

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

WP (C) No. 450/2021

Reserved On: 17th of September, 2026.
Pronounced On: 22nd of September, 2026.
Uploaded On: 22nd of September, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Mohammad Amin Dar, (59 Years)
S/O Ghulam Ahmad Dar
R/O New Colony, Khanabal,
Harnag, Anantnag.

... Petitioner(s)

Through: -

Mr Arif Javaid Khan, Advocate.

V/S

1. **Union Territory of Jammu & Kashmir**,
Through its Chief Secretary,
Civil Secretariat,
Srinagar/ Jammu.

2. Principal Secretary to Government,
Public Works (R&B) Department,
Civil Secretariat, Jammu/ Srinagar.

3. Jammu & Kashmir Projects Construction,
Corporation Limited (JKPCC Ltd.),
Through its Managing Director,
Srinagar/ Jammu.

4. Managing Director,
Jammu & Kashmir Projects Construction,
Corporation Limited (JKPCC Ltd.),
Srinagar/ Jammu.

... Respondents

Through: -

Mr Waseem Gul, Government Advocate.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioner, through the medium of the instant Writ Petition filed under Article 226 of the Constitution of India, has challenged Order

No. 168 of 2020 dated 18th of December, 2020 issued by the Managing Director, JKPCC/ Respondent No.4 herein, whereby the Petitioner has been placed under suspension with immediate effect, with further direction to him to remain attached with the office of General Manager (K), JKPCC, Kashmir, during the suspension period.

02. The Petitioner claims that he was working as Head Assistant in the JKPCC at Unit 5th, Anantnag; that, in the year 2011, an FIR No. 07/2011 dated 11th of April, 2011 was registered by Vigilance Organization, Kashmir, Srinagar against one Mohammad Shafi Shah S/O Ghulam Mohi-ud-Din Shah R/O Changu, Doru, the then Assistant Manager, JKPCC Limited, under the provisions of the Prevention of Corruption Act and RPC for forging his academic qualification certificate and obtaining employment in JKPCC; that in the aforesaid FIR, the Petitioner was implicated for preparing the service book of the accused without going for verification of his testimonials, though, as per the Petitioner, he was not bound or authorized, in any manner, to direct the verification or re-verification of testimonials which had already been verified by the concerned DDO way back in 1991-92; that from the date of registration of aforesaid FIR in the year 2011 till date, the JKPCC has not even contemplated or initiated any departmental inquiry or even preliminary fact finding enquiry, so as to ascertain the veracity of the allegations of commission of offences or of alleged misconduct by its employees, in particular against the Petitioner herein.

03. Upon notice having been issued, the Respondents have filed their Reply/ Objections, *inter alia*, stating therein that the Petitioner herein, who was working as the then Establishment Clerk in the Respondent-JKPCC Unit 5th, Anantnag, came to be implicated as one of the accused in FIR No.07/2011 registered by Vigilance Organization, Kashmir (now Anti-Corruption Bureau), for the accusation of having prepared the service book of the main accused-Mohd. Shafi Shah, on fake and forged matriculation certificate, thereby hatching a criminal conspiracy which has been proved

without any shadow of doubt; that the Vigilance Organization, Kashmir (Anti-Corruption Bureau) have already conducted thorough investigations in the case and it was based on the charge sheet framed by them against the main accused and co-accused, i.e., Petitioner herein, that their names surfaced to be involved in the criminal conspiracy; that the charges against the Petitioner were proved by the Vigilance Organization Kashmir (Anti-Corruption Bureau) and the *Challan* of the case has been produced before the learned Anti-Corruption Court, Anantnag; that the Petitioner is facing trial in the aforesaid case and has not been, till date, exonerated from the charges levelled against him, as such, there is no question of reinstatement.

04. The Petitioner has, thereafter, submitted his Rejoinder to the Reply, stating therein that the Petitioner has been falsely implicated in case FIR No. 07/2011; that the aforesaid FIR has culminated into a charge sheet which stands filed after nine years; that during the pendency of these nine years, no departmental enquiry or preliminary fact finding was conducted by the Respondents, but, unfortunately, the Petitioner was placed under suspension by virtue of impugned Order dated 18th of December, 2020; that the main accused, namely, Mohammad Shafi Shah, was also placed under suspension w.e.f. May, 2011, who challenged the same through the medium of SWP No. 1379/2015; that the said Writ Petition came to be disposed of vide Judgment dated 1st of March, 2018, whereby the suspension order was quashed; that the said Judgment, on challenge, came to be upheld upto the level of Hon'ble Supreme Court ; that the Respondents, in utter disregard of principles of natural justice and without following the law on the subject, so much so, without conducting any enquiry in the matter, have placed the Petitioner under suspension.

05. Heard and considered.

06. The moot question that begs consideration of this Court in this Petition is, whether the impugned Order could be reviewed by this Court in exercise of the power of the judicial review or not.

07. The Hon'ble Supreme Court in a case titled "**Jayrajbhai Jayantibhai Patel V. Anilbhai Nathubai Patel & Ors., (2006) 8 SCC 200**", has held that the power of judicial review may not be exercised *qua* an administrative decision, unless the same is illogical or suffers from procedural impropriety or it shocks the conscience of the Court in the sense that it is in defiance of logic or moral standards, but no standardized formula, universal applicable to all cases, can be evolved and that each case has to be considered on its own facts, depending upon the authority that exercises of the powers, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affect the individual or society and though judicial restraint, *albeit* self-recognized, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant consideration or material or excludes from consideration the relevant material or it is so absurd that no reasonable person could have arrived at it on the given material may be struck down.

