

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

*Reserved on: 27.11.2025*

*Pronounced on: 11.12.2025*

*Uploaded on: 11.12.2025*

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

**WP(C) No.616/2021**

**c/w**

**WP(C) No.391/2021**

ABDUL MAJEED PARRAY  
HABIBULLAH BHAT & ORS.

...PETITIONERS/APPELLANT(S)

Through: - Mr. G. A. Lone, Advocate, with  
Mr. Mujeeb Andrabi, Advocate.

Vs.

UT OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Hakim Aman Ali, Dy. AG.

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

**JUDGMENT**

**1)** Through the medium of present judgment, the afore-titled two writ petitions raising similar issue are proposed to be disposed of.

**2)** WP(C) No.391/2021 has been filed as many as 59 employees of the J&K Sainik School, Mansbal, whereas WP(C) No.616/2021 has been filed Shri Abdul Majeed Parray who is also a retired employee of the J&K Sainik School, Mansbal. The reliefs prayed in both the writ petitions are similar. The petitioners have sought a direction upon the respondents to

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grant pensionary benefits to them on attaining the age of superannuation in accordance with the scheme as was in vogue before 2010 and also to provide arrears of pension on superannuation to those petitioners who have already retired from service. A further direction commanding the respondents to treat and adjust the CP Fund of the petitioners as General Provident Fund as is applicable to the Government employees has been sought. Grant of pensionary benefits to the petitioners on the pattern the said benefits are granted to the employees of the State Government, has also been sought.

3) The petitioners are serving/retired employees of the J&K Sainik School, Mansbal. It has been submitted that the said school has been established by the J&K State Government in the year 1980 vide Government Order No.1248-Edu of 1980 dated 05.08.1980 for the purpose of providing education and training to the students as is being done in Sainik schools elsewhere in the country. It is case of the petitioners that the administrative, financial and functional control of the school exclusively and pervasively vests with the State Government. It has been submitted that the employment at academic and administrative or other levels is to be made on the same pattern on which other Sainik schools of the Country are

following. The qualification for recruitment of  
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Teachers/Masters is the same as prescribed by the Central Board of School Education. The appointment is made through a duly constituted Selection Committee and the pattern of appointment of teaching and non-teaching staff in the J&K Sainik School Mansbal is the same as is prescribed in other Sainik schools of the Country. It has been submitted that the respondent school is a Government aided school and also receives contributions from various sources including the fee charged from the students. It is also being submitted that the capital expenditure of the school is being meted out of the funds provided by the State Government as grant-in-aid. Thus, the Government has a deep and pervasive control over the affairs of the society which governs the J&K Sainik School Mansbal. It has been submitted that the share capital, lands and buildings are provided by the Government and the society, which governs the school, operates on the finances provided by the Union Territory Government. Thus, according to the petitioners, the respondent Society is a "State" within the meaning of Article 12 of the Constitution.

4) It has been submitted that the retired and serving employees of the respondent School are getting pay and other emoluments including leave salary and gratuity upon their retirement but they are not getting any pension on superannuation. It has been submitted that on 29<sup>th</sup> July,

1988, the Government of India issued directions to the Principals of all Sainik schools thereby extending the benefit of pension on retirement to the Sainik school employees. In this regard a copy of communication dated 29<sup>th</sup> July, 1988, has been placed on record. It has been submitted that because J&K Sainik School Mansbal has been established by the erstwhile State Government, the pension scheme formulated by the Government of India for other Sainik schools was not extended to the petitioners.

5) It has been submitted that on 27<sup>th</sup> December, 1991, the Executive Committee of the Society in its 30<sup>th</sup> meeting took a decision to approve in principle the extension of benefit of pension to the employees of the J&K Sainik School Mansbal, as has been done in the case of employees of other Sainik schools in terms of communication dated 19.07.1988. Thereafter the matter was placed before the Board of Governors in its meeting held on 17.10.1992 as Agenda Item No.XI and it was decided that financial implications be worked out. It has been submitted that on 31.03.1994, the matter was again put up in 31<sup>st</sup> Executive Committee meeting. The ASC (Finance) was asked to examine the matter and issue necessary instructions on the subject relating to extension of benefits to the employees of the school.

