**Serial No.50**
SUPP CAUSE LIST

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

**WP(C) 1619/2026**
**CM(4231/2026)**
**Caveat 1342/2026**

**1. UT of J&K Through Commissioner Secretary to Government, Skill Department, J&K, Civil Secretariat, Jammu/Srinagar.**

**2. Director Skill Development Department, J&K Bemina, Srinagar.**

**…Petitioner(s)**

Through: Mr. Ilyas Nazir Laway, GA

**Vs.**

**1. Firdous Ahnad Itoo**
**S/O: Nazir Ahmed Itoo**
**R/O: Alqadour Lane NakikBagh, Natipora, Srinagar.**

**2. Accountant General, J&K Srinagar, Jehangir Chowk.**

**...Respondent(s)**

Through: Mr. Sheikh Mohd Faisal, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE (ACTING)**
**HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE**

**ORDER (ORAL)**
15.07.2026

**Caveat No. 1342/2026:-**

1. With the appearance of Mr. Sheikh Mohd Faisal, learned counsel Caveat stands ***discharged***.

**WP(C) No. 1619/2026:-**

2. This petition under Article 226 of the Constitution of India filed by the Union Territory of J&K, calling in question the

order and judgment dated 30th March, 2026, passed by the Central Administrative Tribunal, Srinagar Bench ["the Tribunal"] in OA No. 660/2024, titled ***"Firdous Ahmad Itoo Vs. Union Territory of J&K and Ors."***, whereby the Tribunal has allowed the Original Application (OA) filed by the respondent No. 1 and directed the petitioners herein to process and release the pension and other post retiral benefits in favour of the respondent No. 1within a period of six weeks from the date a copy of the judgment was served upon them.

3. The Tribunal has further provided that in case the retiral benefits are not finalized within the stipulated period, the amount shall become payable along with interest at the rate of 6% per annum.

4. Briefly stated, the facts leading to the filing of this petition are that the respondent No. 1 was substantively holding the post of the Principal in the Government Polytechnic College, Pulwama, and retired on superannuation w.e.f. 30th April, 2024. The respondent No. 1 was, however, not sanctioned/granted his pension by the petitioners without indicating any reason or justification to him.

5. Aggrieved thereof, the respondent No. 1 filed OA No. 660/2024 before the Tribunal seeking, *inter alia,* a writ of certiorari for quashing Government Order No. 313 of 2024 dated 4th September, 2024, issued by the petitioner No. 2 to the extent that it

granted only the provisional pension and withheld other post retiral benefits like gratuity, etc. A direction was also sought to release and disburse the retiral benefits along with interest and adequate compensation.

6. The Government Order dated 4th September, 2024, (supra) was challenged by the respondent No. 1 on the ground that, in the absence of any judicial or departmental proceedings pending against him, the respondent No. 1 could not be deprived of his hard earned pension and other post retiral benefits.

7. It was also contended before the Tribunal that the right to receive retiral benefits, including the full pension, is a right to property and is recognized as a constitutional right under Article 300-A of the Constitution of India.



8. The Original Application (OA) was contested by the petitioners herein on the ground that, as per the information received from the Crime Branch, the involvement of the respondent No. 1 has surfaced as a suspect in FIR No. 11/2018 registered at Police Station, Economic Offences Wing, Srinagar, Crime Branch, Kashmir and that an inquiry into the alleged embezzlement in the Islamic University of Science and Technology (IUST) is also contemplated against the respondent No. 1.

9. The matter was considered by the Tribunal in the light of rival contentions and the material on record, and the Tribunal came to the conclusion that since there was no FIR, trial or

departmental inquiry pending against the respondent No. 1, as such, he cannot be deprived of his post retiral benefits, including full pension and gratuity, etc.

***10.*** Reliance was placed by the Tribunal on the judgment passed by a Division Bench of this Court in case titled ***"Ghulam Mohi-ud-din Lone Vs. State of J&K and Ors."***, **2020:JKLHC:SGR:754** and the Judgment of the Hon'ble Supreme Court rendered in the case ***titled "Union of India Vs. K.V. Jankiraman, AIR, 1991, SC 2010.***

11. The Tribunal has, thus, allowed the Original Application (OA) filed by the respondent and passed the directions, which we have adverted to hereinabove.

12. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Tribunal is in consonance with the law declared by this Court in **Ghulam Mohi-ud-din Lone** (Supra) and also the position of law elaborated by the Hon'ble Supreme Court in **K.V. Jankiraman** (Supra). It is now well settled that unless departmental or judicial proceedings are instituted under Article 168-A, the resort to Article 168-D of the CSR cannot be taken and the employee cannot be denied full pension or granted only the provisional pension.

13. This Court has already explained in extenso the meaning of departmental and judicial proceedings in the case of **Ghulam**

**Mohi-ud-din Lone** (Supra) and, therefore no reiteration of the position of law on the point is called for in this matter. It would be appropriate, at this stage, to set out what is said by a Division Bench of this Court in Para 14 of the judgment rendered in case of **Ghulam Mohi-ud-din Lone** (Supra):-

> *"(14) The net result of the law laid down by the Supreme Court in the judgments referred above is that the hard earned benefit in the shape of pension and gratuity that accrues to an employee is in the nature of „property". The right to property may not be a fundamental right any more but it continues to be a Constitutional right and cannot be taken away without due process of law, as is provided under Article 300A of the Constitution of India. It, therefore, follows that to deprive a person of his right to property, the State has to come up with a law within the meaning of Article 300A of the Constitution of India. It cannot be taken away by way of executive instructions which do not have any statutory character. It is thus axiomatic that the pension and gratuity is a property and the employee who has earned it cannot be deprived of it otherwise than by law within the meaning of Article 300A of the Constitution of India. The pension or gratuity can be denied to a retired employee like appellant only in accordance with the statutory provisions of Articles 168-A and 168-D of CSR. As explained above, since neither „judicial proceedings" nor „departmental proceedings" against the appellant were instituted at the time of his retirement, as such, there is no statutory mandate to deny the pension, gratuity and other post retiral benefits to the appellant. The respondents have not brought to our notice any other statutory provision either in the CSR, Pay Rules of 1979 or J&K Civil Services (Classification, Control and*

*Appeal) Rules, which entitle the employer, the respondents herein, to deny post retirement benefits to an employee merely on the ground that at the time of his superannuation, an FIR into his misconduct was registered and pending investigation. The mandate of Statutory Rules, reproduced hereinabove, is that the government will sanction only provisional pension and withhold the gratuity in the cases where the employee at the time of superannuation was facing either a „departmental enquiry" or a „judicial proceeding". The connotation of the term „judicial" proceedings has already been explained by us hereinabove."*

14. Indisputably, there are no judicial proceedings or departmental inquiry pending against the respondent No. 1 and, therefore, he cannot be deprived of his hard earned post retiral benefits, including full pension and gratuity

15. For the foregoing reasons, we find no merit in this petition and the same is, accordingly, **dismissed**.

**(Mohd Yousuf Wani)** **(Sanjeev Kumar)**
**Judge** **Chief Justice (Acting)**

**SRINAGAR:**
15.07.2026
"MIR ARIF"

(i) Whether the order is reportable? Yes
(ii) Whether the order is speaking? Yes