

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

**Case No: LPA No.02/2020
CM No. 60/2020**

Reserved on: 11.11.2025
Pronounced on: 20.11.2025
Uploaded on: 20.11.2025

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

1. Sheela Sharma, age 77 years
W/O Late Shri Khem Raj
Sharma.
2. Smt. Reva Sharma, age 59
years,
D/O Late Shri Khem Raj
Sharma.
3. Shri Pankaj Sharma, age 55
years
S/O Late Shri Khem Raj
Sharma.
4. Sh. Kamlesh Sharma, age 51
years
S/O Late Shri Khem Raj
Sharma.
5. Shri Anjan Sharma, S/O Late
Shri Khem Raj Sharma
All residents of Pandit Gam,
Kishtwar, Tehsil and District
Kishtwar.

...Petitioner(s)/Appellant(s)

Through: Mr. K.Nirmal Kotwal, Sr. Advocate with Ms.
Surbhi Kotwal, Advocate

v/s

1. State of Jammu & Kashmir
through Commissioner-cum-
Secretary, Finance Department,
J&K Government,
Civil Sectt, Srinagar.

.... Respondent(s)

2. Accountant General,
Jammu & Kashmir, Jammu.
3. Zonal Education Officer,
Kishtwar.

Through: Ms. Monika Kohli, Sr. AAG for R-1
Ms. Monika Thakur, Adv. For R-2
Mr. Raman Sharma, AAG for R-3

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.**

JUDGMENT

PER OSWAL-J

1. The original appellant-writ petitioner having expired, this intra-court appeal is now being prosecuted by his legal representatives. Henceforth, the term 'Appellant' shall refer to the original Appellant.
2. The Appellant (now deceased) retired as In-charge Zonal Education Planning Officer (ZEPO) on 30.09.1997, on attaining the age of 58 years and his pensionary benefits were sanctioned by respondent No.2 under PPO No. 104330 dated 26.11.1997. After the implementation of 5th Pay Commission Report, the Government vide SRO 19 dated 19.01.1998 inserted Article 242-CC to the Jammu & Kashmir Civil Service Regulations, 1956 (for short 'the Regulations of 1956), which *inter alia* provides that the Government servants who have retired or will be retiring between 01.01.1996 to 31.12.1997 shall be given an option to retain the pre-revised scale of pay for the purposes of fixation of pension. The Appellant admittedly exercised this option within the prescribed period of three months.

3. The dispute between the parties is limited only to the extent of inclusion of dearness allowance in the pension in terms of the Govt. Order No. 175-F of 1996 dated 10.06.1996. According to the appellant, in terms of clause (ii) of Article 242-CC, the dearness allowance @ 96% of the pension/family pension subject to minimum of Rs.3,330/- per month is to be added in the pension, whereas the stand of the respondents is that office Memo No. A/12/(98)-397 dated 23.02.1998 issued by the Finance Department to clarify SRO 19 dated 19.01.1998 provides that the dearness allowance has to be enhanced by 8% subject to minimum of Rs. 270/- per month.
4. This was the sole issue presented by the Appellant to the learned Writ Court, but the contention did not find favour, as the writ petition preferred by the Appellant, for quashing the communication dated 24.08.1998 and pension proposal dated 07.09.1998 with a direction to the respondent No.2 to revise his pension as per pension proposal dated 05.03.1998 in terms of Article 242-CC read with G.O. No.175-F dated 10.06.1996, was rejected vide judgment dated 30.05.2019. The Appellant being aggrieved thereof, has approached this Court for quashing of the same on the same grounds as recorded above by us.
5. Heard learned counsel appearing for the parties and perused the record.
6. To adjudicate the controversy at hand, it is necessary to reproduce the Article 242-CC of Regulations 1956, the relevant portion of Govt. Order No.175-F of 1996 dated 10.06.1997 and office memo dated 23.02.1998 :-

Article 242-CC of Regulations 1956:

“242-CC. (a) Government servants who have retired or will be retiring between 01-01-1996 to 31-12-1997 shall be given an option to retain the pre-revised scale of pay and have their pension and DCRG calculated under the rules in force before 01-01-1996. The pension and DCRG in such cases shall be regulated as under :-