6) In the 12<sup>th</sup> meeting of Board of Governors held on 02.10.2004, the matter was again directed to be processed separately. In the meantime, on 18.09.2005, during annual day celebrations of the J&K Sainik School Mansbal, the then Hon'ble Chief Minister (Chairman of the Board of Governors) approved the extension of pension scheme to the employees of the J&K Sainik School Mansbal on the pattern applicable to the State Government employees. In terms of this approval, the Principal/Member Secretary of the Board of Governors prepared the pension scheme under endorsement dated 07.09.2007. However, the Financial Advisor/CAO of the Education Department vide his communication dated 19.12.2007, informed the Principal that without seeking approval of the Administrative Department and concurrence of the Finance Department, the scheme may not be implemented.

7) Pursuant to the aforesaid communication of the Financial Advisor, the Education Department approached the Finance Department. It was communicated by the Finance Department that the school has become entirely dependent on the financial assistance of the State Government, as such, a scheme needs to be formulated.

8) On 24.09.2009, the matter was again placed in 35<sup>th</sup>

Executive Committee meeting and it was decided that the

proposal can be considered only after the Finance Department gives its opinion in the matter. On 02.06.2011, the pension scheme was again placed in the 13<sup>th</sup> meeting of the Board of Governors and a sub committee was constituted which comprised Commissioner/Secretary to the Government, Finance Department, Commissioner/Secretary to the Government, Education Department and Principal, J&K Sainik School, Mansbal.

9) The matter was again placed in the 14<sup>th</sup> meeting of Board of Governors held on 10.10.2013 and it was decided that the matter shall be examined by the Finance Department in reference to the Pension Scheme Rules applicable to other Sainik schools of the Country.

10) It has been further submitted that the proposal for implementation of pension scheme was again placed in 15<sup>th</sup> meeting of the Board of Governors held on 20.12.2016 and it was decided that the School Principal will submit a concrete proposal to the Education Department bringing out financial implications for further reference.

11) When the matter was submitted to the Finance Department, it conveyed it's no objection to the grant of pensionary benefits to the employees of the J&K Sainik School, Mansbal, subject to the condition that the additional

burden on this account has to be borne by the society out of its internal resources through Administrative Department.

**12)** In the face of aforesaid background facts, the petitioners contend that the pension scheme in respect to the employees of the J&K Sainik School, Mansbal, is being unnecessarily delayed on account of bureaucratic wrangles. It has been further submitted that the respondents have shown complete apathy towards the rights of the petitioners. It has been contended that the pension is in the nature of social security to the employees and it is the right of an employee who has, during his young age, served the employer. It has been submitted that after coming into effect of the 7<sup>th</sup> Pay Commissioner recommendations, NPS scheme has been introduced but the employees of the State Government who were appointed prior to 2010 continue to draw pension after their superannuation and, therefore, those employees of the J&K Sainik School, Mansbal, who have entered service prior to the year 2010, are entitled to pension at par with the employees of the Government of the Union Territory of Jammu and Kashmir and the other Sainik schools of the Country and they cannot be discriminated.

**13)** The respondents have contested the writ petitions by filing their reply to the same. It has been submitted that the

respondent School is fully funded by the Government of J&K and a meagre amount of fee is charged from the parents of the students on the basis of income slab prescribed in this behalf by the Government. It has been submitted that the respondent School is being run by J&K Sainik School Society whereas other Sainik schools of the country are run by Sainik School Society of India which functions under the Ministry of Defence, Government of India. Therefore, the employees of J&K Sainik School, Mansbal, cannot claim parity with the employees of other Sainik schools of the Country.

