

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)**

WP(C) No.1735/2024

Ghulam Fatima

.....Petitioner(s)

Through: Mr. Faisal Qadri, Sr. Advocate with
Mr. Huzaif Ashraf Khanpori, Advocate

Vs

Union Territory of J&K and others

..... Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG vice
Mr. Waseem Gul, GA

Coram: HON'BLE MR. JUSTICESANJAY DHAR, JUDGE

ORDER
29.05.2026

1. Through the medium of the present petition, the petitioner has challenged communication bearing No.DATK/ESTT/1152 dated 11.05.2024 whereby the clarification issued by the Directorate of Accounts & Treasuries Kashmir vide No.DATK/Adm/2448 dated 30.08.2022 has been treated as void *ab-initio*. Challenge has also been thrown to communication No.DHHK/Actt/1216-18 dated 01.06.2024 whereby the petitioner has been informed that the leave salary received by her needs to be recovered and she has been asked to report to the office of Directorate of Handicrafts & Handloom, Srinagar.
2. Briefly stated the facts emanating from the pleadings of the parties are that initially the petitioner was appointed as Junior Assistant in the Jammu & Kashmir State Road Transport Corporation (SRTC) and she was promoted to the post of Accounts Assistant in terms of order No.JKSRTC/DPC/EC/III/2920 dated 03.11.1999.

3. In the year 2008, the petitioner came to be deputed to the Department of Finance, Government of Jammu and Kashmir in terms of order No.31/JKSRTC/EC-III/Adm-2008 dated 03.04.2008. Thereafter, the petitioner was deputed to various other departments including the office of Conservator of Forests, Srinagar; Office of Warden, Gujjar and Bakerwal Hostel (Girls), Srinagar; Office of Director, Defence Procurement and Labour Department, Kashmir. Finally, the petitioner was deputed to the office of Director, Handicrafts and Handloom, Kashmir vide order No.324/Accts/DATK of 2019 dated 30.10.2019.

4. The petitioner is stated to have superannuated from service on 31.10.2022 whereafter her case for release of retiral benefits was processed by the respondents. During this process, a communication bearing No.DHKK/Accts/365 dated 17.08.2022 was addressed by the Department of Handicrafts & Handloom, Kashmir to the Director, Accounts and Treasuries seeking clarification with regard to entitlement of the petitioner to draw cash equivalent of leave salary. Vide communication dated 30.08.2022 issued by the Directorate of Accounts & Treasuries, the Directorate of Handicrafts & Handloom Department was advised to process the leave salary of the petitioner in terms of Rule 37 of the J&K Civil Service revised (Leave) Rules, 1979 on their own.

5. It has been submitted that vide communication bearing No.DHHK/Estt/5788 dated 12.12.2022, Director Handicrafts & Handloom, Kashmir, informed Managing Director, J&K SRTC, Srinagar, that the petitioner was due for superannuating on 31.10.2022 and that her case for release of retiral benefits is under process. A clarification was sought from Managing Director,

State Road Transport Corporation, Jammu and Kashmir as to whether the employees of the J&K SRTC are entitled to leave salary in terms of the rules governing the subject. In response to the said communication, General Manager (Admn.) sent a communication bearing No.JKRTC/GMA/PS/J/392 dated 05.01.2023 to the Director, Handicrafts & Handloom Department Kashmir clarifying that in terms of Sub Rule-IV of Rule 37 of the J&K Civil Services revised (Leave) Rules, 1979, the employees of the Jammu and Kashmir SRTC are entitled to grant of cash equivalent of leave salary.

6. Upon receipt of aforesaid clarification, the Department of Handicrafts and Handloom released the leave salary benefits in favour of the petitioner in terms of order bearing No.44-DHHK of 2023 dated 23.01.2023 and an amount of ₹.7,64,520/- was released in favour of the petitioner. It seems that after receipt of the aforesaid amount on account of cash in lieu of leave salary, impugned communications dated 11.05.2024 and 01.06.2024 came to be issued by the respondents seeking recovery of the amount of leave salary released in favour of the petitioner.