08. Now, coming to the issue of suspension, as involved in this Petition, it is settled position of law that the word "**suspension**" refers to that state when an employee temporarily is debarred by his employer for the time being from performing his official functions or enjoying certain privileges. When an employee is placed under suspension by an employer, during the period of suspension, the employee is essentially kept away from exercise of his official functions and enjoyment of those privileges. The main purpose of placing an employee under suspension by his employer is temporary and is not a permanent feature envisaged for the purposes of completing an enquiry or trial in respect of the conduct of an employee.

09. The Hon'ble Supreme Court in a case titled "**State of Orissa V. Bimal Kumar Mohanty, AIR 1994 Supreme Court 2296**" has held that it would not be as an administrative routine or an automatic order to suspend an employee, but it should be on consideration of the gravity of the alleged misconduct or the nature of allegations imputed to the delinquent

employee; and that the suspension must be a step in aid to the ultimate result of the investigation or inquiry; and that the authority must keep in mind public interest of the impact of delinquent's continuation in office, while facing the departmental enquiry or trial of a criminal charge.

10. In **“Union of India V. Ashok Kumar Agarwal, 2013 (16) SCC 147”**, the Hon'ble Apex Court, while summarizing the concept of suspension, has held that a suspension order can be passed by the competent authority considering the gravity of the alleged misconduct *viz.* serious act of omission or commission and the nature of evidence available, however, facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. It was further held that the suspension order should be passed only where there is strong *prima facie* case against the delinquent and the charges, if proved, would ordinarily warrant imposition of major punishment, i.e., removal or dismissal from service or reduction in rank, etc.

11. Again, in case titled **“Ajay Kumar Choudhary V. Union of India, (2015) 7 SSC 291”**, the Hon'ble Supreme Court, at Paragraphs No. 11, 12, 20 and 21, has held as under: -

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even long delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity,

much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused, But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law jurisprudence, antedating even the Magna Carta of 1215, which assures that –“We will sell to no man, we will not deny or defer to any man either justice or right”. In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

20. It will be useful to recall that prior to 1973 and accused could be detained for continuous and consecutive period of 15 days, albeit, after judicial scrutiny and supervision. The code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorize detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence, Drawing support from the observations contained of the Divisions Bench in Raghbir Singh V State of Bihar and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CRPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charges-sheet has not been served on the suspended persons. It is true that the proviso to Section 167(2) CrPC postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should be also be placed on the same pedestal.

21. We, therefore, direct that the currency of a suspension order should next extend beyond three months if within this period the memorandum of charges/charges-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person or handling records and documents till the stage of his

having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

12. Having regard to the afore-stated exposition of law and reverting back to the facts of the case on hand, admittedly, the Petitioner herein came to be placed under suspension on 18th of December, 2020, whereafter, he has retired from service upon reaching the age of superannuation on 31st of May, 2021. It is also not in dispute that charge-sheet stands filed before the Anti-Corruption Court, Anantnag, in connection with the case with reference to which the Petitioner was placed under suspension. In such a situation, the question that arises is as to whether the principle of law laid down by the Apex Court in **Ajay Kumar Choudhary’s** case (*supra*) would be extendable and applicable to the case of the Petitioner herein *qua* the impugned Order of suspension.

13. True it is that the scope of judicial review in the matter of suspension of an employee is limited and that the matter of suspension, its continuation or revocation is the exclusive domain of the employer, yet the principles of law laid down by the Apex Court in **Ajay Kumar Choudhary’s** case (*supra*) cannot be overlooked having regard to the peculiarity of the facts and circumstances of the case on hand, more particularly, having regard to the fact that the impugned suspension Order of the Petitioner came to be issued way back in the year 2020 and that, admittedly, no departmental enquiry parallel to the filing of the charge-sheet has been initiated by the Respondents which would get prejudiced by termination of the suspension of the Petitioner and also that the Petitioner

has already retired from service upon reaching the age of superannuation in May, 2021.

14. It is trite in law that, although suspension is not a punishment, but once a suspension is prolonged for almost six years and without any departmental enquiry, as in the present case, then it amounts to punishment, inasmuch as, it has very strong stigmatic social connotations. In the considered opinion of this Court, the Respondents have failed to discharge their obligations to proceed in the matter in accordance with law by issuing charge sheet and conducting inquiry after placing the Petitioner under suspension for almost six years now and no plausible reasons have been explained for such a delay for not framing the charge sheet, even after a lapse of almost six years.

15. Viewed thus, the present Petition is **allowed** and the impugned Order No. 168 of 2020 dated 18th of December, 2020, whereby the Petitioner was placed under suspension, is hereby quashed. The Respondents are directed to reinstate the Petitioner back into service within a period of six weeks from the date of this Order notionally, settle his suspension period, release all consequential benefits in his favour and process his case for grant of pensionary benefits as per Rules governing the field.

16. Writ Petition is, thus, **disposed** of on the above terms, along with any CM(s) pending therewith.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

September 22nd, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting?

Yes.