- (i) The term 'emoluments' shall mean 'pay' as defined in Art. 27(a)(i) of these rules and shall include dearness allowance upto AICPI 1436 i.e. instalment of July 1995, sanctioned vide Government Order No.220-F 1995 dated 29.09.09.1995 and interim relief I & II (sanctioned vide Government Order No. 7-F of 1995 dated 02-02-1995 and 206-F of 1995 dated 18-09-1995 respectively).
- (ii) Pension shall be calculated at 50% of average emoluments. To the pension so calculated, dearness allowance upto AICPI 1510 at prescribed rates (sanctioned vide Government Order No. 175-F of 1996 dated 10-06-1996, January, 1996 instalment) shall be added. The amount so arrived at shall be regarded as pension.
- (iii) DCRG will, be admissible with reference to emoluments at (i) above under the orders in force immediately before coming into effect of these provisions. The maximum amount of gratuity shall not exceed Rs. 2.50 lakhs.
- (iv) Commutation of pension shall be admissible in accordance with the rules in force immediately before coming into effect of these rules.
- (v) Family pension shall be allowed in accordance with the orders applicable prior to issue of these orders and shall be calculated with reference to basic pay in the pre-revised scale. To the family pension so calculated dearness allowance up to AICPI 1510 at prescribed rates (i.e. January, 1996 instalment as sanctioned vide Government Order No. 175-F of 1996 dated 10-06-1996) shall be added. The amount so arrived at shall be regarded as family

pension for regulating payment of dearness allowance beyond average AICPI 1510”

Govt. Order No.175-F of 1996 dated 10.06.1996

In Partial modification of Government Order No.221-F of 1995 dated 29.09.1995, it is hereby ordered that the State Government Pensioners/Family Pensioners shall be allowed Dearness Allowance on Pension/Family Pension at the following rates with effect from 01.01.1996:-

	Pension/Family Pension per month	Rate of Dearness Allowance per month (including previous instalments with effect from 01.01.1996
(i)	Not exceeding Rs.1750/-	148% of pension/Family Pension.
(ii)	Exceeding Rs. 1750/- but not exceeding Rs.3000/-	111% of Pension/Family Pension subject to a minimum of Rs.2590/-PM
(iii)	Exceeding Rs.3000/-	96% of Pension/Family Pension subject to a minimum of Rs.3330/-PM

O. M. No. A/12/(98)-397Dated 23.02.1998

Subject :-Notification SR0-19 dated 19-01-1998-Clarification regarding.

Doubts have been expressed with regard to actual import of sub clauses (i) and (ii) of Art. 242-CC (a) as inserted vide Notification SRO 19 dated 19-01-1998 issued vide endtt. No. A/12 (98)-316 dated 19-01-1998. The said sub-clauses (i) and (ii) of the said Art.read as under :-

"(i) The term 'emoluments' shall mean 'pay' as defined in Art. 27 (a) (i) of these rules and shall include dearness allowance upto AICPI 1436 i.e. instalment of July, 1995 sanctioned vide Govt. Order No. 220-F of 1995 dated 29-9-1995 and interim relief I& II (sanctioned vide Govt. Order No. 7-F of 1995 dated 02-02-1995 and 206-F of 1995 dated 18-9-1995 respectively).

(ii) Pension shall be calculated at 50% of average emoluments to the pension so calculated, dearness allowance up to AICPI 1510at prescribed rates (sanctioned vide Govt. Order No. 175-F of 1996dated 10-6-1996-January 1996 instalment) shall be added. The amount so arrived at shall be regarded as pension.

2. In respect of those Govt. Servants who have retired in between01-01-1996 to 31-12-1997 and have opted or may opt

for the pre-revised pay scale(s) for purpose of calculation of their retirement benefits under the rules in force prior to 01.01.1996, the following elements shall be taken into account for determination of ' emoluments' for calculation of their pension :

- (i) Basic pay as defined in Art. 27(a) (i) of J&K CSRs.
- (ii) DA up to AICPI 1436 i.e. up to and including July 1995 instalment 11 (sanctioned vide Govt. Order No. 220-F of 1995 dated 29-9-1995)
- (iii) Interim Relief I & II instalment (sanctioned vide Govt. Order No. 7-F of 1995 dated 02-02-1995 and Govt. Order No. 206-F of 1995 dated 18-9-1995 respectively.)

