

GOVERNMENT OF JAMMU AND KASHMIR,  
YOUTH SERVICES & SPORTS DEPARTMENT,  
Civil Secretariat, Jammu/ Srinagar  
\*\*\*\*\*

**Subject:-** WP No. 2117/2018 titled Shri Nazir Ahmad and Ors Vs UT of J&K and others.

**Government Order No. 32 -JK(YS&S) of 2024**

**Dated: 27.08.2024**

**Whereas,** the petitioners filed a writ petition before the Hon'ble High Court at Jammu praying for following reliefs:-

- a. *Writ of mandamus, commanding the respondents to provide the pensionary benefits on superannuation/ retirement benefits/ family pension to the petitioners being the employees of J&K Sports Council on the pattern/ analogy of Corporation employees and also on the analogy of J&K Khadi and Village Industries Board and J&K Handicrafts Corporation (S&E) (JKHC,S&E) and J&K Industries department including State Road Transport Corporation and other Corporations/ Board Councils of Govt. of India/ States/Union Territories. With further prayer commanding the respondents to consider the plea of the petitioners for pensionary benefits and other benefits on superannuating including family pension in view of the judgement passed by this Hon'ble Court in SWP 1269/ 2016 and connected writ petition No. 469/2018 decided on 31.07.2018, SWP No 1250. Of 2002 titled J&K Industries Employees Association V State of J&K and others, SWP No. 1468/2004, SWP 945/2002, SWP 27/2003, SWP 78/ 2003 and SWP 143/ 2007 and also in view of J&K CSR extending retirement and pensionary benefits and also on the pattern of Hon'ble Supreme Court Judgements and some of them have also been mentioned in the above said judgements. And may also commanding the respondents to consider the case of the petitioners on the pattern and analogy of Govt Order No. 230- Ind of 2017 dated: 26.09.2017.*
- b. *Writ of certiorari, may quashing any order passed for not providing pensionary/ retirement benefits/ family pension to the employees of the J&K State Sport Council.*
- c. *Any other writ, order or direction which this Hon'ble court may deem fit and proper in the facts and circumstances of the case may also be issued in favour of the petitioners and against the respondents.*

**Whereas,** the above writ petition was disposed of by the Hon'ble High Court vide order dated **20.03.2020** with the following direction:-

*"It would be in placed to mention here that the matter with regard to pension case of Sports Council Employees based upon the recommendations as well as request made number of times by the Sports Council to Higher authorities for providing pensioner/ retirement*

*benefits/ family pension to the employees of J&K State Sports Council in accordance of Khaddi and Village Industries, IMPHA etc. Reportedly the Pension/ Retirements benefits/ Family pension case in respect of the J&K State Sports Council is under active consideration with the State Government at present"*

**Whereas**, in light of above directions of the Hon'ble Court, the case of the petitioners has been examined in the Department and it has been found that the applicant has submitting wrong and fabricated facts before this Hon'ble; **and**,

**Whereas**, during examination of the case, it has also come-forth that the service conditions of the employees of J&K Sports Council is governed and regulated by the Constitution of J&K Sports Council and J&K Sports Council Service Rules, 1979 and in terms of the rules governing service conditions of employees of J&K Sports Council, the services in the J&K Sports Council is non-pensionable. Since the petitioners have accepted to the service conditions of J&K Sports Council at the time of appointment/ engagment, as such, they are estopped by "Law of Estoppel" to challenge the same or to press for its alteration to their best advantage after accepting the terms and conditions of Employment; **and**,

**Whereas**, the petitioners are employees of the society and are governed by the set rules. Their service conditions like leave, salary, lien, pension etc are governed by the said rules. With respect to the pension, the petitioners cannot claim pension since the services in the council is non-pensionable. The petitioners cannot selectively apply the rules to their liking; **and**,

**Whereas**, the petitioners service conditions of employees of J&K Sports Council is governed by Constitution of J&K Sports Council and J&K Sports Council Service Rules, 1979. The petitioners have neither challenged Constitution of J&K Sports Council ~~nor~~ J&K Sports Council Service Rules, 1979 and in absence of the same being quashed or set-aside, the petitioners cannot be granted the relief which is not covered under rules; **and**,

