

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

**CJ Court**

**Case: WP(C) No. 515/2025  
Cav. No. 375/2025**

1. Union Territory of J&K .....Petitioner(s)  
th. Commissioner/Secretary to Govt.  
Jal Shakti (PHE) Deptt.  
Civil Secretariat J&K at Jammu.

2. Chief Engineer,  
Jal Shakti (PHE) Deptt,  
Jammu-180001

3. Superintending Engineer,  
Hydraulic Circle  
Jammu-180001

4. Executive Engineer,  
Jal Shakti (PHE) Division  
Akhnoor-181201

Through :- Mrs. Monika Kohli, Sr. AAG.

v/s

1. Sehdev Singh, Age 59 years .....Respondent(s)  
S/O Sh. Rasal Singh  
R/O Bhalwal, Tehsil Bhalwal District Jammu

2. Ram Pal, Age 59 years  
S/O Sh. Kaka Ram  
R/o Bhalwal, Tehsil Bhalwal District Jammu

3. Jamat Ali, Age 57 years  
S/O Sh. Abdulla  
R/O Baran, Tehsil Bhalwal District Jammu

4. Raj Singh, Age 58 years  
S/O Sh. Tarlok Singh  
R/O Baran, Tehsil Bhalwal District Jammu

5. Kounsai Singh, Age 55 years  
S/O Sh. Onkar Singh  
R/O Baran, Tehsil Bhalwal District Jammu

6. Jia Lal, Age 57 years  
S/O Sh. Sarban Dass  
R/O Seri Pandita,  
Tehsil Bhalwal District Jammu
7. Darshan Singh, Age 56 years  
S/O Sh. Sansar Singh  
R/O Malpur, Tehsil Bhalwal District Jammu
8. Sukhdev Singh, Age 57 years  
S/O Sh. Onkar Singh  
R/O Batehra, Tehsil Bhalwal District Jammu
9. Bodh Raj, Age 55 years  
S/O Sh. Ram Lal  
R/O Baran, Tehsil Bhalwal District Jammu
10. Parshotam Lal, Age 56 years  
S/O Sh. Prem Nath  
R/O Baran, Tehsil Bhalwal District Jammu
11. Abdul Majid, Age 55 years S/O Sh. Ghulam Ali  
R/o Baran, Tehsil Bhalwal District Jammu
12. Shameer Ali, Age 54 years  
S/O Alam Din  
R/O Dhar Dharochan,  
Tehsil Bhalwal District Jammu
13. Prabu Dayal, Age 55 years  
S/O Sh. Gian Chand  
R/O Ghaink, Tehsil Bhalwal District Jammu
14. Mohan Lal, Age 54 years  
S/O Sh. Jalla Ram  
R/O Ranjan, Tehsil Bhalwal District Jammu
15. Ram Pal, Age 55 years  
S/O Sh. Chuni Lal  
R/O Ghaink, Tehsil Bhalwal District Jammu
16. Iqbal Mohd. Age 55 years  
S/O Sh. Nek Mohd.  
R/O Kangar, Tehsil Bhalwal District Jammu
17. Shiv Kumar, Age 55 years  
S/O Sh. Ram Krishan  
R/O Showa, Tehsil Bhalwal District Jammu

18. Ashok Kumar, Age 55 years  
S/O Sh. Des Raj  
R/O Bhalwal, Tehsil Bhalwal District Jammu
19. Amar Singh, Age 54 years  
S/O Sh. Jaber Singh  
R/O Baran, Tehsil Bhalwal District Jammu
20. Rattan Lal, Age 55 years  
S/O Sh. Jagat Ram  
R/O Ranjan, Tehsil Bhalwal District Jammu
21. Sh. Bhagwan, Age 54 years  
S/O Sh. Hans Raj  
R/O Ranjan, Tehsil Bhalwal District Jammu
22. Devi Singh, Age 56 years  
S/O Sh. Parbhat Singh  
R/O Bhalwal, Tehsil Bhalwal District Jammu
23. Darshan Lal, Age 58 years  
S/O Sh. Ganga Ram  
R/O Dharam Khoo,  
Tehsil Bhalwal District Jammu
24. Tilak Raj, Age 58 years  
S/O Sh. Kaka Ram  
R/O Gharota Thathi,  
Tehsil Bhalwal District Jammu
25. Ram Chand, Age 59 years  
S/O Sh. Diwan Chand  
R/O Ranjan, Tehsil Bhalwal District Jammu
26. Sham Lal, Age 59 years  
S/O Sh. Chattru Ram  
R/O Agore, Tehsil Bhalwal District Jammu
27. Ghulam Qadir, Age 56 years  
S/O Imam Din  
R/O Ranjan, Tehsil Bhalwal District Jammu
28. Subash Chander, Age 57 years  
S/O Sh. Panu Ram  
R/O Jandyal, Tehsil Bhalwal District Jammu
29. Thakur Singh, Age 58 years

