
Ladakh Financial Corporation (JKLFC) in terms of order No.PS/26/10-701 dated 20.12.2010. Vide Government Order No.470-GAD of 2013 dated 19.03.2013, the petitioner was deputed to the Jammu and Kashmir Power Development Corporation (JKPDC). The petitioner's service with the borrowing corporation was initially for a period of 15 months from 01.01.2012 to 25.03.2013 and thereafter for about 84 months from 25.03.2013 to 31.03.2020. The petitioner is stated to have tendered his resignation which was accepted by his parent organization on 20.02.2020, whereafter he joined State Bank of India, Mumbai, on 21.02.2020.

3) It seems that after the resignation of the petitioner, whole of the leave encashment salary and gratuity has not been released by the respondents in his favour by the respondents which has compelled him to invoke writ jurisdiction of this Court.

4) The stand of the parent organization of the petitioner, namely, JKLFC, is that provident fund in the amount of Rs.6,52,798/ has already been released in favour of the petitioner. With regard to leave encashment salary and gratuity amount, it is the stand of respondent No.1 that the same has been considered for release by the management but its release got delayed for the reason that the petitioner

has served with respondent No.2-JKPDC for a significant period of time. It has been submitted that case of the petitioner in this regard was referred to the Administrative Department (Finance Department) seeking its advice/opinion and in response thereto, the Finance Department vide communication 11.01.2024 has conveyed that post-retirement benefits of the petitioner should be released after seeking necessary contribution from JKPDC for the period he was employed with the said organization.

5) It has been submitted that in view of the opinion of the Finance Department, the matter has been taken up with respondent No.2 requesting them to release proportionate quantum of leave encashment salary and admissible gratuity amount for the period for which the petitioner has served with the said organization. A calculation sheet along with communication dated 23.04.2024 has been forwarded to respondent No.2. It has been further contended that the delay does not stem from negligence or malafides of respondent No.1 but it stems from the necessity of inter-departmental coordination to ensure that the petitioner receives his rightful entitlements.

6) Respondent No.2-JKPDC, in its reply to the writ petition, has submitted that claim of the petitioner was examined pursuant to interim direction passed by this

Court and the same was found to be without force. It has been submitted that as per Rule 12(a) of Schedule XVIII to J&K Civil Service Regulations, which relates to standard terms of deputation, it is the parent organization which has to decide the claim of the petitioner. It has been contended that a detailed speaking order dated 30.01.2023 came to be issued by respondent No.2 in which it was clearly stated that the petitioner has no right to claim any service benefits from the said respondent. It has been submitted that the claim of the petitioner, if any, has to be determined by the parent organization i.e. JKLFC under the applicable rules.

7) Heard and considered.

8) So far as the factual aspects of the matter are concerned, the same are not in dispute. The petitioner was initially appointed with respondent No.1 and his services were deputed to respondent No.2 in terms of a valid Government Order passed by the General Administration Department. He continued to work with the borrowing department i.e. respondent No.2 until he tendered his resignation which was accepted by the parent organization on 20.02.2021. While initial appointment of the petitioner took place on 20.12.2010, he continued to serve with respondent No.1 upto the date of issuance of order dated 19.03.2013 and thereafter from 25.03.2013 upto

31.03.2020, four about 84 months. It is also not in dispute that the petitioner has not been paid gratuity and leave encashment salary.

9) The only question that has to be determined in this case is as to which of the two respondents, the parent organization or the borrowing organization, has to pay the dues of the petitioner. While the parent organization has taken a stand that the liability in this regard has to be shared by respondents No.1 and 2 in proportion to the period for which the petitioner has worked with these two organizations, respondent No.2 has taken a stand that it is the liability of the parent organization to pay the retiral dues to the petitioner.

10) In the above 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

Organisation, 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.

11) 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 Corporation, Company or Autonomous body.

12) So far as the release of gratuity is concerned, the same is, admittedly, liability of the parent organization. The gratuity, in terms of Article 240-BB of the J&K CSR has to be paid by the parent organization at the time of retirement or death of an employee. Therefore, it is respondent No.1 which has to pay the amount of gratuity to the petitioner. Respondent No.1 has abdicated its duty of releasing amount of gratuity in favour of the petitioner and has unnecessarily engaged itself in inter-departmental communications with the Finance Department and respondent No.2. This attitude of respondent No.1 has

resulted in delay of several years in release of gratuity in favour of the petitioner.

13) In terms of Section 7(3-A) of Payment of Gratuity Act, if the amount of gratuity is not paid within thirty days from the date it becomes payable, the employer, from the date gratuity becomes payable to the date on which it is paid, has to be pay simple interest at the rate not exceeding the rate notified by the Central Government from time to time. As per the Notification, the rate of interest is 10% per annum and, therefore, respondent No.1 is liable to pay interest @10% per annum on the amount of gratuity payable to the petitioner from 30 days of acceptance of resignation of the petitioner by the said respondent.

14) Learned counsel for the petitioner has submitted that 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 Artic1es 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.

15) 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.

16) Thus, in the present case, respondent No.2, the borrowing organization, had to sanction leave salary in favour of the petitioner under intimation to respondent No.1 and thereafter release the amount of leave salary to the petitioner. After undertaking the aforesaid exercise, respondent No.2 had to seek reimbursement of amount released in favour of the petitioner by way of leave salary from respondent No.1. Instead of doing so, respondent No.2 has simply denied entitlement of the petitioner to leave salary and its liability to pay the same, which is contrary to the provisions contained in J&K CSR which are applicable to both respondent No.1 as well as to respondent No.2.

17) For what has been discussed hereinbefore, the writ petition is **disposed** of in the following manner:

- (I) Respondent No.1 is directed to release the amount of gratuity due to the petitioner in accordance with rules forthwith along with interest @10% per annum from 30 days after acceptance of his resignation till the amount is actually paid by it to the petitioner.
- (II) Respondent No.2 shall calculate the amount of leave salary due to the petitioner and release the same in his favour within a period of one month with a right to claim reimbursement of the same from respondent No.1. The said respondent shall also be liable to pay interest @6% per annum on the amount of leave salary payable to the petitioner from the date of filing of this writ petition till its realization.

(Sanjay Dhar)
Judge

SRINAGAR
30.04.2026
"Bhat Altaf-Secy"

Whether the **judgment** is reportable: **YES/NO**