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

Reserved on: 20.08.2026
Pronounced on: 29.08.2026

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

WP(C) No.2269/2024

SAADUT HUSSAIN PAMPORI

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Shariq J. Reyaz, Advocate, with
Ms. Humaira Sajad, Advocate.

Vs.

UT OF J&K AND ORS. **...RESPONDENT(S)**

Through: - Mr. Mohsin Qadiri, Sr. AAG, with
Ms. Maha Majeed, Assisting Counsel.

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

JUDGMENT

1. The petitioner, through the medium of present petition, has challenged order dated 15.07.2024, issued by respondent No. 3, whereby he has been dismissed from the service of the respondent-Bank with immediate effect.

2. As per case of the petitioner, he was appointed as a Computer Engineer with the respondent-Bank on 16.06.1995 on probationary basis and, after successful completion of the probation period, his services were confirmed by the respondent-Bank on 23.10.1997. The petitioner held various positions in the respondent-Bank

including In-charge, Technology Training Centre of the Bank from 2003 to 2006, Head of IT Operations of the Bank from 2006 to 2010, Senior Executive Manager Technology from 2010 to 2015, Officer on Special Duty to Chief Minister, J&K, from 2016 to 2018, Assistant Vice President (Technology) from 2018 to 2022 and Deputy General Manager from 2022 till the issuance of the impugned order. According to the petitioner, his Annual Performance Reports bear testimony to his merit and expertise.

3. It has been submitted that on 15.04.2024, an order was issued by the respondent-Bank whereby the petitioner was placed under suspension pending investigation into misconduct. According to the petitioner, he was not supplied with any grounds for his suspension, nor any inquiry was initiated against him but in the meantime, on 15.07.2024, the impugned order came to be issued by the competent authority by invoking Clause 12.29 of the Officers Service Manual (OSM), whereby the petitioner was dismissed from service without holding any inquiry on the basis of an advice tendered by respondents No.4 and 5. It has been submitted that as per the impugned order, the petitioner is stated to be involved in terrorist/anti-national activities.

4. The petitioner has challenged the impugned order on the grounds that the same is illegal and arbitrary, inasmuch

as the conditions prescribed in Clause 12.29 of the OSM for invoking the drastic powers given to the Managing Director and CEO of the respondent-Bank under the said Clause are not fulfilled in the present case. It has been contended that neither any FIR has been registered against the petitioner nor any investigation has been conducted by any State/UT/Central Investigating Agency into the allegations regarding involvement of the petitioner in terrorist/anti-national activities and without undertaking such exercise, the power vested under Clause 12.29 of the OSM could not have been invoked.

5. It has further been contended that a plain reading of Clause 12.29 of the OSM would reveal that the Principal Secretary or the Director General of Police can tender advice to the respondent-Bank only if involvement of an employee of the Bank in anti-national activities is established after holding an investigation but, in the instant case, according to the petitioner, no such investigation has taken place. Therefore, it was not open to respondent No.5 to tender advice to respondent No.2 for dismissal of the petitioner, who, in turn, could not have acted upon such advice of respondent No.5. Thus, contention of the petitioner is that the exercise of passing of the impugned order is vitiated in

law as the same is in clear violation of the conditions prescribed under Clause 12.29 of the OSM.

6. In the reply affidavit filed by the respondent-Bank, it has been submitted that, as per Clause 12.29 of the OSM, once advice is received by the respondent-Bank from the competent authority of the Government regarding dismissal or removal of an employee, such employee has to be terminated or removed from the services of the Bank. In the present case, advice was received by the respondent-Bank from respondent No.5 for termination of services of the petitioner as he was found to be involved in anti-national activities warranting invocation of Clause 12.29 of the OSM. It has been submitted that the respondent-Bank has only followed the advice of the designated authority of the Government of Jammu and Kashmir and issued the impugned order which, according to the Bank, has been passed in accordance with the rules occupying the field. It has also been contended that the power vested with the respondent-Bank in terms of Clause 12.29 of the OSM is analogous to the power vested with the competent authority under Article 311(2) proviso (c) of the Constitution of India. It has been submitted that the respondent-Bank has a reasonable belief that the designated competent authority of the Government of Jammu and Kashmir has applied its

mind to the material collected during investigation, whereafter the advice was tendered to the respondent-Bank for termination of services of the petitioner.

