

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

Reserved on: 11.08.2025
Pronounced on: 26.08.2025

LPA No. 4/2023 in
WP (C) No. 747/2021

Mohammad Yousuf Mir, Aged 59 years
Son of Abdul Rahman Mir,
Resident of Nikas, Pulwama

...Petitioner(s)/Appellant(s)

Through: Mr. L. A. Latief, Adv.

Vs.

1. Union Territory of J&K through
Commissioner cum Secretary to Government,
Cooperative Department, Civil Secretariat,
Srinagar
2. Registrar Cooperative Societies, J&K Srinagar.
3. Additional Registrar Cooperative Societies,
Kashmir, Srinagar.
4. Deputy Registrar Cooperative Societies,
Pulwama, J&K
5. General Manager/Administrator,
Cooperative Super Market Limited, Pulwama.

...Respondent(s)

Through: Mr. Fahim Nissar Shah, GA

LPA No. 223/2022 in
SWP No. 872/2018

Abdul Majid Doshaba aged 57 years
S/o Ab. Khaliq Doshaba
R/o Model Town, Sopore, District Baramulla

...Petitioner(s)/Appellant(s)

Through: None

Vs.

1. Union Territory of J&K through
Commissioner cum Secretary to Government,
Cooperative Department, Civil Secretariat,
Srinagar

2. Registrar Cooperative Societies, Kashmir, Srinagar.
3. Deputy Registrar Cooperative Societies, Baramulla, (Administrator Marketing Society, Sopore)
4. Assistant Registrar Cooperative Societies, Block Sopore Transport Workers Cooperative Societies, Limited Sopore
5. President, Board of Management, Cooperative Marketing Society, Sopore. ...Respondent(s)

Through: Mr. Fahim Nissar Shah, GA

CORAM:

HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

J U D G M E N T

Per Shahzad Azeem, J.

I. SUBJECT MATTER OF CHALLENGE:

1. These intra-court appeals are directed against the judgment dated 15.12.2022 passed in WP (C) No. 747/2021 titled Mohammad Yousuf Mir vs. Union Territory of JK & Ors. and 15.09.2022 passed in WP (C) No. 872/2018 titled Abdul Majid Doshaba vs. State of J&K & Ors. respectively, passed by the learned Single Judge [“the Writ Court”] whereby the Writ Court has dismissed the above titled writ petitions. Both the appeals involving common question of law, therefore, came to be clubbed together and thus we propose to dispose of by this common judgment.

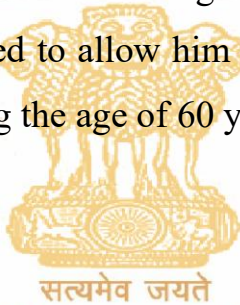
II. INTRODUCTION:

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2. Appellant-petitioner has thrown challenge to the order dated 15.03.2021 passed by the respondents, whereby the respondents have notified to the appellant the date of his superannuation as, 31.03.2021,

in terms of SRO 233 of 1988, i.e., going to attain the age of 58 years. The appellant has assailed the legality of order dated 15.03.2021 before the Writ Court mainly on the ground that Government has already taken a decision for enhancement of the age of the Government employees from 58 years to 60 years in terms of SRO 164 of 2014 and also respondent No. 2 vide order dated 01.08.2019 has approved the recommendation for enhancement of the age of the employees of the Cooperative Societies from 58 years to 60 years. Therefore, according to appellant-petitioner, the impugned order, whereby he has been notified the retirement age on attaining the age of 58 years, being contrary to law, thus, prayed to allow him to perform the duty beyond 31.03.2021 i.e., till attaining the age of 60 years.

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WP (C) No. 872/2018



3. Appellant-petitioner also being the employee of the Cooperative Societies filed a writ petition praying therein to allow him to continue till attaining the age of 60 years in terms of SRO 164 of 2014 read with the proposal of the Registrar Cooperative Societies, Kashmir, Srinagar on the basis of decision taken by the Board of Directors.

III. FACTS:

4. Briefly put, the appellants, Mohammad Yousuf Mir and Abdul Majid Doshaba came to be appointed to the common services of Cooperative Societies and with the passage of time have arisen to the position of Assistant Manager and Manager, respectively.

5. It is seen that the appellants were to retire on attaining the age of 58 years i.e., precisely on 31.03.2021 and 30.04.2018, respectively.

6. It appears that the respondents have exchanged certain communications on the basis of the representations of the employees of the Department for enhancement of their age from 58 years to 60 years and in this regard, beside proposal(s), there is a draft on record for

amendment of rules dealing with service conditions of the employees, but no final decision was taken by the respondents. Thus, in this backdrop, the appellants have approached the Writ Court and challenged the action of the respondents in retiring them at the age of 58 years, instead of 60 years i.e., at par with the Government employees of other departments, whose age of retirement came to be enhanced from 58 years to 60 years in terms of SRO 164 of 2014.