3. Pension shall be calculated at 50% of the average of the ' emoluments' as indicated in para 2 above. To the pension so calculated shall be added element of DA sanctioned beyond AICPI 1436 (i.e. up to and including July, 1995 instalment - sanctioned vide Govt. Order No. 220-F of 1995 dated 29-9-1995) up to and including AICPI 1510 (January 1996 instalment –sanctioned vide Government Order No. 175-F of 1996 dated 10-6-1996) at prescribed rates. It may be pointed out here that there has been net enhancement in DA rates beyond July, 1995 instalment up to and including 1996 instalment as under :-

Basic pension/family pension per month	Enhancement of DA beyond July, 1995 upto January, 1996 instalment
(a) Not exceeding Rs.1750/-p.m.	12%
(b) Exceeding Rs.1750/- but not exceeding Rs.3000/-p.m.	9% subject to minimum of Rs.210/-pm
(c) Exceeding Rs.3000/-pm	8% subject to minimum of Rs.270/-pm

7. There is no dispute regarding the calculation of emoluments for the last ten months preceding the retirement of the Appellant, as Rs.66,006/-. As already noted above, the dispute is only about the

dearness allowance to be added in terms of Govt. Order No.175-F of 1996 dated 10.06.1996.

8. A perusal of clause (ii) of the Article 242-CC reveals that pension shall be calculated at the rate of 50% of the average emoluments and to the pension so calculated, the dearness allowance up to AICPI 1510 at prescribed rates (sanctioned vide Government Order No.175-F of 1996 dated 10.06.1996- January, 1996 instalment) shall be added. The amount so arrived at shall be regarded as pension. The sole contention of the Appellant is that in terms of Government Order No.175-F of 1996 dated 10.06.1996, the dearness allowance at the rate of 96% of the pension subject to minimum of Rs.3,330/- is required to be added to the monthly pension, but at the same time the fact that cannot be lost sight of is that rate of dearness allowance per month as mentioned in Government Order No.175-F of 1996 dated 10.06.1996 includes **the previous instalment as well**. The slight ambiguity in the text of Clause (ii) of Article 242-CC was, in our opinion, resolved by the office memo dated 23.02.1998 to the extent that dearness allowance shall be enhanced @ 8% subject to minimum of Rs. 270/- per month. It also needs to be noted that in terms of Govt. Order No.220-F of 1995 dated 29.09.1995, the rate of dearness allowance was enhanced to 88% of the pension/family pension subject to minimum of Rs.3060/- per month and in terms of clause (i) of Article 242-CC, the emoluments includes dearness allowance sanctioned vide Govt. Order No. 220-F of 1995 dated 29.09.1995. The sole intention of the employer was to grant benefit of enhanced rate of dearness allowance only, over and above the earlier installment of dearness

allowance, as is evident from the expression employed in terms of Govt. order No.175-F of 1996 dated 10.06.1996 that dearness allowance per month includes the previous installment also, otherwise it would amount to grant of dual benefit of dearness allowance (See table as extracted above). This ambiguity was clarified by the Finance Department vide office memo dated 23.02.1998.

9. We have examined the judgment rendered by the learned Writ Court and are of the considered view that the learned writ Court has rightly adjudicated the controversy at hand. The learned writ Court has taken note of the fact that Article 240-A(v) of Regulations of 1956 shall not be applicable for the simple reason that the same applies to the employees, who despite insertion of Article 242-CC to Regulations of 1956 opted to have their pension fixed in the revised pay scale. The learned writ Court declined to interfere, notwithstanding its observations, since doing so would have entitled the Appellant to the lesser pension as calculated and granted by the respondents.
10. In view of the above discussion, we do not find any merit in this appeal. Accordingly, the same is **dismissed** along with connected CM(s), if any.

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Jammu
20.11.2025
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable? **No.**