7. A joint reply has been filed by respondents No.1, 4 and 5 to the writ petition. In the reply, it has been submitted that the impugned order has been passed strictly in consonance with the legal framework provided under Clause 12.29 of the OSM, which carves out a legally sanctioned exception in cases involving national security and allied considerations, in contrast to the general procedural safeguards available to employees of the respondent-Bank with respect to professional misconduct in the ordinary course of business. It has been contended that the impugned action is firmly rooted in the regulatory service rules governing the J&K Bank and is founded upon overriding and compelling considerations of national security. It has further been contended that the petitioner has no cause of action because, as per Clause (6) of the appointment order issued in his favour, it has been made clear that the petitioner shall be governed by the service rules of the Bank in force.

8. It has been contended that the competent authority of the Government of J&K, in terms of Clause 12.29 of the OSM, assessed the material and found involvement of the petitioner in anti-national activities and, keeping in view the

national security considerations, an advice was tendered to dismiss the petitioner without conducting any departmental inquiry. It has been submitted that the power under Clause 12.29 of the OSM is akin to the power exercisable under Article 311(2)(c) of the Constitution of India and, as such, exercise of the said power falls outside the scope of judicial review, particularly when no mala fides or extraneous considerations have been pleaded or established by the petitioner. It has further been contended that this Court cannot reappreciate the confidential and sensitive material which has already been examined by the competent authorities of the Government as well as the competent authority of the Bank. It has been submitted that the petitioner has been found actively running smear campaigns against India by downplaying the lawful actions of the security forces and that he has tangible links with foreign elements hostile towards India, which surfaced during discreet investigation conducted in the present case.

9. While admitting that investigation conducted by State/UT/Central Investigating Agency is a prerequisite under Clause 12.29 of the OSM, respondents No.1, 4 and 5 have contended that the impugned order is based upon discreet investigation conducted by the J&K Police, which revealed that the petitioner was directly involved in anti-

national activities and activities prejudicial to national security which posed threat to the sovereignty, security and integrity of the country. This investigation report was shared by Police Headquarters with the Government of J&K in accordance with the procedure mandated under Clause 12.29 of the OSM. According to the respondents, there was credible material available with the competent authority warranting action under Clause 12.29 of the OSM without conducting any departmental proceedings. It has been contended that the fact that the aforesaid Clause mandates termination of employees who are even indirectly involved in anti-national activities shows that the investigation referred to in the said Clause does not require a prosecutorial-type evidence, nor does it mandate prior registration of an FIR. In short, the contention of the respondents is that Clause 12.29 of the OSM is in *pari-materia* with Article 311(2)(c) of the Constitution of India.

10. It has also been contended that the investigation contemplated under Clause 12.29 of the OSM is not the investigation as defined under Section 2(j) of the BNSS. It has further been contended that even as per the said provision, registration of an FIR is not a precondition for undertaking investigation and, therefore, contention of the petitioner is misconceived.

11. It has further been contended that the petitioner has not laid any challenge to the order of suspension, which, shows that he is aware of his own wrongdoing. It has been contended that the petitioner is involved in anti-national activities and his activities include propagation of secessionist ideology and instigation of unrest through organized anti-India campaigns, including the hashtag campaign "#Torture Kashmir", which, was aimed at creating false narratives against the sovereignty, unity and territorial integrity of the country and the same has resulted in unrest in Kashmir in the years 2008, 2010 and 2016.

12. I have heard learned counsel for the parties and perused record of the case, including the confidential record produced by learned counsel for the respondents.

13. Before proceeding to deal with the rival contentions of the parties, it would be apt to notice the legal position as regards the scope of judicial review of this Court in matters relating to dismissal of an employee in the interests of security of the State without holding an inquiry. The legal position in this regard has been settled by the Supreme Court in its various judgments delivered from time to time.

