



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

Reserved on: 28.04.2026

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

WP(C) No.3399/2023

AULTAF AHMAD SHAH

...PETITIONER(S)/APPELLANT

*Through: - Mr. Jehangir Iqbal Ganie, Sr. Advocate
with Ms. Gousia Tabasum, Advocate,
Mr. Owais, Advocate.*

Vs.

J&K BANK LTD. & ORS

...RESPONDENT(S)

Through: - Mr. Shafqat Nazir, Advocate.

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

JUDGMENT

1) The petitioner, through the medium of present petition, has challenged decision of the respondents whereby the period of his suspension has been treated as not part of his actual service. This has been done under the garb of order dated 20th December, 2019, which provides that the period during which the petitioner has remained under suspension shall not be treated as period spent on duty but shall qualify for leaves, increments and retirement benefits. A further direction commanding the respondents to allow the petitioner to participate in the process initiated for promotion to the post of Assistant Manager under

WP(C) No.3399/2023



Seniority-cum-Normal/Screening Channel, as notified vide Circular id 1587 dated September 21, 2023, has also been sought.

2) The facts emanating from the pleadings of the parties are that the petitioner was appointed as Banking Associate on contractual basis in the year 2013 for a period of two years and pursuant to completion of two years of contractual term, his services were regularized with effect from 17.12.2018 vide Circular id No.6844 dated January 2, 2016 issued by the respondent-Bank. Upon successful completion of six months' probation, the services of the petitioner were confirmed in terms of Circular id 7791 dated 25th November, 2016.

3) It seems that vide Circular id 9993 dated 22nd October, 2018, the petitioner was placed under suspension pending disciplinary proceedings, whereafter he was served with a charge sheet relating to gross misconduct and minor misconduct. After holding an enquiry, the Enquiry Officer submitted his report before the Disciplinary Authority. Vide order dated 20.12.2019, issued by the Disciplinary Authority, penalty of withholding of one future increment of the petitioner for a period of six months was imposed and he was also warned to be extra cautious in future in discharge of his duties.



4) After imposition of the aforesaid minor penalty, the petitioner was reinstated in service in terms of the impugned order dated 20th December, 2019. While reinstating the petitioner in service, the Disciplinary Authority has ordered that the period, during which the petitioner has remained under suspension, shall not be treated as the period spent on duty but shall qualify for leaves increments and retirement benefits.

5) It seems that vide Circular id 15876 dated 21st September, 2023, the respondent-Bank initiated the process for promotion from Banking Associates to Assistant Manager cadre and the employees of the Bank were asked to submit their willingness through People System as per the schedule notified. As per the eligibility criteria for promotion to the post of Assistant Manager under Seniority-cum-Normal/Screening Channel, an employee has to possess seven years regular service as Banking Associate.

6) The petitioner is stated to have submitted his willingness through People System. However, he was shown to be eligible only under Fasttrack-cum-Merit Channel and not under Seniority-cum-Normal/Screening Channel. When the petitioner approached the respondents, he was informed that because the period of his suspension has not



to be treated as the period spent on duty, therefore, the same has to be excluded for the purpose of counting his regular service as Banking Associate. Thus, he was held to be ineligible for promotion to the post of Assistant Manager under Seniority-cum-Normal/Screening Channel.

7) The petitioner has challenged the impugned action of the respondents on the grounds that the same is illegal and unconstitutional as the same amounts to break in his service, which is not countenanced by law. According to the petitioner, the effect of treating his period of suspension as period not spent on duty is that he would not be entitled to back wages and nothing more. It has been contended that the said period cannot be excluded for the purpose of seniority and promotion as the same would be without any logic and would amount to imposition of second punishment upon him, which is impermissible in law.

8) The respondent-Bank has contested the writ petition by filing its reply thereto. In the reply, it has been submitted that eligibility for being considered under Seniority-cum-Normal/Screening Channel is seven years of actual regular service as Banking Associate whereas the petitioner falls short of said length of service. It has been contended that the petitioner is not entitled for being considered for



promotion to the post of Assistant Manager under Seniority-cum-Normal/Screening Channel.