S/O Sh. Bachittar Singh  
R/O Ranjan, Tehsil Bhalwal District Jammu

30. Beli Ram, Age 58 years  
S/O Sh. Dhani Ram  
R/O Jandyal, Tehsil Bhalwal District Jammu
31. Mushtaq Ahmed, Age 58 years  
S/O Abdul Gani  
R/O Jandyal, Tehsil Bhalwal District Jammu
32. Tara Chand, Age 58 years  
S/O Sh. Dhumu Ram  
R/O Ranjan, Tehsil Bhalwal District Jammu
33. Chhankar Singh, Age 45 years  
S/O Sh. Roop Singh  
R/O Ranjan, Tehsil Bhalwal District Jammu
34. Yash Pal, Age 56 years  
S/O Sh. Guran Ditta  
R/O Gurha Brahmana,  
Tehsil Akhnoor District Jammu
35. Jai Pal Singh, Age 56 years  
S/O Sh. Karan Singh  
R/O Kaleeth, Tehsil Khour District Jammu
36. Jagdish Kumar, Age 56 years  
S/O Sh. Thoru Ram  
R/O Kaleeth, Tehsil Khour District Jammu
37. Puran Chand, Age 57 years  
S/O Sh. Thoru Ram  
R/O Kaleeth, Tehsil Khour District Jammu
38. Ashok Kumar, Age 56 years  
S/O Sh. Sansar Chand  
R/O Kaleeth, Tehsil Khour District Jammu
39. Om Parkash, Age 54 years  
S/O Sh. Kanshi Ram  
R/O Rajwal, District Jammu
40. Babu Ram, Age 56 years  
S/O Sh. Dina Nath  
R/O Dhok Khalsa,  
Tehsil Khour District Jammu

41. Doulat Ram, Age 56 years  
S/O Sh. Raghu Nath  
R/O Dhok Khalsa,  
Tehsil Khour District Jammu
42. Baldev Raj, Age 58 years  
S/O Sh. Dhana Ram  
R/O Balebagh,  
Tehsil Akhnoor District Jammu
43. Mohd. Shafi, Age 58 years  
S/O Ghulam Rasool  
R/O Balebagh,  
Tehsil Akhnoor District Jammu
44. Kewal Kumar, Age 58 years  
S/O Sh. Bhagat Ram  
R/O Gurha Brahmana,  
Tehsil Akhnoor District Jammu

Through :- Mrs. Surinder Kour, Sr. Advocate with  
Mr. Mohinder Kumar, Advocate for  
Caveator.

**CORAM: HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

**ORDER**  
**04.03.2025**

**CAV No. 375/2025**

With the appearance of learned counsel for the Caveator, caveat stands discharged.

**WP(C) No. 515/2025**

01. Notice. Mrs. Surinder Kour, learned Senior Advocate assisted by Mr. Mohinder Kumar, Advocate waives notice on behalf of the respondents.
02. The respondents-applicants before the Central Administrative Tribunal (CAT), Jammu Bench (hereinafter called as, "*the Tribunal*") were

Class-IV employees and had been granted benefits of higher pay in terms of SRO 59 dated 06.02.1990 and SRO 149 dated 07.01.1973, however, at the later stage, the petitioners herein realized that the applicants-respondents herein were not entitled for those benefits and, subsequently, the same was withdrawn. The petitioners herein further initiated recovery of the amount which was paid to the applicants-respondents herein in the form of higher pay scales.

03. Aggrieved of the action of the petitioners herein for recovery, the applicants-respondents herein approached the Tribunal by filing different Original Applications.
04. It was the case of the applicants-respondents herein before the Tribunal that deductions were ordered to be made by the petitioners herein from those who retired, from their gratuities and other pensionary benefits, whereas, in the case of those who were in service, recoveries were ordered to be made from their salaries.
05. Respondents-petitioners herein have admitted that the grant of benefits of higher pay scale have wrongly been granted in favour of the applicants-respondents herein and after realizing they initiated the process of recovery from the retirees as well as in service employees.
06. The case of the applicants-respondents herein is that they have not played any fraud or mischief for receiving the benefits under SROs mentioned above, whereas, the said benefits have been granted by the writ petitioners herein voluntarily, therefore, once even if granted

wrongly, the recovery for the same cannot be effected from the retirees as well as in service employees at the relevant point of time.

- 07.** The Tribunal vide common judgment/order dated 20.06.2024 (impugned herein) quashed and set-aside the order of recovery *qua* the applicants-respondents herein and the respondents-applicants herein were directed not to recover any amount from the salaries or pensionary benefits of the applicants-respondents herein and further directed that recovery, if any, effected from the salary/pensionary benefits of the respondents herein shall be refunded within a period of two months from the date of receipt of a certified copy of the order.
- 08.** Aggrieved of the order passed by the Tribunal, the present writ petition has been filed.
- 09. Heard learned counsel for the parties.**
- 10.** Admittedly, the benefits under SRO 59 and SRO 149 (*supra*) were granted voluntarily by the writ-petitioners in favour of the applicants-respondents herein, subsequently, the same benefits have been withdrawn and initiated recovery from the pensionary benefits from those who have already been retired and from the salary of those who were in service at the relevant point of time. It is not the case of the writ-petitioners that the benefits received by the applicants-respondents herein by way of a fraud or misrepresentation. Therefore, the law in this regard is well settled in various judgments passed by the Hon'ble Supreme Court of India as well as this Court.

11. The learned Tribunal also relied upon the judgment passed by the Hon'ble Supreme Court in **2022 Live Law (SC) 438 titled – “Thomas Daniel Vs State of Kerala & Ors.”**. The relevant paragraphs 13, 14 and 15 of the said judgment are reproduced as under:-

“13. In *State of Punjab and Others v. Rafiq Masih (White Washer) and Others* wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

.....

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified."

- 12.** Therefore, having regard to the settled legal position, the judgment impugned passed by the learned Tribunal is well reasoned, accordingly, we are not inclined to interfere into the impugned judgment/order passed by the Tribunal.
- 13.** In view of the above, the present writ-petition is *dismissed* along with connected application(s), if any.

**(M A CHOWDHARY)**  
**JUDGE**

**(TASHI RABSTAN)**  
**CHIEF JUSTICE**

JAMMU  
04.03.2025  
SUNIL

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No