7. Respondent No.3-Jammu and Kashmir SRTC, in its reply to the writ petition, has submitted that in pursuance to the communication dated 12.12.2022 addressed by the Directorate Handicrafts & Handloom, Kashmir to the Corporation, it was made clear that Sub-Rule(IV) of Rule 37 of the J&K Civil Services (Leave) Rules, 1979 governs the grant of cash in lieu of leave salary to the employees of Corporation. It was also informed that a similar case of one Ms. Yasmeena Shah is relevant for the purpose of deciding the present controversy as the said person was an employee of the respondent-Corporation, who retired on 30.04.2019, while on deputation as Accounts Assistant in

Irrigation & Flood Control Department. It was informed that at the time of her retirement her leave salary was settled and paid directly to her by the concerned department. Accordingly, in the case of the petitioner, Directorate of Handicrafts and Handloom, Kashmir was asked to deal with her case on similar lines.

8. Respondent Nos.1 & 2, in their reply to the writ petition, have submitted that General Administration Department vide Govt. Order No.589-JK(GAD) of 2024 dated 12.02.2024 which bears reference to Circular No.GAD/Acctss/Dep/Corp.2016 dated 21.07.2016, O.M. No.GAD-ADMOIII/135/2021-02-GAD dated 07.06.2022 and Circular No.15-JK(GAD) of 2023 dated 08.05.2023 reiterated that the employees of the State-owned Corporations, temporarily deployed in the Government Departments are not entitled to post-retirement benefits at par with Government employees and that such employees be relieved at least three months ahead of their retirement enabling their repatriation by the General Administration Department. It has been submitted that the matter was examined in the light of Sub-Rule-IV of Rule 37 of the J&K Civil Services Revised (Leave) Rules, 1979 whereafter, it was referred to fact finding committee constituted vide office Order No.123-DATK of 2024 dated 01.05.2024. The committee recommended that employees of Corporation are not entitled to retiral benefits at par with the Government Employees and that action of borrowing departments settling the issue of retired deputationists in terms of Rule 37 of J&K CSR Leave Rules, 1979 is in total contravention of instructions of General Administration Department.

9. It has been submitted that on the basis of aforesaid instructions, the matter was examined and impugned communications came to be issued which are perfectly in accordance with law.

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

11. So far as the factual aspects of the case are concerned the same are not in dispute. The petitioner was initially appointed with respondent-JKSRTC and at the time of her superannuation, she was serving with Directorate of Handicrafts & Handloom on deputation basis. The petitioner at the time of her retirement has been paid cash in lieu of salary by Directorate of Handicrafts & Handloom Department. However, Director Accounts & Treasuries vide impugned communications dated 11.05.2024 and 01.06.2024 has sought to recover this amount from the petitioner. To justify their stand, respondent Nos.1 & 2 have placed reliance upon Government Order No.589-JK(GAD) of 2024 dated 12.02.2024 which bears reference to previous Circulars on the subject according to which, employees of the State-owned Corporations deployed in the Government Departments are not entitled for post-retirement benefits at par with the Government employees. The said respondents also place reliance upon the recommendations of the fact finding committee made vide order dated 01.05.2024 for justifying the recovery of cash in lieu of salary paid to the petitioner.

12. For justifying the impugned action, the reliance placed by respondent Nos.1 & 2 upon Government Order dated 12.02.2024 (supra) and report of fact finding committee dated 01.05.2024 (supra) is wholly misconceived because these orders only provide that employees of Corporation deputed to the Government departments are not entitled to retiral benefits at par with the Government employees. These orders/reports nowhere lay down that employees of JKSRTC are not entitled to leave salary. If the Rules of JKSRTC provide for

payment of leave salary or if the said Corporation has adopted the rules of the government on this aspect of the matter, the employees of the Corporation are definitely entitled to get the leave salary.

13. The respondent-JKSRTC in its reply, has made it clear that employees of the Corporation are entitled to leave salary and for this purpose, they have adopted Sub-Rule IV of Rule 37 of the J&K Civil Service Revised (Leave) Rules, 1979. To illustrate this position, the respondent-JKSRTC has made reference to the case of one Ms. Yasmeena Shah, who had also retired while on deputation to Irrigation & Flood Control Department was paid leave salary by the said department. Thus, once it is an admitted position that the employees of JKSRTC are also entitled to leave salary at par with the Government employees, respondents 1 & 2 cannot seek recovery of amount of leave salary that has been released in her favour.