**14)** The respondents have admitted the deliberations held in the meeting of Board of Governors and the meetings of the Executive Committee from time to time with regard to extension of pension scheme in favour of the employees of the J&K Sainik School, Mansbal but it has been submitted that the Finance Department has expressed its no objection to the grant of pensionary benefits to the employees of the J&K Sainik School, Mansbal, who were engaged before 01.10.2010 subject to the condition that the additional burden on this count is borne by the society out of its internal resources but because the respondent school does not have enough funds available from its internal resources, as such, it is unable to implement the pension scheme in favour of the employees of

the J&K Sainik School, Mansbal

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**15)** I have heard learned counsel for the parties and perused record of the case.

**16)** The petitioners have rested their claim on the basis that the employees of other Sainik schools of the Country are getting pension whereas the petitioners, who are similarly situated, have been left out of the pension scheme, as such, they have been discriminated against. The other ground on which the petitioners have based their claim is that the Chief Minister of the erstwhile State, who happens to be the Chairman of the Board of Governors of the respondent School, had approved the extension of benefit of pension to the employees of the J&K Sainik School, Mansbal, on the occasion of annual day celebrations held on 18.09.2005, as such, the respondents cannot now resile from the said decision.

**17)** The first issue that comes up for discussion is whether the approval granted by the then Chief Minister (Chairman of the Board of Governors) relating to extension of pension scheme to the employees of the J&K Sainik School, Mansbal, confers a right upon the petitioners to claim post-retirement pension. It is true that on the annual day celebrations of the J&K respondent school held on 18.09.2005, the then Chief Minister had approved extension of pension scheme to the

employees of the J&K Sainik School, Mansbal, on the pattern of State Government employees. It appears that the Commissioner/Secretary to the Government, Education Department had put up a note before the Hon'ble Chief Minister and proposed that before circulating the said decision among members of the Board of Governors, the action may be confirmed. The said action was confirmed by the Hon'ble Chief Minister, whereafter the decision of the Hon'ble Chief Minister (Chairman of the Board of Governors) was to be circulated amongst the members of the Board of Governors.

**18)** As per the Rules and Regulations of the J&K Sainik School, Mansbal, the Board of Governors is the Chief Executive Body of the J&K Sainik School, Mansbal, and it is empowered to take all decisions with regard to business of the school. The Chief Minister is only the Chairman of the Board of Governors. The Board of Governors includes other nine members. Unless a decision is approved by the Board, the same cannot be put into operation. Clause 1.10 of Chapter-I of the Rules and Regulations of the respondent School provides that if any business is required to be transacted or any action is required to be taken at any time when the Board is not meeting, such business may be transacted or such

action may be taken by the Chairman but report of such action has to be placed before the Board in its next meeting and the Board may ratify such action subject to modification and exceptions, if any, meaning thereby that Chairman of the Board of Governors does not have absolute authority to take a decision in any matter and even if he takes such decision, the same has to be ratified by other members of the Board of Governors. It is only for this purpose that the Commissioner/Secretary to the Government, Education Department had placed the matter before the Hon'ble Chief Minister for circulation of the said decision amongst the Board members.

19) As is clear from the pleadings of the parties, the Board of Governors of the J&K Sainik School, Mansbal, did not approve the said decision and instead it sought opinion of the Finance Department. The consistent stand of the Finance Department has been that it has no objection to the adoption of pension scheme for the employees of the J&K Sainik School, Mansbal but the additional burden has to be shouldered by the school from its own resources. As per the stand of the respondent school, it doesn't have resources to shoulder this burden. It is only because of this reason that the decision taken by the then Hon'ble Chief Minister

(Chairman of the Board of Governors) in the year 2005 could not be implemented till date. Thus, mere approval of the Chairman of the Board of Governors to the pension scheme in favour of the employees of the J&K Sainik School, Mansbal does not entitle the employees of the said school to pension benefits unless the decision is approved by the Board of Governors.

**20)** The next issue that crops up for determination of this Court in the facts and circumstances of the case is as to whether in denying the pensionary benefits to the employees of the J&K Sainik School, Mansbal, any of their rights stands violated that would warrant issuance of a Writ of Mandamus against the respondents.