IV. PROCEEDINGS BEFORE THE WRIT COURT:

7. The Writ Court came to the conclusion that since the appellants were the employees of the Cooperative Societies/Institutions and were subject to the provisions of SRO 233 of 1988 which forms a Common Service Rule for the Cooperative Institution employees and the provisions of the said SRO have been occupying the field as on date as same having not been either modified, altered or repealed, therefore, the appellants are to be superannuated at the age of 58 years.

8. The Writ Court further held that the appellants cannot claim to remain in service of the respondents upto the age of 60 years on any ground or any basis including on the strength of SRO 164 of 2014, as admittedly the Service Conditions of the appellants are being governed under SRO 233 of 1988.

9. Therefore, on the above premise, the Writ Court had come to the conclusion that the writ petitions are misconceived, hence dismissed the writ petitions, vide impugned judgments, dated, 15.12.2022, and 15.09.2022, respectively.

V. THE CHALLENGE:

10. The appellants have thrown challenge to the impugned judgments passed by the Writ Court almost on similar lines, therefore, for the sake of brevity, suffice to say that the appellants mainly relied upon the Communication dated 01.08.2019, passed by the Registrar, Cooperative Societies, J&K, Srinagar, whereby, the recommendation for enhancement of the age from 58 years to 60 years was approved. Further, the appellants have placed reliance on SRO 164 of 2014,

whereby the Government has raised the superannuation age of the Government employees from 58 years to 60 years and also the appellants emphasized on the Draft Amendment Rules of the Societies.

11. Per contra, the learned counsel appearing for the respondents mostly relied upon the reasoning prevailed with the Writ Court in dismissing the writ petition. Therefore, we do not deem it proper to burden this judgment, with the submissions made in this regard, however, note of the same shall be taken hereafter at appropriate stage.

VI. THE ISSUE(S):

12. Having taken note of the rival submissions and navigated through the paper book, the point arises for our consideration is that;

as to whether without amending Statutory Rules governing the Service Conditions of the employees of the Cooperative Societies, merely on the basis of draft Rules or recommendations of the respondents, the retirement age of the employees of the Societies can be altered.

VII. ANALYSIS

13. Admittedly, the appellants were borne on the cadre strength of Jammu and Kashmir Cooperative Societies and thus their Service Conditions are governed under SRO 233 of 1988, which came to be promulgated in exercise of the powers conferred by Section 124 of the J&K Cooperative Societies Act, 1960 [for short “Act of 1960”] which came to be repealed by J&K Cooperative Societies Act, 1989 [for short “Act of 1989”], however, in terms of Section 177 of the Act of 1989, all the actions taken, order or notification issued, rule or bye-laws made under the provisions of the Act of 1960 are saved and deemed to have been done, taken, issued and made under the corresponding provisions of the Act of 1989. Therefore, it is abundantly made clear that Service Conditions of the appellants are governed by the Statutory Rules enacted in terms of the Act of 1960, and same stands saved by the Act of 1989.

14. Section 124 of the Act of 1960 deals with the power to make rules and Rule 124 (2) (o-1) and (o-2) specifically deals with the service, qualifications, remunerations, allowances, recruitment and other conditions of service of the officers and other employees of different classes of Cooperative Societies. Similarly, under the amended Act of 1989, Rule 176 deals with the power to make rules and Section 176 (xiv) and (xv) deals that the Service Conditions of the employees of different classes of Cooperative Societies.

15. It is in exercise of this Rule making power, the SRO 233 of 1988, was made by virtue of which, the service conditions of the employees of the Cooperative Societies have been laid down, which admittedly is occupying the field as on date.

16. Rule 13 of SRO 233 of 1988 deals that the matter related to retirement and resignation of the employees of Cooperative Societies and in this regard Rule 13(1) *inter-alia* provides that person appointed to the service shall retire on attaining the age of 58 years.

17. From the perusal of SRO 233 of 1988, we did not find that anywhere that the power is conferred or delegated to the respondents to alter the age of retirement of the employees of the Cooperative Societies. Therefore, mere making of recommendations by the respondents in no manner have the overriding effect over the provisions or SRO 233 of 1988, which came to be promulgated in exercise of power conferred under the Act of 1960 and saved by the Act of 1989.

18. Notwithstanding the above position of law, it is important to place on record that when the appeals have come up before the court on 16.09.2023, following order came to be passed:-

“1. LPA NO. 4/2023:

2. Learned counsel for the appellant submits that the appellant shall confine his claim only in respect of salary for the period for which he has worked beyond the age of 58 years till 60 years.

3. Mr. Faheem, learned GA shall report instructions as to whether the appellant has worked beyond the age of 58 years till 60 years or not.

