

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR  
(Through Virtual Mode)**

.....

**CJ Court**

**LPA No.229/2025 in  
[WP(C) 1051/2024]  
CM (6080/2025)  
Caveat No. 1762/2025**

- 1. Union Territory of J&K through  
Commissioner/Secretary to Government,  
Housing and Urban Development Department,  
Civil Secretariat,  
Jammu/Srinagar.**
- 2. Director, Urban Local Bodies,  
Habitat Centre,  
Bemina, Srinagar.**
- 3. Account Officer,  
Urban Local Bodies,  
Kashmir.**
- 4. Deputy Director,  
Local Funds Audit and Pensions,  
Srinagar.**
- 5. Executive Officer,  
Municipal Council,  
Pampore.**

..... Appellant(s)

Through: Mr. Ilyas Nazir Laway, Govt. Advocate

**Versus**

**Hafiza Akhtar  
D/O Shri Ghulam Ahmad Khan,  
R/O Gandespora,  
Srinagar.**

.....Respondent(s)

Through: Mr. Shakir Haqani, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE  
HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE**

**ORDER  
22.09.2025**

**CAVEAT No. 1762/2025**

Heard the Caveator. Caveat stands discharged.

Main appeal is taken on board.

**LPA No. 229/2025**

1. This intra court appeal is directed against the judgment dated 11.07.2025 passed by the learned Single Judge in WP(C) No. 1051/2024 titled '*Hafiza Akhtar Vs. UT of J&K and others*' whereby the learned writ Court has quashed the communication dated 22.03.2024 in respect of recovery of Rs.6,05,007/- from the death-cum-retirement gratuity on account of drawal of excess pay.
2. The appellants have impugned the judgment on the grounds, *inter alia*, that the learned writ Court has not taken note of the fact that respondent-writ petitioner was illegally re-designated as Junior Assistant and the respondent-writ petitioner had managed her regularization. It is urged that through the medium of communication dated 22.03.2024, the amount wrongly paid to the respondent-writ petitioner was sought to be recovered.
3. Heard learned counsel appearing for the parties and perused the record.
4. The respondent-writ petitioner had filed a writ petition thereby impugning the communication dated 22.03.2024 addressed by appellant No.3 to appellant No.4 whereby it was brought to the notice of appellant No.4 that a sum of Rs.6,05,007/- was required to be recovered from the death-cum-retirement gratuity payable to the respondent-writ petitioner. It was stated by the respondent-writ petitioner that she attained superannuation on 31.05.2022 and after her superannuation, no recovery that too without affording any

opportunity of hearing to the respondent-writ petitioner could have been effected from the death-cum-retirement gratuity of the respondent-writ petitioner.

5. Appellants filed the response stating therein that the respondent-writ petitioner was engaged as daily wager on 05.08.1994 and was brought into regular establishment on 10.09.1997. Subsequently respondent-writ petitioner came to be designated as Junior Assistant with effect from 09.10.1998 and the pay scale attached to the post was released in her favour w.e.f. 19.10.2002. The contention of the appellants is that the respondent-writ petitioner was granted the benefit of up-gradation in an illegal and unauthorised manner and subsequently, the same was cancelled by the Director, Urban Local Bodies, Kashmir- appellant No.2 vide its Order No. DULB/Esstt/327/478 of 2023 dated 28.08.2023 and pursuant to that the pension case of the respondent-writ petitioner was forwarded by the appellant No. 3 to appellant No.4 in terms of the impugned communication dated 22.03.2024. In nutshell, the stand of the appellants is that respondent-writ petitioner was granted the benefit of up-gradation illegally and when it came to the knowledge of the appellants it was withdrawn vide order dated 28.08.2023 issued by the appellant No.2.

6. Admittedly, the respondent writ petitioner came to be superannuated on 31.05.2022 and order in respect of up-gradation of respondent-writ petitioner came to be rescinded on 28.08.2023 and further excess amount allegedly paid to respondent-writ petitioner was ordered to be

recovered from the death-cum- retirement gratuity of the respondent-writ petitioner. The order dated 28.08.2023 has been passed after more than one year of superannuation of the respondent-writ petitioner.

7. The only issue that arises for consideration is as to whether after the respondent-writ petitioner attained superannuation, the appellants could have ordered the recovery of the excess emoluments paid to the respondent-writ petitioner or not, particularly, when there are no allegations of fraud/misrepresentation against the respondent-writ petitioner.
8. The Hon'ble Supreme Court of India has been consistent in its various judgments such as **State of Punjab Vs. Rafiq Masih (White Washer)**, (2015)4 SSC 334, **Thomas Daniel Vs. State of Kerala and others**, 2022 SCC Online 536 and **Jogeshwar Sahoo and others Vs. District Judge, Cuttack and others**, 2025 SCC Online 724 that the employer cannot recover the excess pay/emoluments from the class Class-III and Class-IV employee after his retirement notwithstanding the fact that the payment was made wrongly. The respondent-writ petitioner is admittedly a Class-III employee and the order dated 28.08.2023 in respect of recovery of Rs.6,05,007 has been passed on 28.08.2023 i.e. after more than one year of attaining the superannuation. The action of the appellants in effecting the recovery of excess amount allegedly received by respondent-writ petitioner after more than one year of attaining her superannuation cannot be countenanced in law.

9. Learned writ Court after placing reliance upon various pronouncements of the Hon’ble Supreme Court of India, as mentioned above, has rightly arrived at the conclusion that action of the appellants in seeking recovery of amount of Rs.6,05,007/ by virtue of impugned communication dated 22.03.2024 is unsustainable in law. The view of the learned writ Court is unexceptionable and no view other than the one of the learned writ Court is possible.
10. Viewed thus, we do not find any merit in this appeal. Accordingly, the same is **dismissed** along with connected CM(s).

(Rajnish Oswal)  
Judge

(Arun Palli)  
Chief Justice

Jammu  
22.09.2025  
Madan Verma-Secy

Whether order is speaking? Yes/No.  
Whether order is reportable? Yes/No.