14. The only question that has to be determined in this case is as to which of the two departments, the parent organization or the borrowing organization has to pay the leave salary of the petitioner. In this context, the provisions contained in Schedule XVIII of the J&K CSR, which governs the standard terms of deputation, provide a guideline as to which of the organizations, whether parent organization or the borrowing organization, has to pay the leave salary or other pensionary benefits. Rule 12 of the said Schedule is relevant to the context and the same is reproduced as under:-

“12. During the period of deputation sanctioned to the grant of leave etc. including advances from G. P. Fund will be regulated as under: (a) where deputation is to a Corporation, Company, Autonomous Body or any other Non-Government Organization, the sanction to leave, G. P. Fund advances/withdrawals etc. and the disbursement of leave salary and advances will be made by the parent department;

(b) where deputation is to Central Government or to other State Governments sanction to leave, G. P. Fund advance etc. will be issued by the borrowing Government but the leave salary will be disbursed by the parent Government.

Note.-For sanctioning of leave and disbursement of leave salary Government Instructions below Art. 185- B refers.”

15. From a perusal of the afore-quoted rule, it is clear that GP Fund advances/withdrawals etc. and the disbursement of leave salary and advances has to be made by the parent department even in a case where an employee has been deputed to any other Corporation, Company or Autonomous Body.

16. So far as the release of leave salary is concerned, the note appended to Rule 12 provides for reference to Government Instructions below Article 185B of the J&K CSR, therefore, the case of the petitioner has to be dealt with in accordance with Article 185B of the J&K CSR and the Instructions attached thereto. Government Instructions appended to Article 185 of the J&K CSR read as under:-

“Government Instructions-Notwithstanding anything contained in Article 185-B it is ordered that for purpose of drawn of leave salary by a Government servant while on deputation with foreign employer, the latter will maintain leave account of the Government servant concerned. An extract of the leave account shall be supplied to the be foreign employer by the parent Department of the deputations. The fore employer windlasses the leave admissible to the Government servant concerned and sanction it under intimation to the parent Department of the Government servant. The payment of leave salary will be made by the foreign, employer. The latter will claim the reimbursement of leave salary from the concerned State Government half yearly. The foreign employer will send to the parent department of the deputationist the claim for leave salary reimbursement duly supported with details regarding nature and period of leave sanctioned, rate of leave salary and the

amount paid to the deputationist. The half yearly reimbursement should be in respect of the period from 1st April to 30th September and 1st October to 31st March.

The parent Department should verify the claim preferred by the foreign employer and arrange reimbursement of the amount within a month from the receipt of the claim.

Note. 1- The words "pay or salary" as levied in Articles 185, 185-A and 185-B shall mean presumptive pay in case of Government servants who do not hold any substantive appointment.

Note-2 Government servant who proceeds on transfer from one foreign employer to another, without reverting to Government service, his transit pay and allowances and transfer travelling allowance shall be borne by the foreign employer to whom the employee proceeds on transfer."

17. From a perusal of the aforesaid Government Instructions, it is clear that the procedure regarding payment of leave salary applicable to cases relating to deputation on Foreign Service has to be made applicable to release of leave salary in the case of employees deputed to Corporation, Company, Autonomous Body etc. As per this procedure, the borrowing organization will have to assess the leave admissible to the employee concerned and sanction it under intimation to the parent organization. The payment of leave salary has to be made by the borrowing organization, whereafter, it has to claim reimbursement of leave salary from the parent organization. The borrowing department has to send to the parent department of the deputationist the claim for leave salary reimbursement duly supported with details regarding nature and period of leave sanctioned, rate of leave salary and the amount paid to the deputationist. The parent department has to verify the claim preferred by the borrowing department

and arrange reimbursement of amount within a month from the receipt of the claim.

18. Thus, in the present case, respondent No.1, the borrowing organization has rightly sanctioned the leave salary in favour of the petitioner. However, the said organization after intimating the same to respondent-JKSRTC is entitled to seek reimbursement of the amount released in favour of the petitioner by way of leave salary. Instead of adopting the said course, respondent Nos. 1 & 2 have sought to recover the leave salary released in favour of the petitioner which is contrary to the provisions contained in J&K CSR which are applicable to both the borrowing organization as well as to the parent organization of the petitioner. The impugned communications seeking recovery of the amount of leave salary released in favour of the petitioner are, therefore, not sustainable in law.

19. For what has been discussed hereinbefore, the writ petition is allowed and the impugned communications dated 11.05.2024 and 01.06.2024 are *quashed*. Respondent No.1 is, however, at liberty to seek recovery of the amount of leave salary released in favour of the petitioner from respondent No.3.

20. *Disposed of.*

(Sanjay Dhar)
Judge

Jammu
29.05.2026
Shammi