
(2010) 01 J&K CK 0006
In the Jammu And Kashmir High Court

Dura Kumari	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 01-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 1 JKJ 116

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—At the time of her migration, petitioner was working as Lady Social Worker in the Social Welfare Department. Due to the

prevailing circumstances in the valley, she migrated to Jammu in the year 1990. After migration, the petitioner continued to draw her leave salary

without being assigned any job. The said decision to pay leave salary to the migrant employees was taken by the respondent-State in view of

extraordinary situation which had arisen due to the prevailing circumstances. As consequence, Government vide its order No. 605-GAD of 1991

dt. 26th of June'91, took following decision:

The period of migration of a State Government employee who has migrated from Kashmir valley in consequence of the disturbed conditions

obtaining therein shall be treated as earned leave to the extent that may have been due to him on the preceding migration. The amount of earned

leave shall thus be allowed to him regardless of the ceiling of 120 days prescribed in Sub-rule (2) of J & K Civil Service (Leave) Rules;

(b) After adjustment of the period of migration as per (a) above, the remaining

period of absence from duty shall count towards service for purpose of pension....

2. Petitioner submits that she superannuated in the year 2004 and is entitled to 300 days earned leave and cash equivalent for the same. Her

grievance is that she is being denied this benefit on the ground that from 1991 to 2004 she has been drawing leave salary without any job, and as

such, she is not entitled to cash equal to the earned leave salary for a period of 300 days.

3. In the reply submitted by respondents, it is stated that the pensionary benefits have been released in favour of the petitioner except the cash in

lieu of the earned leave which is due in favour of the petitioner for 91 days only. It is thus stated that the petitioner is not entitled to cash in lieu of

the earned leave beyond 91 days.

I have heard learned Counsel for the parties and perused the record.

4. This issue is no longer res-integra that a migrant employee who has migrated from valley is entitled to all the benefits which a Government

employee is entitled to in spite of the fact that the period from 1990 onwards has been treated as on leave. A Division Bench of this Court in the

case titled State v. A.K. Sadhu and Ors. LPA(S) No. 429/02, decided on 29.2.09, has held as under:

So the first question arising for consideration would be as to whether such kind of distinction is legally valid? In our considered view, the distinction

sought to be made on the basis of performance of duty within the employees who have migrated from Kashmir valley on account of disturbed

conditions is legally not permissible. The migrant employees in terms of para (e) of Government Order dated 26.6.1991 are bound to report for

duty at any place within or outside the State. Therefore, if the Government has not chosen some of them for performance of duty at any post or

place, it is not their fault and therefore, they cannot be penalized for not performing the duties. All the migrant employees being members of the

same category are required to be treated alike being similarly placed, irrespective of the fact that some of them have been chosen for duty because

all of them are available for being deputed for duty.

5. It was further observed by the Division Bench as under:

The exclusion clause incorporated in para (c) of the Government Order No. 605-GAD of 1991 dt. 26.6.91 is therefore, bad in law, being

arbitrary and discriminatory in character which is being violative of Articles 14 and 16 of the Constitution cannot be legally sustained. We

therefore, quash the same and hold that the writ petitioners/respondents entitled to the benefit of HRA and CCA.

6. In view of the above, this petition is allowed. Petitioner is held entitled to cash in lieu of earned leave salary for a period of 300 days as is being

paid to a Government employee. Let appropriate order for release of the said benefit in favour of the petitioner be passed within a period of four

weeks from the date, a copy of this order is made available to respondent authorities by the petitioner.

Disposed of accordingly.