14. The Supreme Court has, in the case of **Union of India and another** v. **Balbir Singh and another**, (1998) 5 SCC 216, while examining the scope of judicial review in respect

of an order of dismissal issued under clause (c) of the second proviso to Article 311(2) of the Constitution, observed as under:

> ***7.*** *In the case of A.K. Kaul v. Union of India this Court has examined the extent of judicial review permissible in respect of an order of dismissal passed under second proviso clause (c) of Article 311(2) of the Constitution. This Court has held that the satisfaction of the President can be examined within the limits laid down in S.R. Bommai v. Union of India. The order of the President can be examined to ascertain whether it is vitiated either by mala fides or is based on wholly extraneous and/or irrelevant grounds. The court, however, cannot sit in appeal over the order, or substitute its own satisfaction for the satisfaction of the President. So long as there is material before the President which is relevant for arriving at his satisfaction as to action being taken under clause (c) to the second proviso to Article 311(2), the court would be bound by the order so passed. This Court has enumerated the scope of judicial review of the President's satisfaction for passing an order under clause (c) of the second proviso to Article 311(2). The Court has said, (1) that the order would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds; (2) even if some of the material on which the action is taken is found to be irrelevant the court would still not interfere so long as there is some relevant material sustaining the action; (3) the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President; (4) the ground of mala fides takes in, inter alia, situations where the proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power; (5) the court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Council of Ministers are the best judge of the situation and that they are also in possession of information and material and the Constitution has trusted their judgment in the matter; (6) this does not*

> *mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive. (cf. also Union Territory, Chandigarh v. Mohinder Singh.*
>
> ***8.*** *If an order passed under Article 311(2) proviso (c) is assailed before a court of law on the ground that the satisfaction of the President or the Governor is not based on circumstances which have a bearing on the security of the State, the court can examine the circumstances on which the satisfaction of the President or the Governor is based; and if it finds that the said circumstances have no bearing whatsoever on the security of the State, the court can hold that the satisfaction of the President or the Governor which is required for passing such an order has been vitiated by wholly extraneous or irrelevant considerations.*

15. From a plain reading of the aforesaid ratio laid down by the Supreme Court, it is clear that the scope of judicial review of the satisfaction of the competent authority for passing an order under clause (c) of the second proviso to Article 311(2) is very limited. The High Court would be justified in interfering with such an order if the order is *malafide* or is based on extraneous or irrelevant considerations. It is further clear that correctness of the material or its adequacy cannot be gone into by the Court, nor the opinion of the competent authority can be substituted by the Court with its own opinion.

16. Thus, in a case where the competent authority has decided to exercise its power under clause (c) of the second proviso to Article 311(2) of the Constitution for dismissing the services of an employee without holding an inquiry, it

would not be open to the Court to go into issues which are not covered by the aforenoted exceptions.

17. However, the question that arises for determination in this case is whether the power vested with the President or the Governor in terms of Article 311(2)(c) to dispense with holding of an inquiry for dismissing an employee from service, is akin to the power vested with the Managing Director and CEO of the respondent-Bank under Clause 12.29 of the OSM. For determining this issue, it is necessary to have a comparative analysis of the two provisions, which are quoted hereinbelow:

Article 311(2)(c)	Clause 12.29 of Officer Service Manual
311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State: (1) xxx xxx xxx xxx (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges xxx xxx xxx xxx Provided further that this clause shall not apply— (a).... (b)... (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.	**12.29. Dismissal/Removal of employee found involved in terrorist/ anti-national activities**. If, consequent upon an investigation conducted by the State/UT/Central Investigating Agency/ies, an employee of the Bank is found to be involved in any direct or indirect Terrorist/anti-national activities or whose activities are found to be against National Security and/or posing an eventual threat to the territorial sovereignty, security and integrity of the country and such investigation is followed by an advice of removal/dismissal by the Competent Authority of the Government not below the rank of Principal Secretary to the Govt./Director General of Police(or the equivalent rank), such employee shall be dismissed forthwith from the services of the Bank without conducting any departmental/ disciplinary proceedings and serving of any notice or giving any pay in lieu thereof. In the event of any order passed/action taken under this rule, the indicted employee shall not be entitled to any retirement/terminal benefits. The rule shall also be applicable to the employees

	of the Bank engaged under contractual arrangements, who shall be immediately removed from the services without any notice. The rule shall accordingly be also incorporated in the agreements being executed by the contractual employees with the Bank at the time of their engagement. The power to invoke such rule and action shall be with the MD & CEO of the Bank. A report in respect of decision/actions taken under this rule shall be placed before the Board in succeeding Board meeting.