**21)** It is a settled law that a Writ of Mandamus can be issued in favour of a person only if he establishes a legal right in himself and it can be issued only against a person who has a legal duty to perform but has failed or neglected to do so. The existence of a right is the basis for issuance of Writ of Mandamus. Thus, in case the petitioners succeed in showing that they have a right to receive pension and their said right has been violated by the respondents by denying them the pensionary benefits, a Writ of Mandamus can be issued by this Court.

**22)** In the present case, if we have a look at the Rules and Regulations applicable to the employees of the J&K Sainik School, Mansbal, Chapter-V of the said Rules and Regulations governs pay, allowances and fringe benefits of the employees of the J&K Sainik School, Mansbal. As per these Regulations, the employees are entitled to pay scales as mentioned in the appendix of the said Rules and Regulations. They are also entitled to periodical increments and dearness allowance. As per the Regulations, the employees are entitled to facility of meals with boys, rent free accommodation, rent free furniture, free electricity, servants and conservancy services, entertainment allowance, travelling/daily allowance outside the State, TA/DA for official assignments, honorarium, advance payment of leave salary, festival allowance, medical facilities for employees and families and the Contributory Provident Fund. The Rules and Regulations do not provide for payment of pension upon superannuation. Therefore, in terms of these Rules and Regulations, the employees of J&K Sainik School, Mansbal do not have any right to claim pension upon superannuation.

**23)** The question arises as to whether, in the aforesaid facts and circumstances, the petitioners have a legally enforceable right to claim pension against the respondents. A Division

Bench of this Court has, in the case of **State of J&K and Ors. Vs. Khursheed Ahmad Mir and Ors.** (LPASW No.10/2019 along with connected matters decided on 11.11.2021), while discussing the nature of right to receive retirement pension, made the following observations:

*“16. Right to pension is not a fundamental right guaranteed by any Article of Part III of the Constitution of India. It is a mere condition of service. Whether or not an employee of the Government or a Statutory Corporation is entitled to pension, is determined by the terms and conditions of his employment. These terms and conditions may be contractual or statutory in nature. No employee of the Government or of any Public or Private Corporation can claim retirement pension de hors the rules and regulations governing conditions of his service. True it is that under the J&K Civil Service Regulations, a Government employee, who was in position till issuance of SRO 400 dated 04.04.2010, was entitled to retirement pension in addition to retirement gratuity and other post retiral benefits. Even the Government employees who have been recruited/appointed after cutoff date mentioned in SRO 400 of 2010 are not entitled to pension which clearly means that even the Government employees who are appointed after a particular date are now not entitled to pension. It is true that pension is paid to a retiring employee in recognition of his long services rendered to the employer as also to take care of his post-retirement needs. Such assistance to retiring employee could be in different forms. Some employers make provisions for payment of annuity, some for monthly payment in the shape of pension and some by payment of a lump sum amount. Such amount could be in the shape of accumulated employees provident fund or retirement gratuity or some other form of ex gratia payments. It is thus not mandatory for an employer to necessarily make a provision for payment of monthly amount by way of pension to its retiring*

*employees, for, no such right inheres in an employee. The post-retirement payments to an employee, as already stated, would be governed by the terms and conditions of his service.....”*

**24)** In the same judgment, the Division Bench of this Court after taking note of the statement of law delivered by the Supreme Court in the case of **All India Rserve Bank retired Officers Associations vs. Union of India**, 1992 Supp. (1) SCC 644, **Pepsu Road Transport Corporation vs. Mangal Singh and Ors.**, (2011) 11 SCC 702, and **Committee for Protection of Rights of ONGC Employees vs. Oil and Natural Gas Commission**, (1990) 2 SCC 472, concluded as under:

*“We, therefore, conclude that no employee, as a matter of right, is entitled to claim retirement pension in addition to other post retiral benefits unless there is a specific provision in this regard made in the terms and conditions of his service. When we view and analyse the case of the respondents in the light of terms and conditions governing their service, we find no such provision made in this regard either in the memorandum of Association or Articles of Association or the SIDCO Service Regulations. This is our answer, plain and simple, to the question No.1.”*

**25)** From the foregoing analysis of the legal position, it is clear that the question as to whether employees of a particular institution are entitled to post retirement pension, would depend upon the rules and regulations and terms and conditions of service of the employees of the said institution.

