

**Government of Jammu & Kashmir
Directorate of Agriculture Jammu**

Order No. 155 DAJ of 2019

Dated 13 -05-2019

Sub: Consideration order in terms of Hon'ble High Court Order dated 13-10-2018 in SWP No. 2320/2018, titled 'Kuldeep Kumar Mattas Vs State and Ors.

WHEREAS, the petitioners in SWP No. 2320/2018 viz. Mr. Kuldeep Kumar Mattas and Mr. Kuldeep Kumar Dass, both retired Migrant employees of the Agriculture Department, were appointed in the category of VEW/JAA/JAEO, in the year 1986, vide Govt. Order No.264-Agri of 1986 dated 29.07.1986;

WHEREAS, the petitioners along with other Government employees of the Kashmiri Pandit community migrated from Kashmir valley to Jammu in the year 1990 due to disturbance. They neither formally joined nor any attachment order was issued for their attachment in the Directorate of Agriculture, Jammu. However, they were paid their salaries from the Directorate of Agriculture, Jammu on the basis of a series of Government Orders issued by the General Administration Department with regard to payment of salaries in favour of Kashmiri Migrant employees by the concerned Head of Departments of Jammu Division. They were paid their salaries as Kashmiri Migrant employees of the Agriculture Department without attending any office or assigning any specific duty to them.

WHEREAS, the petitioners have been allowed to draw cash-in-lieu of the leave salary whatever was due to them on attaining the age of superannuation/retirement on 31.03.2018. Sh. Kuldeep Kumar Mattas and Sh. Kuldeep Kumar Dass were paid cash-in-lieu of leave salary for 108 days and 91 days respectively vide Order No. DAJ/Accts/2017-18/2928-29 dated 14.03.2018 and Order No. DAJ/Accts/2017-18/2682-83 dated 27.02.2018;

WHEREAS, Kuldeep Kumar Mattas and Kuldeep Kumar Dass, aggrieved of the above said orders jointly challenged the same by filing a writ petition in Hon'ble High Court at Jammu under SWP No. 2320/2018 titled Kuldeep Kr Mattas & Ors Vs State of J&K and Ors.;

WHEREAS, the Hon'ble High Court of J&K, at Jammupassed an order in SWP No. 2320/2018 on 13.11.2018, the operational part which is as under:

".....Accordingly, this writ petition is disposed of with a direction to respondents to consider the claim of the petitioners as projected in the writ petition and having regard to judgement Dt. 26.02.2009 passed in LPA (SW) No. 429/2002 titled State Vs AK Sadhu & Ors reported in 2009(Sup.) JKJ211(HC) and judgement Dt. 29.07.2009 passed in SWP No. 643/2005 in case titled Vijay Kumar Kachroo V/s State and others, provided the same are applicable to the case of the petitioner. Let

consideration to the claim of the petitioner be accorded, strictly under rules, within a period of four weeks from the date of certified copy of this order and the judgment aforementioned are made available to the respondents by the petitioners."

WHEREAS, the operative portion of the aforementioned judgments, dated 26-02-2009 passed in LPA (SW) No. 429/2002 titled State V/s A. K. Sadhu & others and judgment dated 29-07-2009 passed in SWP No. 643/2005 titled Vijay Kumar Kachroo V/s State & others is reproduced hereunder:

A. LPA (SW) No.429/2002 c/w other 10 LPAs titled A.K.Sadhu and others V/s State and Others.

"The rationale for incorporating the above restrictions in case of leave appears to be that earned leave is not permissible to an employee beyond a period of 120 days in terms of Sub-Rule (2) or Rule 26 of Jammu and Kashmir Civil Service (leave) Rules.

When the Government has relaxed the rigour of Sub-rule (2) of rule 26 of Civil Service (Leave) rule by providing that period of absence/migration shall firstly be adjusted against earned leave whatever due regardless of the bar of 120 days in terms of Sub-Rule (2) of Rule 26, it does not stand to reason as to why the same should have been insisted upon for deciding the entitlement of a migrant employee to the HRA & CCA. For all practical purposes migrant employee despite his having not been posted at any particular position for extracting work after migration has been treated at par with the other regular employees by the Government in relaxation of the rules for payment of salary and other allowances, his right to the payment of HRA and CCA for no valid reasons can be defeated simply because he has been allowed the leave behind the period permissible under rules and is absent from duty. As such, an employee has not applied and availed leave on his own beyond the permissible limit and as the leave has been forced upon him and even his period of absence behind the period of such leave has been regulated by treating him in service, he is to be deemed to be under the service of the Government notionally performing his duties at the place of his settlement after migration, he therefore, would not lose his right to be paid HRA and CCA.

The exclusion clause incorporated in para (C) of the Government No.605-GAD of 1991 dated 26.06.1991 is therefore, bad in law, being arbitrarily and discriminatory in character which being violative of Article 14 and 16 of the Constitution cannot be legally sustained. We therefore, quash the same and hold the writ petitioners/respondents entitle to benefit of HRA and CCA."

B. SWP No.643/2005 titled Vijay Kumar Kachroo V/s State and Others.

"...respondents are required to grant 300 earned leave in favour of petitioner and for that cash equivalent to said earned leave is required to be paid to him.

