

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 1201/2025

Pronounced on:- 14.10.2025

Uploaded on:- 16.10.2025

.....Appellant(s)/Petitioner(s)

1. UT of J&K th. Financial
Commissioner (Addl. Chief
Secretary) Jal Shakti Department,
Civil Secretariat UT of J&K at
Jammu- 180001
2. Chief Engineer, Jal Shakti
Department, Jammu- 180001
3. Executive Engineer, Jal Shakti
(Hydraulic) Division Ramban -
182144
4. Principal Accountant General
(A&E), UT of J&K, Shakti Nagar,
Jammu-180001.

Through: Ms. Monika Kohli, Sr. AAG

vs

1. Abdul Rashid Malik, aged 60 years Respondent(s)
S/o Ahmadullah Malik,
R/o Neel, Tehsil Banihal, District Doda,
182202.
2. Ghulam Mohd., Aged 60 years,
S/o Abdullah Sheikh,
R/o Village Pogal, Tehsil Banihal, District
Doda, 182202.
3. Niayazullah Sohil, Aged 61 years,
S/o Ghulam Mohd. Sohil,
R/o Village Sunmatna, Tehsil Ramban,
District Doda, 182202.
4. Bashir Ahmed Bali, aged 60 years,
S/o Ghulam Qadir Bali,
R/o Village Batli Gandhari District
Ramban- 182144.

Through: Mr. Navyug Sethi, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER (ORAL)

Sanjeev Kumar 'J'

1. This petition under Article 226 of the Constitution of India, filed by the Union Territory of J&k & Ors., is directed against an order and judgment dated 19.11.2024 passed by the Central Administrative Tribunal, Jammu Bench at Jammu [**“the Tribunal”**] in O.A. No. 100/2024 titled *Abdul Rashid Malik &Ors.Vs. UT of J&K & Ors.* whereby the Tribunal, has, while allowing the O.A. has issued the following directions:

- (i) The impugned order of recovery qua the applicants is quashed and set aside and the respondents are directed not to recover any amount from the pay/pensionary benefits of the applicants.
- (ii) The respondents are directed to restore the pay/pension of the applicants which they were getting prior to the issuance of the impugned order.
- (iii) The amount recovered from the pay/pensionary benefits of the applicants, shall be refunded preferably within two months from the date of receipt of a certified copy of this order.
- (iv) In the cases, where applicants have already retired, the respondents shall pay pension to the applicants on the basis of last pay drawn by the applicants.

2. The petitioners are aggrieved of the judgment impugned on the ground that the Tribunal has failed to appreciate the fact that no employee is entitled to retain the benefit wrongfully extended during his service career only on the ground that he has now retired and cannot be asked to refund the said benefit. The issue, which has been raised by the

petitioners in this petition, has been elaborately considered by us in our judgment dated 04.04.2025 passed in WP(C) No. 2416/2024 c/w WP(C) No. 3034/2024 under the lead case of *Sita Ram & Ors. Vs. UT of J&K & Ors.*

3. Having heard learned counsel for the parties and perused the material available on record, we are of the considered opinion that the judgment passed by the Tribunal insofar as the direction Nos. (ii) and (iv) are concerned, cannot be sustained in law.
4. Indisputably, the respondents are Class-IV employees (equivalent to Class C and D employees in the Central Government) and have retired on superannuation. The benefit of higher pay-scale was given to them by the petitioners during their service career in terms of SRO 59 of 1990 despite the fact that the said SRO stood withdrawn with effect from 15.01.1996. It is not in dispute that the benefit of higher pay scale was granted to the respondents by petitioners erroneously and in ignorance of withdrawal of SRO 59 of 1990, which alone was the source of giving the benefit of higher pay-scale to the respondents.
5. It is also not disputed that for wrong fixation of pay and release of higher pay-scale erroneously by the petitioners, the respondents, were, in any manner, responsible or had contributed. As a matter of fact, the respondents have also not disputed in their O.A., filed before the Tribunal, that they were not entitled to the benefit higher pay-scale in terms of SRO 59 of 1990.
6. It was, however, projected by the respondents before the Tribunal that since they have now retired on superannuation, therefore, it would be

too harsh and inequitable if the petitioners are permitted to make recoveries from their pay or pension/gratuity. The Tribunal accepted the plea of the respondents and by placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and Ors. Vs. Rafiq Masih (White Washer) 2015*, reported in (2015) 4 SCC 334, allowed the O.A. and directed the petitioners herein not to make recoveries on account of excess payments erroneously drawn by the respondents under the orders of the petitioners. The Tribunal also restrained the petitioners from re-fixing their salary after withdrawing the benefit erroneously availed by the respondents during their service career.

7. So far as the view of the Tribunal that the recoveries cannot be effected after the retirement of a Class-IV employee in light of the judgment rendered by Hon'ble Supreme Court in Rafiq Masih's case (supra) is concerned, the same cannot be found fault with and deserves to be upheld. However, we are not in agreement with the Tribunal that once a mistake is always a mistake and therefore, the respondents are entitled to continue to receive the benefit of a mistake committed by the petitioners.
8. No employee, including the one who has superannuated, is entitled to reap the benefit of an error committed by the employer while fixing the pay-scale. As we have noted hereinabove, respondents never claimed before the Tribunal that they were entitled to the benefit of higher pay-scale extended to them by the petitioners or that SRO 59 of 1990 could not have been arbitrarily withdrawn by the petitioners.

Neither any such pleadings are available in the O.A. of the respondents nor has such a question fallen for determination before the Tribunal. In the absence of challenge to the withdrawal of SRO 59 of 1990 and in the absence of a claim by the respondents that they are entitled to higher pay-scale under SRO 59 of 1990, the only question that was required to be determined by the Tribunal was as to whether the benefit of higher pay grade already availed by the respondents could be withdrawn by the respondents, that too, after the superannuation of the respondents. This question has been answered by the Tribunal in favour of the respondents.

9. The argument of the learned counsel for the respondents that since the mistake of granting higher pay-scale has been committed by the petitioners and not by the respondents and therefore, the benefit of such mistake, should be allowed to be availed by the respondents, does not have any substance and therefore, cannot be accepted.
10. During the course of the employment, many a times, bonafide mistakes in fixation of salaries are committed by the employers. Sometimes these mistakes are detected by the employers themselves and sometimes by the Office of the Accountant General. But, there is nothing that prevents the employer from correcting such mistakes.
11. However, in a case where an employee resists such correction, it is incumbent upon to the employer to provide such employee an opportunity of being heard. In the instant case, as we have found, the respondents never disputed that the benefit, which was given to them was under a mistake committed by the petitioners and was therefore,

liable to be corrected by the petitioners. The entire emphasis of the respondents in the O.A. was to restrain the petitioners from recovering the benefits already availed by them. The Tribunal accepted the plea and granted the relief that we have taken note of hereinabove. However, the claim of the respondents to avail the benefit of mistake committed by the petitioners despite the mistake having been detected and corrected is totally misconceived and therefore, cannot be accepted. The Tribunal has gone wrong on this aspect of the matter and therefore, the judgment of the Tribunal to that extent deserves to be set aside.

12. For all these reasons, we partially allow this appeal and set aside the order impugned passed by the Tribunal to the extent of direction Nos. (ii) and (iv). The amount already received by the respondents under the mistake in question shall, not be recovered.

13. **Disposed of.**

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
14.10.2025
Vishal Sharma

Whether the order is reportable: Yes/No

Whether the order is speaking: Yes/No