus to the appellants to release the pay and grade attached to the post of Sanitary Supervisor from the date he had been made to work as such. While the said writ petition was pending consideration of this Court, the then Executive Officer,

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

Municipal Council, Sopore, taking note of the plight of the respondent in its perspective, with the approval of the President of the Municipal Council, Sopore, in terms of order dated 28.04.2005, allowed the respondent to work as Sanitary Supervisor instead of Incharge Sanitary Supervisor with charge allowance. Pertinently, he also recommended case of the respondent for up-gradation of the post held by him, to the level of Sanitary Supervisor, to the Director Urban Local Bodies, Kashmir, Srinagar, for approval.

2.5 In view of the aforesaid order dated 28.04.2005 passed by the Executive Officer, Municipal Council, Sopore, SWP No. 567/2002, came to be disposed of by this Court vide order dated 10.12.2009, with a direction to appellant No. 2—Director, Local Bodies, Kashmir, Srinagar, to consider the case of the respondent and pass appropriate orders strictly in accordance with the Rules/Government orders occupying the field. The Director, came to the conclusion that respondent was not eligible to hold the post of Sanitary Supervisor in view of qualification, prescribed under J&K Urban Local Body Institutions (Management) Service Recruitment Rules, 2008 ["the Rules of 2008", for short].

2.6. The aforesaid order passed by appellant No. 2, constrained the respondent to approach the writ Court and the writ Court in terms of the impugned order on considering the matter at length, while setting aside the order dated 16.02.2013, passed by appellant No. 2, held that respondent shall be deemed to have been appointed and promoted as Sanitary Supervisor in substantive capacity w.e.f. 28.04.2005, i.e., the date on which he was allowed to work as Sanitary Supervisor instead

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

of Incharge Sanitary Supervisor with all consequential benefits. The writ Court also directed that it shall be the responsibility of the appellants, in particular appellant No. 2, to either create a post of Sanitary Supervisor retrospectively w.e.f. 28.04.2005, or to find out the vacant post or some equivalent post to adjust the respondent and issue a formal order in this respect.

03. Appellants are aggrieved of the impugned order primarily on the ground that respondent was never given independent charge of Sanitary Supervisor, but was only asked to assist the Jamadar of the area, which does not amount to promotion or right to claim the grade attached to the post of Sanitary Supervisor and respondent's inclusion in the list of I/c Sanitary Supervisors of the Establishment budget does not automatically entitle him to be considered as a Sanitary Supervisor.

04. Having heard learned counsel for the parties, we are of the considered view that learned writ Court has considered the claim of respondent in its correct perspective and the impugned order does not call for any interference.

05. Concededly, the respondent along with Khazir Mohammad Shah came to be regularized as Safai Karmacharis in the year 1988. It is not in dispute that said Khazir Mohammad Shah was promoted in the year 1994, as Jamadar/Sanitary Supervisor and claim of the respondent, despite being similarly situated, was ignored by the appellants. It is evident that the mandamus issued by this Court vide order dated 06.08.1999 in SWP No. 1614/1995, was never complied

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

with by the appellants in letter and spirit, making the respondent to run from pillar to post. It is also not in dispute that the Executive Officer, Municipal Council, Sopore after due approval of the President of Municipal Council, Sopore, ordered and allowed the respondent to work as Sanitary Supervisor, instead of Incharge Sanitary Supervisor with charge allowance and recommended his case to the Director, Urban Local Bodies, Kashmir, Srinagar, for up-gradation of the post, so that he could be substantively appointed as Sanitary Supervisor.

06. It is manifest from the material submitted by the respondent before the writ Court that he has been performing his duties as Jamadar/Sanitary Supervisor right from 08.06.2000, first in his own pay and grade and later w.e.f. 28.04.2005 subject to the payment of charge allowance. Despite a clear-cut mandate of this Court in SWP No. 1614/1995, claim of the respondent for substantive promotion to the post of Jamadar/Sanitary Supervisor on the analogy of Khazir Mohammad Shah was never considered by the appellants.

07. Appellant No. 2, declined to grant approval for up-gradation of the post held by the respondent to the level of Sanitary Supervisor solely on the ground that respondent was not entitled to be promoted as Sanitary Supervisor under the Rules of 2008.

08. We are conscious that ordinarily a person is entitled only to the pay of the post to which he is appointed and there is no principle of service law, which entitles a person, who is substantively appointed to a particular post in a particular pay scale, to the pay scale of a higher post merely on the claim that he performed the duties attached to the

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

said post. However, there is one exception to this general rule and that is when a person is formally ordered to hold the charge of the duties of a higher post, he is entitled to the pay scale attached to the said higher post.

09. If we approach the present case with the aforesaid principle of law in mind, we find ourselves in agreement with the observation of learned Writ Court that when case of the respondent for consideration was put up before appellant No. 2, the statutory Rules, i.e, Rules of 2008, had been promulgated, but prior to the year 2008, since there were no rules for recruitment of the officers and officials in the Urban Local Bodies, the recruitments and promotions were regulated by sheer whims of the person at the helm of affairs in the department. The right to promotion accrued to the respondent much prior to the Rules of 2008; firstly in the year 1994, when his counterpart Khazir Mohammad Shah came to be promoted and his claim for promotion was ignored by the appellants and subsequently in the year 2000, when respondent was allowed to discharge the duties of Sanitary Supervisor w.e.f. June, 2000, where-after, he had been regularly performing his duties as Jamadar/Sanitary Supervisor without any interruption after receiving the charge allowance admissible under rules and that too to the best satisfaction of his superiors and public in general. Making an employee to perform higher level responsibilities while paying him lower salary amounts to work place exploitation, which is not countenanced in law.

10. It is pertinent to mention that though Single Bench of this Court while disposing of SWP No. 567/2002, directed appellant No. 2, to

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document

consider the claim of respondent in the light of the recommendations of the Executive Officer, Municipal Council, Sopore, in accordance with the Rules/Government orders, occupying the field, however, it is pertinent to underline that the said Executive Officer, in terms of order dated 28.04.2005, which was passed with the approval of President of the Municipal Council, Sopore, had promoted/appointed the respondent as Sanitary Supervisor w.e.f. 28.04.2005.

11. In the circumstances of the case, writ Court has rightly held that appellant No. 2— Director, Urban Local Bodies, Kashmir Srinagar, ought to have considered the claim of respondent in accordance with the rule position occupying the field as on 28.04.2005, and not in accordance with the Rules of 2008, which came to be promulgated much later and were prospective in operation.

12. For what has been observed and discussed above, we do not find any illegality or impropriety in the impugned order passed by writ Court. The writ Court has considered the claim of respondent in its correct perspective having regard to the rule position occupying the field, when cause of action accrued in his favour.

13. Having regard to the aforesaid, present Letters Patent Appeal is found devoid of merit, hence **dismissed** along with all connected CM(s). As a result, impugned order is upheld.

(RAJESH SEKHRI)
JUDGE

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

SRINAGAR
13.10.2026
"Mohammad Yasin Dar"

Whether the Judgment is reportable: ***Yes***
Whether the Judgment is speaking: ***Yes***

Mohammad Yaseen Dar
I attest to the accuracy and
authenticity of this
document