If service conditions of the employees provide for payment of

post-retirement pension, then, of course, the employees have a right to claim pension from the employer but it is also open to the employer to make provision for post-retirement benefits, like gratuity, CPF and other terminal benefits. If such an arrangement is made by the institution for its employees in lieu of the pension, the same is also permissible in law.

**26)** In the present case, the Rules and Regulations applicable to the employees of the J&K Sainik School, Mansbal, provide for payment of Contributory Provident Fund to the employees. Besides this, the Rules and Regulations also provide for leave salary and other benefits. Thus, merely because these Rules do not provide for payment of post-retirement pension to the employees, would not give a right to the employees to claim the same from the respondents on the basis that the employees of other institutions or the employees of the Union Territory of J&K are getting pension. Thus, no enforceable right has accrued in favour of the petitioners to claim post-retirement pension from the respondents and, as such, no Writ of Mandamus can be issued in their favour and against the respondents.

**27)** Another aspect of the matter which has been highlighted by learned counsel for the petitioners. Same relates to the

claim of the petitioners that they are at par with the employees of Government of Union Territory of Jammu and Kashmir. It has been claimed that even the employees of the J&K Institute of Management and Public Administration (IMPA), J&K Khadi & Village Industries Board and J&K Sports Council have been extended the benefit of post-retirement pension, therefore, the petitioners cannot be discriminated against. The petitioners have also claimed parity with the employees of other Sainik schools of the Country and in this regard have placed reliance upon judgment of the Supreme Court in the case of **All India Sainik Schools Employees Association vs. The Defence Minister-cum-Chairman, Board of Governors, Sainik School Society, New Delhi and others**, AIR 1989 SC 88.

**28)** So far as the reliance placed by the petitioners upon the judgment of the Supreme Court in **All India Sainik Schools Employees Association** (supra) is concerned, the same is misplaced because in the said case, the Supreme Court has clearly held that the employees of the Sainik schools cannot be treated at par with the employees of Kendriya Vidyalayas merely because employees of both the institution perform similar type of duties. The Supreme Court has held that Kendriya Vidyalayas are more or less schools as understood

in common parlance and a Sainik school is intended  
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essentially to draw young men for being recruited into the National Defence Academy and it is not an ordinary school. The Supreme Court has further held that the two institutions are unequal and, therefore, their employees cannot be equated in the matters relating to service conditions.

**29)** J&K Sainik School, Mansbal, has been established by the erstwhile Government of Jammu and Kashmir in terms of Government Order No.1248-Edu of 1980 dated 05.08.1980. The said Government Order provides that the school shall be administered by a society registered under J&K Societies Act. As per the Rules and Regulations of the Society, the Chief Minister of the Jammu and Kashmir happens to be the Chairman of the Board of Governors whereas Minister for Education is its Vice Chairman, Chief Secretary J&K, Planning Commissioner, J&K, Financial Secretary, J&K, Educational Secretary, J&K, Education Commissioner, two eminent Educationists to be nominated by the Chairman, happen to be its members and the Project Director/Principal, J&K Sainik School, happens to be its Member Secretary. Thus, the constitution of J&K Sainik School, Mansbal, is entirely different from the constitution of other Sainik schools of the country.

**30)** It is true that the duties performed by the employees of the J&K Sainik School, Mansbal, are similar to the duties that  
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are being performed by the employees of other Sainik schools of the Country but only the similarity of duties performed by the two sets of employees working in two different institutions will not be good enough reason to apply same service conditions to the two sets of employees nor can these two sets of employees seek parity in service conditions. The Sainik schools in other parts of the Country are working under the Ministry of Defence, Government of India and the funding of said Sainik schools is from different source whereas the J&K Sainik School, Mansbal, is working under the control of Government of Union Territory of Jammu and Kashmir and it is being funded by the UT Government.