**Whereas**, apart from the above Government of Jammu and Kashmir vide SRO 400 of 2009 already made all the posts in the State as Non-pensionable. Once all the engagements/ appointment are made non-pensionable, the benefit of pension cannot be extended to the petitioners which will create anomaly across the UT of J&K; **and**,

**Whereas**, Finance Department vide O.M No. A/71(99)-1143 dated 24-02-2010, has intimated to the department that since a number of Departmental Societies have come into existence, it would neither be advisable nor desirable to grant pensionary benefits to such bodies; **and**,

**Whereas**, it has also been found that the case of the petitioners is not similarly situated with the Employees of J&K Khadi and Village Industries Board and J&K Handicrafts Corporation (S&E) (JKHC,S&E) and J&K Industries

department including State Road Transport Corporation and other Corporations/ Board Councils of Govt. of India/ States/Union Territories and therefore no analogy can be extended to the petitioners. Further and even otherwise, the petitioners cannot insist upon to extend the service conditions of employees of some other organization who are governed by different set of rules and regulations; and,

**Whereas**, Hon'ble Supreme Court in **A.R Zakki Vs State of J&K AIR 1992 Supreme Court 1546** has held that:-

*"... when the petitioners are governed by the express statutory rules which sets out the terms and conditions of the services of employees, therefore the employees cannot claim for amendment in the service rules by way of filing writ petition, under which they have been appointed, neither the Hon'ble Court interferes in directing the executive to frame any rule in a particular manner in view of the law laid down."*

**Whereas**, the financial position of the J&K Sports Council at present is also precarious and unsound, any direction directing the J&K Sports Council to extend pension benefits to its employees would lead to winding up of the J&K Sports Council itself. The Hon'ble Supreme Court has appreciated the same fact in **Chairman & M.D, K.S.R.T.C v/s K.O Varghese & Ors**, wherein Kerala State Road Transport Corporation prayed for the extending of 5<sup>th</sup> Pay Commission recommendation regarding Pension. The Hon'ble Supreme Court while dismissing the Writ Petitions of the Petitioners *held that decision taken by the Corporation not to implement the recommendations of the 5<sup>th</sup> Pay Commission for KSRTC Employees are fully justified in view of the financially unsound position of the said J&K Sports Council*. The relevant Para of the said Judgment of the Hon'ble Supreme Court is quoted as under;-

*"18. Even before us, also, it has been clearly pleaded by KSRTC that its financial position is unsound. In fact, the High Court has also noticed it. This Court has held that the financial position of a Corporation like KSRTC is certainly relevant when the Corporation takes a decision as to whether it should implement a recommendation for enhanced emoluments and pension. Since we find from the relevant aspects brought out that the financial position of KSRTC is not sound, we are of the view that the decision taken by the State Govt, not to implement, here and now, the recommendation of the 5<sup>th</sup> Pay Commission for KSRTC and the decision based on it by KSRTC are fully justified. Certainly, the decision cannot be said to be vitiated by any extraneous consideration or perverse appreciation of the circumstances obtaining.*

*19. The result of this discussion is to hold that the High Court was in error in its decision; and the directing that pension had to be paid in terms of the recommendations of the 5<sup>th</sup> Pay Commission. We therefore allow these appeals and setting aside the decisions of the High Court*

dismiss the Writ Petitions filed by the Writ Petitioners. We make no order as to costs.”

**Whereas, Hon'ble High Court of J&K in J&K Tourism Development Corporation Employee Union Vs State of J&K and Others, SWP No. 1702/2017 has held as under:-**

07. The first and foremost issue that requires consideration of the Court is whether in denying the pensionary benefits to the members of the petitioners' Union, any of the rights of the said members stands violated, thus, warranting issuance of a 'Writ of Mandamus' from this Court, as sought in this petition. 'Mandamus' literally means a command. The essence of 'Mandamus' is that it is a command issued for directing performance of a public legal duty. A 'Writ of Mandamus' is issued in favour of a person who establishes a legal right in himself. A 'Writ of Mandamus' is issued against a person who has a legal duty to perform, but has failed and/ or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The 'Writ of Mandamus' is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice, despite demanded, has not been granted.