9) It has been submitted that Rule 90 of the Officers Service Manual, 2000, empowers the Disciplinary Authority to make specific order with regard to treatment of period of suspension of a delinquent employee. It has been contended that in terms of Clause (b) of the said Rule, the competent authority is vested with power to treat the period of suspension as duty for a specific purpose, namely, retirement benefits, increments or leave etc. or it may order that the period of absence from duty shall be converted into leave of whatever kind due in a case where the employee is not fully exonerated. According to the respondents, because the petitioner was imposed minor penalty of withholding of one future increment for a period of six months, therefore, he was not fully exonerated. The competent authority, as such, was justified in treating the period of suspension of the petitioner as duty only for specific purposes which, in the instant case, does not relate to counting of regular service of the petitioner.

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

11) So far as the facts, which are necessary for disposal of the present petition, are concerned, the same are not in



dispute. The only issue which is required to be determined in this case is as to whether the period of suspension of the petitioner is not be counted towards his regular service having regard to the fact that the competent authority has specifically provided that the said period shall not be treated as one spent on duty but shall qualify for leave, increments and retirement benefits.

12) Rule 90(b) of the Officers Service Manual, 2000, vests power with the competent authority to treat the period of suspension as duty for specific purposes, namely, retirement benefits, increments or leave etc. in a case where the employee has not been fully exonerated. In the present case, admittedly the petitioner has not been fully exonerated of the charges but he has been found guilty of minor misconduct and has been imposed minor punishment of withholding of one future increment for a period of six months.

13) In case impugned order dated 20.12.2019 is interpreted in a manner to convey that the period of suspension of the petitioner would not count for his regular service, it would amount to wiping out of the said period from his service career and would have serious consequences upon his service career. Once the competent authority has treated the period of suspension of the



petitioner as duty for the purpose of leave, increments and retirement benefits, writing off of the said period from his regular service does not align with the intention of the Disciplinary Authority. Taking a contrary view would amount to inflicting a second punishment upon the petitioner without following due process of law, which is impermissible in law.

14) In the above context, reference may be made to a Division Bench judgment of the High Court of Rajasthan High Court in the case of **Brij Lal Bundel vs. State of Rajasthan & Anr.** 2006 SCC OnLine Raj. 215, wherein, in somewhat similar circumstances, the Court was dealing with a situation where the period of suspension was treated as period spent on duty only for the purposes of pension and the employee was denied annual increment. The Division Bench, while considering the matter, made the following observations:

“18. The period of absence/suspension is normally treated as period spent on duty for the purpose of pension. If the period is not treated as on duty, the result would be break in service which would cause chain of evil consequences and may spell disaster for the government servant as it would wipe out the entire past service. If the period is to be treated as a period spent on duty so that there is no break-in-service, it is un-understandable as to how the government servant can be deprived of the annual grade increments falling due during the relevant period after his reinstatement. Pension is concomitant of pay and denial of increment would mean reduced pension. Thus, if the period is to be treated as period



spent on duty for the purpose of pension, it would mean that the period of suspension must be counted for the purpose of grant of annual grade increment.

19. Another aspect of the case is that denial of annual increment would amount to withholding of increments which is a punishment specified under Rule 14 of the Rajasthan Civil Services' (Classification, Control and Appeal) Rules, 1958 ('the CCA Rules'). It goes without saying that no punishment can be imposed without observing the formalities and following the procedure laid down in Rules 16 and 17 of the CCA Rules, as the case may be. Withholding of increment being a minor punishment, the procedure laid down in Rule 17 will have to be followed. But, if the term "for any specified purpose" is interpreted so as to include grant of increment and power is conceded to the competent authority to deny annual increment falling due during the suspension period even after reinstatement of the government servant, it would mean in effect and substance, imposing the punishment of withholding of increment without following the procedure laid down in Rule 17. Obviously, this cannot be done."

15) A Division Bench of Delhi High Court has, in the case of **Vinod Kumar vs. G. N. C. T of Delhi and Ors.** 2023 SCC OnLine Del 6011, while dealing with the stand taken by the respondents in the said case that the period of suspension once treated as period not spent on duty, the same has to be treated so for all intents and purposes, observed as under:

35. *Now the question would be whether the petitioner is entitled to seniority in line with his batch-mates. The stand taken by the respondents is that as his period of suspension was treated as 'period not spent on duty' for all intents and purposes, the petitioner cannot be granted seniority and consequential benefits. Such a stand, if accepted, would have serious consequences, inasmuch as, the period between November 18, 1996 and July 16,*



2012 would be written off in the career of the petitioner, significantly impeding his career advancement. Such a situation cannot be allowed to happen, more so when the petitioner has been acquitted by the Appellate Court and reinstated in service from the date of his initial dismissal. A necessary corollary of such reinstatement shall be that even the period treated as 'not spent on duty' will be counted for the purpose of seniority, and also for all consequential benefits. The period treated as 'not spent on duty' must be construed for the purposes of back wages only and not for the purposes of seniority, promotion etc.

