

**HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT  
SRINAGAR**

Reserved on: 07.04.2025  
Pronounced on: 24.04.2025

**LPA No.228/2023**

**J&K HORTICULTURE PRODUCE MARKETING  
AND PROCESSING CORPORATION**

**...APPELLANT(S)**

Through: Mr. Faheem Nisar Shah, GA.

Vs.

**ABDUL RAZAK MALLA & OTHERS** **...RESPONDENT(S)**

Through: Mr. M. Y. Bhat, Sr. Advocate, with  
Mr. Sajid Ahmad, Advocate.

**CORAM:-**

**HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**  
**HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

**JUDGMENT**

**Per OSWAL 'J'**

1. The appellant has impugned the judgment dated 11.05.2023 passed by the learned Writ Court in SWP No.2662/2013, whereby the appellant has been directed to release the salary in favour of the respondents for the period mentioned in the writ petition along with all consequential benefits within a period of eight weeks from the date of service of order upon the appellant.

2. The appellant has impugned the judgment passed by the learned Writ Court, *inter alia*, on the grounds that it is settled law that no one can claim wages for the period, for which he remained absent without leave or justification and that the finding returned by the learned Writ

Court that the principle of “no work no pay” is not applicable in the instant case as the respondents/employees were kept away from the work for none of their fault, is not sustainable in the eyes of law.

3. Precisely, the sole ground of the appellant is that as the respondents have not worked for the period for which they have claimed salary, therefore, the appellant cannot be directed to pay the same to the respondents.

4. Mr. Faheem Nisar Shah, learned GA, has argued that the learned Writ Court was not correct in its approach by directing the appellant to pay salary to the respondents for the period they had not worked with the appellant.

5. *Per contra*, Mr. M. Y. Bhat, learned senior counsel appearing for the respondents, has argued that the appellant was under an obligation to pay voluntary retirement benefits to the respondents within sixty days and when the same were not paid, the respondents preferred a writ petition and with the intervention of the Writ Court, the respondents were allowed to resume their duties, which they did and thereafter they got the writ petition amended and sought the issuance of directions upon the respondents to release salary for the intervening period in their favour along with interest. He has further argued that it was only because of the appellants false promise that the respondents accepted the voluntary retirement offer but the appellant did not honour its promise which forced the respondents to file the writ petition. Learned counsel for the respondents further contended that the respondents

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remained out of service only because of the appellant, as such, the appellant cannot claim that the respondents did not perform any work, more particularly when the business of the appellant had come to a halt.

6. Heard and perused the record.

7. The record depicts that the Government framed a scheme for providing voluntary retirement to the employees of the erstwhile State Government Undertakings and the same was extended to the employees of the appellant as well. Clause 5(iv) of the said Scheme is extracted as under:

“The VR benefits under the Scheme shall be paid to the employees within sixty days (60) of acceptance of the Voluntary Retirement subject to clearance of all dues payable to the Corporation by the employee concerned.”

8. The respondents responded to the scheme by making an offer for voluntary retirement which was accepted by the appellant with effect from 10<sup>th</sup> April, 2013, though the order to that effect came to be issued only on 17<sup>th</sup> May, 2013. When the respondents were not paid the dues in terms of the scheme, they filed a writ petition for directing the appellant to release the payments due in favour of the respondents as calculated in letter dated 26<sup>th</sup> August, 2013 by the Management of the Corporation and further relief was also sought for directing the erstwhile State Government to arrange and pay the due amount to the respondents immediately.

9. The writ petition was objected to by the respondent No.3 therein by contending that it is under no obligation to arrange the funds for the

J&K HPMC in excess of ₹15.00 lacs admissible in each individual case and the amount beyond ₹15.00 lacs has to be arranged by the Corporation from its own resources. The respondent No.4 i.e. the appellant herein in its response stated that after the respondents opted for the VRS, it was accepted by the Government and approved by the appellant. The dues of the respondents were not intentionally withheld but their cases were forwarded to the Administrative Department for release of funds.

10. The record further depicts that the respondents were taken back into service by the appellant. Vide order dated 13<sup>th</sup> April, 2015, the learned Writ Court had observed that the respondents have been asked to resume their duties and join back in the Corporation. Much of the controversy is therefore resolved. The only issue unresolved is as regards entitlement of the respondents to salary/wages for the intervening period i.e. the period for which the respondents remained out of service.

11. The writ petition was subsequently amended and directions were sought to be issued to the respondents therein, including the appellant as well, to release the salary in favour of the respondents for the intervening period and was objected to, by the appellant on the ground that the claim of the respondents for their salary and other employment benefits for the period they were not in active service of the Corporation, is not maintainable on the principle of “no work no pay”.

12. It is an admitted fact that the appellant issued order dated 17<sup>th</sup> May, 2013, thereby accepting offer of voluntary retirement of the respondents with effect from 10<sup>th</sup> April, 2013. The respondents were not paid the relevant dues within the period of sixty days because of the appellants only and it was because of the appellants that the respondents remained out of service and when they filed the writ petition for payment of their dues, in terms of letter dated 26<sup>th</sup> August, 2013, they were taken back into service. The appellant is denying entitlement of the respondents to salary for the period, they remained out of service, on the ground that they have not worked for the said period but it needs to be noted that it is not the case of the appellant that the respondents were not willing to work for the period mentioned above.

13. The principle of “no work no pay” can be put in to operation when the employee remains out of service because of his own act/omission/fault but when an employee is kept away from the work by any act or omission on the part of the employer, the employee cannot be denied salary on the principle of “no work no pay”. In this regard support can be had from the judgments of Supreme Court in the cases titled “**Commr., Karnataka Housing Board v. C. Muddaiah**”, (2007) 7 SCC 689 (para-34), “**J. N. Srivastava vs. Union of India & anr.**” AIR 1999 SC 1571, and “**Union of India vs. K. V. Jankiraman Etc. Etc.**” (1991) AIR (SCW) 2276.

14. We have examined the judgment passed by the learned Writ Court and the learned Writ Court has arrived at the conclusion that the respondents were kept away from work by the authorities after accepting their offer of voluntary retirement and, as such, they are entitled to salary for the intervening period. There is no illegality in the judgment passed by the learned writ court.

15. For the foregoing reasons, we do not find any ground to interfere in the impugned judgment passed by the learned Writ Court. The same is well-reasoned and lucid and deserves to be upheld. The appeal lacks merit and is dismissed.

16. No order as to costs.

**(MOHD. YOUSUF WANI)**  
**JUDGE**

**(RAJNESH OSWAL)**  
**JUDGE**

**Srinagar**

**24.04.2025**

**"Bhat Altaf-Secy"**

*Whether the order is reportable:            Yes/No*