08. Law on the subject is no more res integra. Hon'ble Supreme Court, while dealing with the scope of mandamus, in case titled '**State of Kerela V. Smt. A. Lakshmikutty & Ors reported as (1986) 4 Supreme Court Cases 632**, the Apex Court of the country, at paragraph No.34, has observed as under:

“34. We must refer to the case of **Mani Subrat Jain v. State of Haryana & Ors.**, (supra) which was relied upon by learned counsel for the State Government. It is well-settled that a writ of mandamus is not a writ of course or a writ of right, but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. Applying the principles stated in **Halsbury's Laws of England, 4th edn., vol. 1, paragraph 122**, this Court observed that a person whose name had been recommended for appointment as a District Judge by the High Court under Art. 233 (1) had no legal right to the post, nor was the Governor bound to act on the advice of the High Court and therefore he could not ask for a mandamus. It was observed:

“It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. The initial appointment of District Judges under Article 233 is within the exclusive jurisdiction of the Government after consultation with the High Court. The Governor is not bound to act

on the advice of the High Court. The High Court recommends the names of persons for appointment. If the names are recommended by the High Court it is not obligatory on the Governor to accept the recommendation. The consultation of the Governor with the High Court does not mean that the Governor must accept whatever advice of recommendation is given by the High Court. Article 233 requires that the Governor should obtain from the High Court its views on the merits and demerits of persons selected for promotion and direct recruitment."

The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of mandamus. The present trend of judicial opinion appears to be that in the case of non-selection to a post, no writ of mandamus lies."

**In this context, the irrefutable conclusion which can be drawn is that none of the rights of the petitioners stand violated by the respondent Corporation for which a 'Writ of Mandamus' can be issued in their favour.**

10. The next question that this Court is called upon to answer in this petition is that despite there being clear rule position with regard to the services in the Corporation being non-pensionable, can the members of the petitioners Union still claim pensionary benefits in their favour on the analogy of other Government Corporations/ Departments. The answer to this question has to be in the negative inasmuch as the petitioners cannot seek to selectively apply the relevant recruitment rules to their liking. **The petitioners are governed by express statutory rules which set out the terms and conditions of the services of employees, including the petitioners, therefore, the petitioners cannot claim for amendment in the service rules through the medium of the instant petition. The petitioners and other employees of the Corporation cannot deviate from the terms and conditions of service upon which they have been appointed.**

11. Apart from the above, there is all substance in the argument of the learned counsel representing the respondent Corporation that **once an employee accepts the terms and conditions governing a particular service at the time of entry in that service, he/ she subsequently cannot turn around and contend that the certain portion of the rules governing such service is not enable. This Court cannot issue directions to the legislature to enact a particular legislation.** Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. In this behalf, I am fortified by a judicial dictum rendered by Hon'ble the Supreme Court in case titled **State of JK Vs A. R. Zakki & Ors reported as AIR 1992 Supreme Court 1546.**

**Whereas,** services in J&K Sports Council are non-pensionable, therefore the petitioners and other employees of the J&K Sports Council can not deviate

from the terms and conditions of the services upon which they have been appointed. Furthermore the employees of the J&K Sports Council are governed by Contributory Pension Fund (CPF) Scheme under which the respondent J&K Sports Council shares the equal contribution towards the subscription of employees fund in addition to the due salary/ perks paid to its employees, as such the J&K Sports Council is very keen to protect the interests of the employees; **and**,

**Now therefore, in view of the above facts and circumstances and in compliance with the order dated 20.03.2022 passed by Hon'ble High Court of J&K, the claim of the petitioner has been considered and found devoid of merit.**

**By order of the Government of Jammu & Kashmir.**

**Sd/-**  
**Sarmad Hafeez (IAS),**  
Secretary to the Government,  
Youth Services and Sports Department.

**No:-YSS-Legl/33/2022-02YSS**

**Dated: 27.08.2024**

**Copy to the:-**

1. Joint Secretary (J&K) Ministry of Home Affairs, Government of India.
2. Commissioner/ Secretary to the Government, General Administration Department.
3. Director, Archives, Archeology and Museums, J&K.
4. Secretary, J&K Sports Council for information.
5. Private Secretary to Secretary to Government, Youth Services and Sports Department
6. Sh. Nazir Ahmad (Petitioner) for information.
7. I/C Website for uploading the same on official website.
8. Government Order File/ Concerned File (w.2.s.c).

**MAYO 27/8/24**  
**Mohammad Ayub (JKAS),**  
Deputy Secretary to the Government,  
Youth Services and Sports Department.