I accordingly directed the respondents to pay the petitioner cash equivalent to 125 days earned leave, which has been withheld by them..."

WHEREAS, the case was referred to the Administrative Department vide this Office letter No. DAJ/Accts/2018-19/959 Dt. 28.11.2018 for necessary instructions in light of the Hon'ble Court orders, and in response, the Administrative Deptt vide letter No. Agri/NG/Legal/86/2018 Dt 07.12.2018 directed to consider the claim of the petitioners in light of the Court Order Dt.13.11.2018 strictly under rules in a time bound manner;

WHEREAS, the Agriculture Production Department, in compliance to another Contempt Petition No. 273/2017 arising out of SWP No. 407/2011 clubbed with

SWP No. 2165/2013 titled 'Agriculture Displaced Employees Welfare Association, Jammu V/s State of J&K & others', issued a speaking Government Order No. 91-Agri of 2019, Dated 15-04-2019, the relevant part of which is reproduced hereunder:

“Whereas, the petitioner-association have claimed in the writ petition, the earned leave and cash in lieu of leave salary in respect of period of earned leave which is at their credit at the time of retirement on superannuation and to release cash in lieu of leave salary in respect of period of earned leave in favour of the members of the petitioner-association who have either retired from the active Government service or have expired during their service or are going to retire on attaining the age of superannuation in terms of Rule 37 of the Jammu and Kashmir Civil Services Leave Rules, 1979; and

Now, therefore, in compliance of the Honble High Court directions dated 02.05.2016, the claim of the petitioner-association with regard to leave salary/cash in lieu of leave salary has been examined and considered in terms of Government Order No. 605-GAD of 1991 dated 26.06.1991 read with Government Order No. 629-GAD of 1991 dated 04.07.1991 and Government Order No. 109-GAD of 1994 dated 31.01.1994 and it is hereby ordered that:-

- I. The earned leave at the credit of migrant employees of the department at the time of their migration from the valley will not be adjusted against the migration period and will remain available in respect of those migrant employees of the department who have already retired or may retire for purpose of payment of cash equivalent of the said amount of the earned leave credit in their favour.*
- II. The migrant employees of the department, who have been assigned specific duties at Jammu or any other place, shall be entitled to treatment of the period as on duty from the date they have been put on such temporary duties and shall be entitled to earned leave for the said period.*
- III. Those migrant employees of the department who are posted/assigned the duties by the department against any post outside the valley in public interest, but refused to join their duties shall not be entitled to the grant of leave salary as available to the employees at II above.”*

In the above backdrop, the cases of the petitioners were thoroughly examined and found that in the case of petitioner Mr. Kuldeep Kumar Mattas, JAEO (Migrant), there was 108 days of Earned Leave in his credit upto 28-02-1990 when he migrated from Kashmir to Jammu. Thereafter, till his date of retirement on superannuation on 31-03-2018, he was not assigned any specific duty. Thus, in terms of instruction no. II of the aforementioned Government Order No. 91-Agri of 2019, dated 15-04-2019 no Earned Leave beyond 108 days accrued to the said official from 01-03-1990 to 31-03-2018. Likewise, in the case of petitioner Mr. Kuldeep Kumar Dass, JAEO (Migrant), there was 91 days of Earned Leave in his credit upto 31-01-1990, when he migrated from Kashmir to Jammu. He too was not assigned any specific duty till the date of his retirement on superannuation on 31-03-2018 and as such no additional Earned Leave beyond 91 days accrued to the official from 01-02-1990 to 31-03-2018.

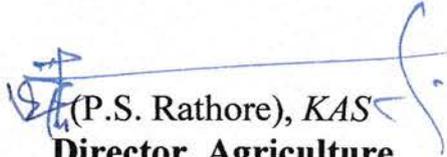
NOW THEREFORE, in deference to the Hon'ble High Court Order passed in SWP No. 2320/2018, after thorough examination of the case of the petitioners viz Kuldeep Kumar Mattas and Kuldeep Kumar Dass, it has been found that both the

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petitioners have not been assigned any special or temporary duty in Jammu since the date of their migration from Kashmir valley to Jammu till their retirement on superannuation and as such no additional Earned Leave accrued to them after their migration to Jammu over and above what has been already accounted for and paid to them as cash-in-lieu of leave salary.

It is as such ordered that the petitioners viz. Mr. Kuldeep Kumar Mattas and Mr. Kuldeep Kumar Dass, retired JAEOS (Migrant) have no further entitlement of cash-in-lieu of leave salary over and above what has already been paid to them.

No.: Agri/DAJ/Estt.-I/2019/1238-45
Dated: 13 05/2019


(P.S. Rathore), KAS
Director, Agriculture
Jammu

Copy to

1. The Secretary to Govt. Agriculture Production Department, Civil Secretariat, Srinagar for favour of information.
2. Sh. Aseem Sawhney, Additional Advocate General for information.
3. The Deputy Director Central for information.
4. The Account Officer, Directorate of Agriculture, Jammu for information.
5. Sh Kuldeep Kumar Mattas for information.
6. Sh Kuldeep Kumar Dass for information.
7. The Incharge Computer Section for uploading on departmental website.
8. The concerned file/ stock /order file.