18. From a comparative reading of the afore-quoted two provisions, it appears that there is a stark distinction between the two. Article 311(2) clause (c) of second proviso, does not contemplate holding of an inquiry or an investigation before the President or the Governor records satisfaction that, in the interest of security of the State, it is not expedient to hold an inquiry in respect of an employee who is sought to be dismissed from service whereas, in Clause 12.29 of the OSM, certain preconditions have been laid down before the Managing Director of the respondent-Bank can invoke the power to dismiss the services of an employee of the Bank without holding an inquiry. It is pertinent to mention here that the provisions of the Officers Service Manual, 2022, provide for holding of a regular inquiry against an employee who is sought to be dismissed from service and Clause 12.29 of the OSM is an exception to those provisions.

19. A plain reading of Clause 12.29 of the OSM would reveal that the following conditions have to be satisfied before the Managing Director and CEO of the respondent-Bank can invoke the powers under the said Clause:

(i) There has to be an investigation conducted by a State/UT/Central Investigating Agency;

(ii) The employee sought to be removed has to be found involved, directly or indirectly, in terrorist and anti-national activities, or his activities should be found to be against national security or posing a threat to the territorial sovereignty, security and integrity of the country;

(iii) The aforesaid investigation should be followed by an advice for removal or dismissal by the competent authority of the Government, not below the rank of Principal Secretary to the Government or Director General of Police or an officer of the equivalent rank; and

(iv) On the basis of the aforesaid advice, the employee has to be dismissed forthwith from the services of the Bank without conducting any departmental/disciplinary proceedings and without serving any notice or giving any pay in lieu of the notice.

20. Unless the aforesaid conditions are fulfilled, an employee of the respondent-Bank cannot be removed or dismissed from service without holding a departmental inquiry. Thus, there is a clear distinction between the power

exercisable by the President or the Governor under Article 311(2)(c) of the Constitution and the power exercisable by the Managing Director and CEO of the respondent Bank under Clause 12.29 of the OSM. In the former case, there is no requirement of conducting any investigation against the employee sought to be terminated, nor there is any requirement that he should be found involved in anti-national activities on the basis of such investigation. It is also not necessary that there should be advice from any authority to the Governor or the President, for removal/dismissal of the employee. Therefore, the contention of the respondents that the powers of the Managing Director and CEO of the respondent-Bank under Clause 12.29 of the OSM are in *pari-materia* with the powers of the President or the Governor under Article 311(2) clause (c) of the second proviso of the Constitution is wholly misconceived.

21. There appears to be a definite purpose behind the choice of language used in Clause 12.29 of the OSM and that adopted in Article 311(2)(c) of the Constitution. While the President and the Governor are high constitutional functionaries and, therefore, they can be trusted with the drastic power of dispensing with the services of an employee without holding an inquiry in appropriate cases, the same

level of trust cannot be reposed in an officer of the level of Managing Director and CEO of a bank. It is for this purpose that while vesting power upon the Managing Director and CEO of the Bank to dismiss/remove an employee of the Bank without holding an inquiry against him certain preconditions have been incorporated in Clause 12.29 of the OSM which are conspicuously absent in Article 311(2)(c) of the Constitution. Therefore, unless the preconditions stipulated in Clause 12.29 of the OSM are fulfilled in a particular case, the Managing Director and CEO of the respondent-Bank cannot dispense with the services of an employee without holding a regular inquiry against him.

22. Turning to the facts of the present case, it is an admitted case of the parties that no FIR stands registered against the petitioner. Learned counsel for the petitioner has contended that investigation is possible only after registration of an FIR and, because no FIR has been registered against the petitioner, as such, without there being any investigation against the petitioner showing his involvement in anti-national activities, the power under Clause 12.29 of the OSM could not have been invoked against him.

23. *Per contra*, learned Senior AAG, appearing on behalf of the respondents, has vehemently contended that the

expression “investigation” used in Clause 12.29 cannot be interpreted in such a manner so as to include only an investigation conducted after registration of an FIR. He has contended that the expression “investigation” has been used in a wider sense and it would include the process of collecting any material even without registration of an FIR.

