

**HIGH COURT OF JAMMU AND KASHMIR,  
JAMMU**

**Case No SWP No. 1702/ 2007**

**Dt: 26-08-2009**

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**Ram Krishan VS STATE & ORS**

**CORAM:**

**HON'BLE MR. JUSTICE NISAR AHMAD KAKRU-JUDGE.**

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**Whether approved for reporting? Yes.**

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**FOR THE PETITIONER/s : Ms Neha Bakshi, Advocate**

**FOR THE RESPONDENT/s: M/s S. Hakim, Dy A.G and Deepika Mahajan, Adv**

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1. One Shri Ram Krishan S/ Shri Prabhu Dayal R/O Kartholi, Sarore Factory, Bari Brahmana, Tehsil and District Samba, having worked as a Chairman on the establishment of the Forest Department until attainment of age of 60 years, was constrained to invoke the writ jurisdiction of this Court to command the respondents to settle his claim of pension, and other benefits. During the currency of the writ petition, a communication came to be issued by the Divisional

Forest Officer bearing No. 487-91/Dem-I dated 23.10.2007 which was followed by a communication of respondent No.4 Accountant General bearing No. PNRJ-1/131244/B/2007-08/768-72 dated 02.11.2007, fall out being, recovery of Rs 1,18,251/- from the petitioner because of overstay in service for two years, consequently amendment to the writ petition sought by medium of CMP No. 235/2008 which was allowed vide order dated 11.02.2008.

2. Despite opportunity the respondents excepting the Accountant General did not file the counter. As ill luck would have it, writ petition could not witness disposal during the life time of the petitioner, resultantly substituted by his widow Smt Pushpa Devi, his sons S/Shri Rakesh Kumar and Suresh Kumar as writ petitioners. Responding to the writ sought, the respondents have opted for disclaimer on the ground that the petitioner was to function on the establishment of the State only upto the age of 58 years but had continued till 60 years age, which he

could not have because Chainman does not fall within the inferior service in terms of Schedule-II of the Jammu and Kashmir Civil Services Regulation Vol-II.

3. The material brought on record makes it clear that the petitioner was allowed to continue beyond 58 years by the respondents on their own, apparently on the basis of an impression that he falls within the definition of inferior service which factual position is gatherable from the recommendations made by none other than the functionaries of the State, the immediate officers of the deceased-petitioner, seeking regularization of his overstay. In addition to that the respondents have not joined issue on the score that the work was extracted from the deceased and he was paid salary at the end of every month without break during overstay like his colleagues. It is also crystal clear that the deceased employee has in no manner whatsoever contributed to his over stay of two years. In the given facts and circumstances of the case on hand, there is no cause much less justifiable

one for recovery of two years' salary disbursed to the deceased during his continuation in the service but there is no justification for calculating the period of overstay towards his pensionary benefits.

4. In the aforementioned backdrop, the impugned communications of the Divisional Forest Officer bearing No. 487-91/Dem-I dated 23.10.2007 and of the Accountant General bearing No. PNRJ-1/131244/B/2007-08/768-72 dated 02.11.2007 are quashed to the extent of recovery of an amount of Rs.1,18,251/- directed against the deceased employee. As a corollary, it shall be obligatory upon the respondents-1 to 3 to settle the pension case of the petitioner without any delay ensuring delivery of the pension papers within eight weeks in the office of the Accountant General, who shall have four weeks thereafter to pass appropriate orders. Should the respondents fail to settle the case as directed, in such eventuality, the petitioner shall be entitled to interest @ 6% per annum.

5. **Disposed** of along with connected CMP(s).

However, no order as to costs.

**(NISAR AHMAD  
KAKRU)**

**JUDGE**

**JAMMU  
Maini\* Secy  
26-08-2009.**