**31)** In view of the above, the employees of the J&K Sainik School, Mansbal, cannot claim parity with the employees of other Sainik schools of the Country. Similarly, the employees of the other institutions like IMPA, J&K Khadi & Village Industries Board and J&K Sports Council perform different duties which are in no way identical to the duties that are being performed by the employees of the J&K Sainik School, Mansbal. Merely because J&K Sainik School, Mansbal as well as IMPA, J&K Khadi & Village Industries Board and J&K Sports Council are funded by the Government of Jammu and Kashmir, would not itself be a reason to claim equality.

32) The Supreme Court has, in the case of **Union Territory Chandigarh v. Krishan Bhandari**, (1996) 11 SCC 348, held that equality can be claimed when there is discrimination by the State between two persons who are similarly situated. It has been further held that such discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12.

33) Again, a Division Bench of Delhi High Court has, in the case of **Union of India v. Association of Employees of Indian Institute of Mass Communication**, (2020) 1 AD (Delhi) 23, made the following observations:

*“3. The main issue flagged by the present Petitioners is with respect to the applicability of the Central Civil Services (Pension) Rules, 1972 (‘Pension Rules’) to Autonomous Bodies (‘ABs’). The case of the Petitioners is that these ABs are established by the Government to discharge activities related to governmental functions, but they are given the autonomy to do so in accordance with their own set of Memorandum of Associations/ Rules, etc. The said ABs are either registered under the Indian Societies Registration Act, 1860 or created by an Act of Parliament. The said ABs have specific objectives and they are governed by their own bye-laws/statutes. The employees of ABs are not Central Government servants.*

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***34.** The ratio of the decision in T.M. Sampath's case is fully applicable to the case in hand. The members of the Respondent No. 1 Association are claiming parity with the Central*

*Government employees on the ground that the Respondent No. 3 organisation is fully funded by the Central Government. The said ground has been negated by the Hon'ble Supreme Court to claim parity. The Ministry of Finance has reiterated in its counter affidavit filed before CAT that it had never agreed for introduction of the pension scheme in IIMC on the lines of the pension being provided to the Central Government employees. So, this Court cannot force the Petitioner No. 2 to give its concurrence for introduction of the pension scheme under CCS Pension Rules for the employees of Respondent No. 3 organisation.*

**35.** *The Respondent No. 3 had its own CPF based scheme for its employees. So, the benefit granted to Central Government employees for shifting from CPF to the pension scheme cannot be extended automatically to the employees of Respondent No. 3 organisation on the basis of OM dated 1<sup>st</sup> May, 1987 as Clause 7.2 of the said OM makes it very clear that the Administrative Ministries were advised to issue similar orders but no such order was issued by Petitioner No. 1, i.e. the Controlling Ministry of IIMC after consultation with the Petitioner No. 2. So, the benefit of the CCS (Pension) Rules, 1972 cannot be extended to the employees of Respondent No. 3.”*

**34)** From the foregoing analysis of the legal position, it is clear that merely because the duties performed by two sets of employees may be similar or the two sets of employees pertaining to two different institutions are being funded from a single source would not be in itself a ground to claim parity in service conditions between the two sets of employees. Thus, the petitioners cannot claim parity in service conditions pertaining to post-retirement pension either with the

employees of other Sainik schools of the Country or with other institutions which are funded by the Government of Union Territory of Jammu and Kashmir. The contention of the petitioners in this regard is without any merit.

**35)** For all what has been discussed hereinabove, I do not find any merit in these petitions. The same are dismissed accordingly. However, the dismissal of these writ petitions would not come in the way of Board of Governors of the J&K Sainik School, Mansbal, to extend the benefit of post-retirement pension to any set of employees of the school, if they deem it proper.



**SRINAGAR**

**11.12.2025**

“Bhat Altaf-Ul-Laq”

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|---------------------------------------------|------------|
| Whether the <b>Judgement</b> is speaking:   | <b>YES</b> |
| Whether the <b>Judgement</b> is reportable: | <b>YES</b> |