4. List on 9.10.2023.

5. LPA NO. 223/2022:

6. Learned counsel for the appellant submits that the appellant shall confine his claim only in respect of salary for the period for which he has worked beyond the age of 58 years till 60 years.

7. Mr. Faheem, learned GA shall report instructions as to whether the appellant has worked beyond the age of 58 years till 60 years or not.

8. List as above.”

19. Again, vide order dated 09.12.2024, learned counsel for the respondents was directed to file affidavit along-with the relevant documents so as to find out as to whether appellants have performed the duties beyond 58 years. In compliance to the order dated 09.12.2024, respondents have filed affidavits in both the LPAs.

20. To be specific, in LPA No. 4/2023 titled Mohammad Yousuf Mir vs. Union Territory of JK & Ors, the deponent, Deputy Registrar, Cooperative Societies, District Pulwama deposed that the appellant Mohammad Yousuf Mir has attained the age of 58 years on 31.03.2021. He filed the writ petition and obtained interim order on 02.11.2021 and on strength of the order of the Writ Court, Mohammad Yousuf Mir continued to work till 20.12.2022. In so far as in LPA No. 223/2022, the appellant-Abdul Majid Doshaba is concern, the affidavit filed by Assistant Registrar Cooperative Societies, Block Sopore, reveals that the appellant-Abdul Majid Doshaba had attained the age of 58 years on 30.04.2018 and it is deposed that the appellant did not render any service beyond the age of superannuation as envisaged under SRO 233 of 1988.

21. Although we have touched the merits of case, nonetheless, the appellants are bound by order dated 16.09.2023, wherein they have undertaken to confine their respective claims only to the extent of salary for the period they worked beyond the age of 58 years.

22. Confronted with this situation, we have no doubt in our minds that the appellant, Abdul Majid Doshaba (in LPA No. 223/2022) did not perform duty beyond the age of 58 years in view of affidavit sworn by the Assistant Registrar Cooperative Societies, Block Sopore

in compliance to the order dated 09.12.2024, therefore, question of claim to the salary beyond 58 years did not arise.

23. Now coming to LPA No. 4/2023 filed by Mohammad Yousuf Mir. In his case, as per the affidavit sworn by Deputy Registrar, Cooperative Societies, District Pulwama, the appellant stated to have worked till, 20.12.2022 on the strength of the interim order passed by the Writ Court dated 02.11.2021, whereas the appellant-Mohammad Yousuf Mir as per the SRO 233 of 1988 was enjoined upon to retire on attaining the age of 58 years i.e., on 31.03.2021. Faced with this position, we have examined the writ record of WP (C) No. 747/2021 filed by appellant-Mohammad Yousuf Mir. Perusal whereof reveals that vide order dated 02.11.2021, the Writ Court directed that the appellant-petitioner shall be allowed to continue to work on his present post, however, at his own risk and responsibility.

24. Since we have dealt with the matter at length on the anvil of statutory provisions governing the service condition of appellants, therefore, once the appellant being conscious of the fact that as per the statutory rules governing the service conditions, the retirement age is 58 years, but still have volunteered to take the risk of performing the duties beyond 58 years, more so when the order of the Writ Court allowing him to continue was subject to at his own risk and responsibility, in that event he shall not be legally entitled to the salary for the period worked beyond the age of 58 years, because Statutory Rules do not permit to perform or continue in service beyond 58 years.

25. From the above discussion, what is deducible is that the reliance of the appellants on the inter-se departmental communications between the respondents in respect of proposal for enhancement of the age of retirement of its employees from 58 to 60 years as well as draft amendment rules are sans the statutory backing, hence are not binding and not enforceable by the court of law. On the other hand, SRO 233 of 1988 came to be promulgated in exercise of the power conferred under the Act of 1960, therefore, have the force of law and is binding on the appellants. In this view of the matter, we are of the opinion that so long SRO 233 of 1988 occupies the field, the service conditions of the

appellants/employees of Cooperative Societies cannot be altered in any manner on the strength of the resolution(s)/approval/recommendations of the respondents.

26. As a corollary to the above factual and legal position, we are of the opinion that the retirement age of the employees of the Cooperative Societies can be altered or enhanced only by making suitable amendments to the Statutory Rules (SRO 233 of 1988) governing the service conditions of the employees of the Cooperative Societies, and thus in the wake of this inbuilt inhibition, the work done beyond the age of 58 years particularly at the personal risk and responsibility do not entitle for the salary for such overstayed period.

VIII. RELIEF

27. For the foregoing reasons, we do not find any error of fact or law in the judgments under challenge, thus appeals are found to be without merit and, therefore, same are, accordingly, dismissed.

28. Let writ record be dispatched with due diligence.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR:
26.08.2025
Altaf

Whether approved for reporting? Yes