

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

WP(C) No. 2279/2024

Reserved on: 21.05.2025

Pronounced on: 26.05.2025

Prem Kumar

...Petitioner

Through :- Ms. Shivani Jalali, Advocate

v.

UT of J&K & Ors.

.....Respondents

Through:- Mr. P.D. Singh, Dy. AG
Ms. Sagira Jaffar, Advocate vice
Mrs. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Petitioner has invoked writ jurisdiction of this Court, under Article 226 of the constitution of India for the following reliefs:

- “a. Direct the official respondents & the liquidator to release pensionary/terminal benefits of the petitioner viz, Gratuity, CPF, leave salary and other benefits with interest as claimed above.**
- b. Direct the official respondents & liquidator to ward off the liability of its employees, particularly after the organization, J&K Cooperative Supply & Marketing Federation Ltd. (JAKFED, for short) has been ordered to be wound up by Government order, which has already ascertained, the assets and liabilities of the society and eventually worked out and are now required to satisfy the claims of petitioner with immediate effect.**
- c. Implement various directions given by the Hon'ble Court for clearing the gratuity/CPF/ leave salary, sixth pay arrears and other terminal benefits of employees of said federation with 18% interest and to issue such other directions appropriate in nature and circumstances of the case for complete justice.**
- d. Any other, relief, order or direction which this Hon'ble Court may deem fit and appropriate in the nature and the circumstances of the present case.”**

2. As factual narration of the present case, from the pleadings of the parties would unfurl, J&K Cooperative Supply & Marketing Federation Ltd. (JAKFED), in terms of a decision taken, in the State Administrative Council under No. 133/15/2019 on 13.06.2019 came to be wound up and its registration came to be cancelled. The liquidator was appointed, who submitted a report of assets and liabilities and retiral claims of its erstwhile employees.

3. The case set out by the petitioner is that he retired from JAKFED as a Storekeeper on 31.03.2011. Post retirement, sanction was accorded, for the grant of 13 periodical increments, in his favour vide Order No. 89 JAKFED of 2014 dated 12.04.2014 and for the release of his retiral dues as admissible in JAKFED at the relevant point of time. It is also case of the petitioner that before his retirement, he obtained no demand certificates from the Regional/Sectional/Unit heads to facilitate the respondents to process his retirement dues in time.

4. It is further case of the petitioner that in the year 1995, a false and frivolous FIR no. 40 of 1995 came to be registered against him and his colleagues for alleged misappropriation of food grain worth Rs.74,85,725.72 entrusted to him as a public servant for the period from 01.07.1991 to 30.06.1992. The said FIR came to be closed as “not proved” and pertinently a closure report in this respect was filed by the Vigilance authorities after its approval by the Commissioner Vigilance and it was disposed of by the Court of Sub Judge, Anti Corruption, Jammu.

5. According to the petitioner, respondent-UT has already taken a decision regarding settlement of dues of the employees of JAKFED, in one of its meetings held on 19.07.2023.

6. It is further contention of the petitioner that despite the aforesaid decision taken by the UT Government, respondents instead of releasing his post retiral benefits, published a notice dated 06.08.2024, in Daily Excelsior newspaper, issued by the office of liquidator, JAKFED, BC Road, Jammu which reflected his name at Serial No. 9 indicating an amount of Rs. 4.35 lacs outstanding against him after adjustment. He responded the said notice by way of his communication dated 25.08.2024 requesting the liquidator, JAKFED for providing the details of outstanding amount shown against his name and placed on record all the No Demand Certificates issued by the Regional/Sectional/Unit Heads of his department as also final report of FIR No. 40 of 1995 of Police Station Vigilance Organization, Jammu, according to which, the case against him was closed as “not proved”.

7. Petitioner has claimed following amounts of retiral benefits due to him:

Shri Prem Kumar

Gratuity/Leave salary = Rs. 2,33,289/-

Interest for 13 years 5 months,

01-04-2011 upto 31-08-2024 = Rs. 28,1696/-

6th pay commission = Rs. 3,26,266/- + interest

Total amount = Rs. 8,41,251/-

8. There is admission on the part of the respondents that as per the report of the liquidator, an amount of Rs.2,33,298/- is payable to the petitioner on account of retiral claims as per the record of erstwhile JAKFED and that claim of the petitioner regarding 6th pay Commission arrears including interest, was implemented by the management of JAKFED with effect from the year 2012. However, it is contention of respondents that petitioner has a

claim against his parent organization i.e. erstwhile JAKFED and they are not liable to pay his retiral benefits.

