

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**
(Th. Virtual Mode)

CJ Court

**LPA No. 306/2025
CM Nos. 8407/2025, 8408/2025**

Reserved on: 17.12.2025

Pronounced on: 29.01.2026

Uploaded on: 29.01.2026

Whether the operative part or full judgment
is pronounced: Full judgment.

1. Union Territory of J&K

Th. Principal Secretary to Government,
Housing and Urban Development
Department, Civil Secretariat,
Jammu/Srinagar.

**2. Director Urban Local Bodies,
Kashmir.**

**3. Chief Executive Officer Municipal
Council Baramulla.**

**4. P&AO (Accounts Officer) Municipal
Council Baramulla.**

**5. Deputy Director Local Funds AuditAppellant(s)/Petitioner(s)
and Pensions, Srinagar.**

**6. Accounts Officer Urban Local Bodies,
Kashmir, Srinagar.**

Through: Mr. Illyas N. Laway, GA.

Vs

Gulzar Ahmad Khan
S/O Abdul Samad Khan R/O Kansipora,
Baramulla.

..... Respondent(s)

Through: Mr. M. A. Beigh, Advocate

**Coram: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

(Oswal-J)

CM Nos. 8407/2025

1. This is an application filed by the applicants seeking condonation of delay in filing the accompanying appeal.
2. For the reasons stated in the application, the same is allowed and the delay in filing the main appeal is condoned.
3. Application stands **disposed of**.

LPA No. 306/2025

1. This intra-court appeal is directed against the judgment dated 22.08.2025 rendered by the learned Writ Court in WP(C) No. 3342/2023 titled “*Gulzar Ahmad Khan vs. UT of J&K and others*”, whereby the learned Writ Court has directed the appellants to reconstruct the service book of the respondent and make all necessary entries therein in accordance with the applicable rules, and consequently release all the retiral benefits, including the arrears thereof in favour of the respondent, which he is entitled to, within a period of two months from the date of receipt of the judgment by the appellants. On account of failure on part of the appellants to comply with the directions issued by the learned Writ Court, the appellants have been held liable to pay interest at the rate of 7% per annum from the date the retiral benefits and arrears became due to the respondent till actual payment thereof.
2. The appellants have assailed the judgment primarily on the ground that the respondent was illegally appointed in the year 1999 and his regularisation in the year 2007 was also illegal, therefore, he was not entitled to any relief. It is also urged that the learned Writ Court, without considering the

submissions made by the appellants in their reply, has allowed the writ petition preferred by the respondent.

3. Mr. Illyas Laway, learned GA appearing for the appellants has reiterated the submissions made in memo of the appeal. He has further submitted that the interest granted by the learned Writ Court is on a higher side.
4. *Per contra*, Mr. M. A. Beigh, learned counsel for the respondent has submitted that till date no charge-sheet has been filed against the respondent and further that the appellants never proceeded against the respondent while he was in service and rather allowed him to attain superannuation. However, he fairly submitted that the rate of interest awarded by the learned Writ Court may be reduced from 7% per annum to 6% per annum.
5. Heard learned counsel for the parties and perused the record.
6. Record depicts that the respondent was initially appointed as a driver on consolidated basis for Rs. 1,000/- per month by the Administrator of Municipal Council, Baramulla in terms of order No. TAC/Bla/99-2000/153-54 dated 31.05.1999 and subsequently, his services were regularised in terms of order No. MC-Bla/2007-08/4235-42 dated 31.12.2007.
7. The grievance projected by the respondent in his writ petition was that his service book was not being updated by the appellant Nos. 2 and 3, which they were otherwise bound to and further he was also entitled to due increments which were not granted to him till the filing of the writ petition. By placing these facts before the Writ Court, the respondent sought issuance of directions to the appellant No. 3 to re-build/reconstruct his

service book with all entries upto date in terms of Article 268(A) of J&K CSR read with guidelines issued by the GAD in terms of Circular No. 42-GAD of 2014 dated 04.10.2014 and for release of due increments, benefits of promotions in his favour and further that he be granted benefit of higher pay-scale due to him in terms of Government Order dated 23.05.2008 with retrospective effect by releasing arrears in his favour till his retirement.

8. The writ petition preferred by the respondent was opposed by the appellants on the grounds already noted hereinabove. In addition thereto, it was contended that the issue relating to illegal appointments was being investigated by the Crime Branch, Kashmir in FIR No. 19/2011 and also an enquiry was being conducted by the appellants and under such circumstances, it was asserted that the respondent was not entitled to any relief.
9. This is an admitted position that the respondent attained the age of superannuation during the pendency of writ petition. Furthermore, no such proceedings were ever initiated by the appellants during his tenure. There is nothing on record to demonstrate that any judicial or departmental proceedings are currently pending against him. Having allowed the respondent to serve for nearly 25 years, it is now too late for the appellants to contend that his appointment was illegal. Had that been the case, appropriate proceedings for termination of his services ought to have been initiated at an earlier point of time.
10. Instead, the appellants continued to extract work from the respondent for over two decades and the benefits, he claims are earned through long service and not granted as charity. Having failed to act in time and allowing

him to retire honorably, the appellants cannot now challenge his initial appointment or subsequent regularization. While the appellants claim that all regularizations post-2000 are under investigation by the Crime Branch, Kashmir, it is evident that after 14 years, this investigation remains unfinalized, and no charge-sheet has been produced in FIR No. 19/2011.

11. In **‘Vijay Kumar Vs. central Bank of India & Ors’**, 2025 INSC 848, the Hon’ble Apex Court has observed that *“there is no cavil that pension is not a discretion of the employer but a valuable right to property and can be denied only through authority of law”*.

12. In **State Of Jharkhand & Ors vs Jitendra Kumar Srivastava & Anr**, AIR 2013 SC 3383, the Hon’ble Apex Court has observed as under:

“7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S Nakara and ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors. wherein this Court authoritatively ruled that **pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one’s discretion. It is only for the purpose of quantifying the amount having regard to**

service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) ILLJ 377SC”.

8. It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.”

13. In view of what has been considered, discussed and analysed hereinabove, we dispose of the instant appeal by modifying the judgment passed by the learned Writ Court in WP(C) No. 3342/2023 titled “*Gulzar Ahmad Khan vs. UT of J&K and others*” to the extent that in the event the appellants fail to comply with the directions issued by the learned Writ Court within three months from today, respondent shall be entitled to interest on all retiral benefits and arrears at the rate of 6% per annum. Such interest shall be calculated from the date the respondent first became entitled to these benefits until the date of actual payment.

14. Disposed of along with the connected applications.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Jammu
29.01.2026
Sahil Padha

Whether the order is speaking:
Whether the order is reportable:

Yes/No.
Yes/No.