

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

CJ Court

**Case: WP(C) No. 569/2025
CM No. 1331/2025**

1. Union Territory of J&K through
Commissioner/Secretary to Government,
Jal Shakti (PHE) Department,
Civil Secretariat J&K at Jammu-180001
2. Chief Engineer, Jal Shakti (PHE) Department,
Jammu-180001
3. Chief Engineer, Jal Shakti (I&FC) Department,
Jammu-180001
4. Superintending Engineer Hydraulic Circle
Jammu-180001
5. Executive Engineer, Jal Shakti (PHE) Division
Akhnoor-181201

.....Petitioner(s)

Through :- Mrs. Monika Kohli, Sr. AAG.
v/s

1. Sita Ram, S/o Munshi Ram R/o Manoh Tehsil Meira-Maandrian and District Jammu
2. Naresh Pal, S/o Chuni Lal R/o Keour Tehsil Meira-Maandrian and District Jammu
3. Madan Lal, S/o Dhani Ram, R/o Chowki Choura Tehsil Chowki Choura, District Jammu
4. Dewan Chand, S/o Chuni Lal R/o Balsaro Thourni Tehsil Chowki Choura, District Jammu
5. Bal Krishan, S/o Chatru Ram R/o Hardu Malada Tehsil Chowki Choura, District Jammu
6. Ashok Kumar, S/o Kashmir Singh R/o Nikiya Camp Tehsil Khour, District Jammu
7. Sukhdev Raj, S/o Kunj Lal R/o Manoh Tehsil Meira-Maandrian and District Jammu
8. Suram Chand, S/o Munshi Ram R/o Khour Tehsil Khour, District Jammu
9. Sat Pal, S/o Badhri Nath R/o Chowki Choura Tehsil Chowki Choura, District Jammu
10. Suram Chand, S/o Gian Chand R/o Gurha Brahmana Tehsil Pragwal, District Jammu
11. Madan Lal, S/o Ganga Ram R/o Gandarwan Tehsil Akhnoor, District Jammu
12. Ravinder Kumar, S/o Paras Ram R/o Kharoti Tehsil Pouni, District Jammu
13. Romesh Kumar, S/o Sh. Dharm Chand R/o Keour Tehsil Meira-Maandrian and District Jammu

14. Ram Krishan S/o Gogi Ram R/o Malpur Tehsil
Bhalwal District Jammu
15. Puran Chand, S/o Krishan Lal R/o Tanda Gandarwan,
Tehsil Akhnoor, District Jammu
16. Gopal Dass, S/o Nikk Ram R/o Rah Siote Tehsil
Chowki Choura, District Jammu

.....Respondent(s)

Through :-

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

ORDER
10.03.2025

01. The facts of the case are briefly stated as under:-

The respondents-applicants before the Central Administrative Tribunal, Jammu Bench (hereinafter called as, "*the Tribunal*") are Class-‘C’/‘D’ employees of the Jal Shakti (Public Health Engineering) Department who were initially granted benefits under SRO-59 dated 06.02.1990 and on 30.06.2020 the Chief Engineer issued a circular directing verification of pay scales and benefits granted to the employees under repealed statutory rules. The department discovered that employees were incorrectly granted benefits under SRO that has been repealed. In the meantime the respondents approached the Central Administrative Tribunal by filing Original Application, during the pendency of which, the benefits of SRO-59 stands withdrawn by the Government beyond 15.01.1996. The Finance Department has issued SRO-14 of 1996, granting benefit of Time Bound Promotions to the non-gazetted employees w.e.f. 01.01.1995, the purpose of which was to stop the application of SRO-59 and the salaries of the applicants/respondents herein was refixed in the month of July 2021.

02. The case of the applicants-respondents herein is that they have not played any fraud or mischief for receiving the benefits under SRO mentioned above, whereas, the said benefits have been granted by the writ petitioners herein voluntarily, therefore, once the benefit 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.
03. The Tribunal vide common judgment/order dated 04.04.2024 (impugned herein) directed the respondents/petitioners herein to re-fix the pay structure of the applicants/respondents herein by denying the higher pay scale, however, the respondents have been restricted to recover any amount already paid to them and also directed to refund any amount already recovered from salary or pension including gratuity without interest.
04. Aggrieved of the order passed by the Tribunal, the present writ petition has been filed.
05. Heard learned counsel for the petitioners.
06. Admittedly, the benefits under SRO 59 (*supra*) were granted voluntarily by the writ-petitioners in favour of the applicants-respondents herein and subsequently, the said benefits have been withdrawn. It is not the case of the writ-petitioners that the benefits have been received by the applicants-respondents herein by way of fraud or misrepresentation. The law in this regard is well settled in various judgments passed by the Hon'ble Supreme Court as well as this Court.

07. The learned Tribunal has 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."

- 08.** 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.
- 09.** In view of the above, the present writ-petition is *dismissed* along with connected application(s).

(M A CHOWDHARY)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

JAMMU
10.03.2025
Pawan Angotra

Whether the order is speaking?: Yes/No

Whether the order is reportable?: Yes/No