24. So far as interpretation of expression “investigation” in the context of Code of Criminal Procedure, 1973 is concerned, the Supreme Court has, in the celebrated judgment of **H.N. Rishbud and another** v. **State of Delhi**, AIR 1955 SC 196, observed as under:

> *“Thus, under the Code investigation consists generally of the following steps:(1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173.”*

25. As per the definition of “investigation” given in the Oxford English Dictionary, ‘investigation’ is an official or systematic examination of facts relating to a situation, crime or problem. Thus, investigation is essentially a preliminary fact-finding stage when material is collected to determine

whether there exists a prima facie case. It involves ascertainment of facts, collection of evidence/material and examination of persons acquainted with the facts of the case. Investigation also covers all proceedings involving collection of evidence by a police officer or any other person authorized by a Magistrate. It is not necessary that investigation is restricted only to FIR-based proceedings, particularly in the context of Clause 12.29 of the OSM, which is under consideration before this Court. However, one thing is clear that to qualify a process as an investigation in terms of the said Clause, the State/UT/Central Investigating Agency has to undertake an exercise of collecting material, recording statements of the persons acquainted with the facts of the case and thereafter, on the basis of such material, involvement of the employee in anti-national activities, etc., has to be established before the competent authority tenders its advice to the respondent-Bank for removal/dismissal of the employee from service without holding any departmental inquiry against him.

26. Coming to the facts of the present case, the Director General of Police, it seems, has tendered his report to the Government, which in turn forwarded the same to the respondent-Bank. Acting upon the said report, the Managing Director and CEO of the respondent-Bank issued impugned

order. A perusal of the confidential report forwarded by the competent authority (Director General of Police, CID), which has become the basis for passing of the impugned order, would reveal that the same is based upon the information received from sensitive and credible sources as also from the discreet enquiries. It is also based upon the material in the shape of posts made by various individuals on the hashtag campaign #TortureKashmir, allegedly operated by the petitioner inviting the people to let others know about their experiences with what was described as the Indian State's torture programme in Kashmir.

27. The information obtained from sources or discreet enquiries made by the Director General of Police or any other competent authority would not fall within the meaning of expression "investigation" as used in Clause 12.29 of the OSM, because the process of gathering such information does not involve collection of material/evidence or recording of statements of witnesses. The information gathered from sources is largely based upon general reputation of a person and not on any tangible material or evidence. The material annexed to the secret report of the Special DG, CID, J&K, in the shape of tweets allegedly posted on the hashtag campaign operated by the petitioner, is not based upon some investigation set up by any authority for conducting any

inquiry or investigation into the activities of the petitioner. It is only a material obtained by the CID from discreet sources without there being any investigation into the conduct of the petitioner, even in its loose sense. In fact, the report of the Special DG, CID refers to discreet verification conducted by the said authority, which, in the opinion of this Court, cannot substitute the requirement of holding an investigation which, as already stated, includes recording of statements of witnesses and collection of material. The report of the Special DG, CID does not refer to any such process having been undertaken by any authority.

28. Dismissal of an employee from service without holding an inquiry is a drastic step, which has to be taken only in rare and appropriate cases. In the present case, in the absence of any investigation with a finding about involvement of the petitioner in anti-national activities, etc., it was not open to the Managing Director and CEO of the respondent-Bank to issue the impugned order dismissing the petitioner from service. It is, thus, clear that the respondents have passed the impugned order without satisfying themselves about fulfilment of the requirements contemplated under Clause 12.29 of the OSM. The impugned order, being not sustainable in law, is liable to be quashed.

29. It is, however, made clear that it shall be open to the respondents to follow the procedure prescribed under Clause 12.29 of the OSM and thereafter pass a fresh order against the petitioner. In the alternative, it shall also be open to the respondent-Bank to proceed ahead with the departmental inquiry against the petitioner, which it was contemplating to hold pursuant to issuance of suspension order dated 14.04.2024, which incidentally has not been challenged by the petitioner and, as such, would stand revived once the impugned order is set aside.

30. For what has been discussed hereinabove, the writ petition is **disposed** of with the following directions:

(i) The impugned order dated 15.07.2024, issued by respondent No.3, being unsustainable in law, shall stand quashed and the petitioner shall be relegated to the status which he was holding immediately prior to the passing of the impugned order.

(ii) The respondents shall be at liberty to proceed afresh against the petitioner after fulfilling the requirements of Clause 12.29 of the OSM, as discussed hereinbefore, ***or in the alternative***, the respondent-Bank shall be at liberty to proceed against the petitioner by holding a regular departmental inquiry contemplated pursuant to the order of suspension dated 15.04.2024.

31. The record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar
29.08.2026
"Bhat Altaf-Secretary"

*Whether the **Judgment** is speaking:* ***Yes***
*Whether the **judgment** is reportable:* ***Yes/No***