36. *On account of the foregoing, we are of the view that the period from November 18, 1996 to July 16, 2012 cannot be treated as period not spent on duty for all intents and purposes. The period shall be counted for assessing and granting seniority and consequential benefits, including promotion to the petitioner. However, on the basis of the principle of 'no work, no pay', he would not be entitled to any pay or allowances except subsistence allowance that is to be granted to him on the strength of this order.*

16) From the foregoing analysis of the legal position, it is clear that once the Disciplinary Authority in the present case has taken a decision that the period of suspension undergone by the petitioner would qualify for leaves, increments and retirement benefits, it has to be inferred that the said period would count for regular service of the petitioner as well. It is only for the purposes of back wages that the said period would not count. Taking any contrary view would amount to serious prejudice to the petitioner, inasmuch as he would be subjected to evil consequences



flowing from wiping out of the period of suspension from his past service. The same cannot be done without adoption of due process of law. The impugned order dated 20th December, 2019, has to be interpreted in a manner so that the same does not amount to inflicting second punishment upon the petitioner by writing off the period of suspension from his service career. Thus, the said period has to be treated as actual service for the purpose of preventing break in service of the petitioner.

17) Once the said period is treated as regular service of the petitioner, he becomes eligible to participate in the selection process for the post of Assistant Manager under Seniority-cum-Normal/Screening Channel. In terms of order dated 29.12.2023 passed by this Court, the petitioner was permitted to participate in the selection process and to appear in the interview for selection by promotion. Pursuant thereto, the petitioner has appeared in the interview. However, the respondents have taken a stand that the petitioner did not fall within the merit.

18) Learned Senior Counsel appearing for the petitioner has produced a copy of order dated 7th July, 2025, passed in WP(C) No.2051/2024 titled 'Mir Kifayat-ullah and others vs. J&K Bank Ltd. and another', wherein it was noted by the Court that there were less number of candidates



participating in the selection process to the posts of Assistant Manager under Seniority-cum-Normal/Screening Channel as against the available vacancies and, therefore, it was not open to the respondent – Bank to shortlist the candidates in the ratio of 1:5. From the reading of said order, it becomes clear that the respondent-Bank was having more vacancies of Assistant Managers under Seniority-cum-Normal/Screening Channel than the number of candidates participating in the selection process. If that be so, the respondent – Bank cannot reject the claim of the petitioner for promotion on the ground that he did not fall within merit because there was no question of going for interview in view of the order passed by this Court in **Mir Kifayat-ullah's** case (supra).

19) Learned Senior Counsel, appearing for the petitioner, has also submitted that even at present the respondent-Bank has the vacancies of Assistant Managers under the category of Seniority-cum-Normal/ Screening Channel and in this regard, fresh advertisement notice has been issued by the respondent-Bank in terms of Circular id 18622 dated 8th April, 2026. This position is not being disputed by the learned counsel appearing for the respondent – Bank. In view of this, the respondent – Bank is under an obligation to consider the case of the petitioner for promotion to the



post of Assistant Managers under Seniority-cum-Normal/ Screening Channel having regard to the fact that this Court has found him eligible to participate in the selection process.

20) Accordingly, the writ petition is disposed of with the following directions:

- (I) Impugned order dated 20th December, 2019, shall be construed in a manner so as to count the period of suspension of the petitioner towards his regular service. The said period, however, has to be treated as period not spent on duty for the purposes of release of arrears of back wages in his favour.
- (II) The petitioner is held eligible to participate in the selection process for the post of Assistant Managers under Seniority-cum-Normal/ Screening Channel and the respondents are directed to consider his case for promotion to the said post in accordance with the rules and in case he is found fit, he shall be accorded promotion to the post in question from the date his immediate junior has been promoted.

(Sanjay Dhar)
Judge

SRINAGAR
08.05.2026
“Bhat Altaf-Ul-Hasan”

Whether the **judgment** is reportable: **YES/NO**