9. Respondents are affront with the contention that as per the report of the liquidator submitted to the Government an amount of Rs.4,35,000/- is outstanding against the petitioner on account of shortages/misappropriation/embezzlement. Respondent No. 5 published a notice in leading newspaper, Daily Excelsior and Amar Ujala on 23.09.2023 for fulfillment of codal formalities by the retired employees of the erstwhile JAKFED, but the petitioner has failed to fulfill said formalities till date. It is contention of the respondents that since service conditions of the employees of JAKFED are covered under SRO 233 of 1988 dated 08.07.1988, the retiral benefits of the petitioner can be disbursed only after fulfillment of codal formalities by him and after clearance from the Crime Branch, a pre-requisite before disbursement of the claims. According to the respondents, though Vigilance clearance of the petitioner has been approved by GAD Vigilance, his clearance from the Crime Branch is awaited.

10. Heard learned counsels for the parties and perused the record.

11. While learned counsel for the petitioner has relied upon **Sanjeev Bhagat and ors. v. UT of J&K and others [WP(C) No. 2823/2023 dated 14.11.2024]** and **Amarjit Singh and ors. V. UT of J&K and ors.[WP(C) No. 1914/2024 dated 07.05.2025]** to reiterate the grounds urged in the memo of petition, learned counsel for the respondents has argued that retiral benefits of the petitioner could not be released due to clearance from the Crime Branch.

12. Having heard learned counsels for the parties, I am of the considered view that respondents have withheld retiral benefits of the petitioner without

any lawful justification and it is violative of Articles 14, 16 and 21 of the Constitution of India.

13. Uncontroverted facts of the case are that petitioner retired from JAKFED as a Storekeeper on 31.03.2021. Sanction for grant of thirteen periodical increments and release of retiral dues was also accorded in his favour after his retirement on 12.04.2011. FIR No. 40/1995, registered against him came to be closed as “not proved” after its approval by the Commissioner of Vigilance and a closure report in this respect was also filed by the Vigilance authorities in the Court of learned Sub Judge, Anti Corruption, Jammu. It is also an admitted position of fact on record that UT of J&K has already taken a decision regarding settlement of dues of employees of JAKFED in its meetings on 19.07.2023. However, despite the said decision respondents instead of releasing post retiral benefits, published a notice in a daily newspaper on 06.08.2024, whereby it was indicated that an amount of Rs. 4.35 lacs was outstanding against the petitioner. It is also not in dispute that petitioner responded the said notice by way of his communication dated 25.07.2024 requesting the Liquidator, JAKFED to provide the details of outstanding amount and he also placed on record all the NOCs issued by Regional/Sectional/Units heads of his department. The respondents have also admitted vigilance clearance of the petitioner as approved by GAD Vigilance. The only stand of the respondents is that retiral benefits of the petitioner could not be released for want of clearance from the Crime Branch.

14. Pertinent, in this respect, shall be an observation of a Division Bench of this Court in **Ghulam Mohi-ud-Din Lone v. State of J&K and ors.; 2020 (6) JKJ 346**, relevant excerpt whereof captured in para 9, is extracted below, for the facility of reference:

“9.....In any case, mere registration of an FIR and its investigation by the investigating agency cannot tantamount to institution of “judicial proceedings”. The “judicial proceedings” can only be launched before a court which is capable of passing a definitive judgment on the issues before it. Viewed thus, we are not inclined to concur with the view of the Writ Court that the appellant was not entitled to payment of post retiral benefits except the provisional pension in view of pendency of a criminal case i.e. FIR No.25/2014.....”

15. In **Sanjeev Bhagat** (supra), it was stand of the official respondents that retiral benefits of the petitioner could not be released due to pendency of investigation against him. However, the co-ordinate Bench relied upon aforesaid observation of the Division Bench to conclude that Government is obliged to release retiral benefits of a public servant, notwithstanding the pendency of investigation in an FIR.

16. An identical view has been taken by another Co-ordinate Bench of this Court in **Amarjit Singh** (supra), in which Crime Branch was investigating an FIR against the petitioner.

17. Petitioner, in the present case, is better placed because the only FIR against him already stands closed as “not proved” and a closure report in this respect also stands disposed of by the concerned Court after its approval by the Commissioner Vigilance. There is admission on the part of the respondents that gratuity/leave salary amount of Rs. 2,33,298/- is payable to the petitioner as per the record of the JAKFED and that claim of the petitioner regarding 6th pay commission arrears including interest w.e.f. year 2012 was also implemented by the Management of JAKFED. It is also admitted by the respondents that Vigilance clearance of the petitioner has also been approved by GAD Vigilance. In the circumstances, the retiral benefits of the petitioner, who came to superannuated way back on 31.03.2011, cannot be withheld for want of Crime Branch clearance.

18. Having regard to the aforesaid, present petition is allowed and respondents are directed to release retiral benefits due to the petitioner including arrears of 6th pay commission along with applicable interest within a period of three months from the date a copy of this judgment is made available, failing which, it shall carry interest @ 6% per annum till actual realization of the dues.

19. Petition stands disposed of along with connected CMs.

(RAJESH SEKHRI)
JUDGE

Jammu:
26.05.2025
Paramjeet

Whether the order is speaking?
Whether the order is reportable?

Yes
Yes

