

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 14/2026 in WP(C) No. 2013/2022

Union Territory of J&K and Another

...Petitioner/Appellant(s)

Through: Ms. Maha Majeed, Assisting Counsel vice
Mr. Mohsin Qadiri, Sr. AAG.

Vs.

Jabeen Kounsar and Others.

...Respondent(s)

Through: Mr. B. A. Zargar, Advocate.
Mr. Mir Manzoor, Advocate.
Ms. Heena Baqal, Advocate vice
Mr. Shafaqat Nazir, Advocate.

CORAM:

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

ORDER

11.08.2026

1. This intra court appeal arises from a judgment and order dated 26.03.2025 passed by the learned Single Judge of this Court {hereinafter referred to as the "Writ Court"} in WP(C) No. 2013 of 2022, titled *Jabeena Kouser v. UT of Jammu and Kashmir and Others*, whereby the Writ Court has partially allowed the writ petition and quashed the recovery ordered by respondent No. 3. The Writ Court, has however, permitted the appellants herein to correct the error and refix the family pension of the respondent.
2. Briefly stated, the facts leading to the filing of the instant appeal are that the respondent No. 3 ordered recovery of the excess amount of

family pension erroneously paid to the respondent, to the tune of Rs. 7,18,268/-. The Manager, J&K Bank, Branch Chanapora, was directed to recover an amount of Rs. 3,59,134/- at the first instance from the family pension of the respondent and the remaining amount in installments at the rate of Rs. 7,500/- per month.

3. The order of recovery issued by respondent No. 3 was called in question by the respondent in WP(C) No. 2013 of 2022. It was contended by the respondent before the Writ Court that the excess family pension paid to her was neither on account of any fraudulent act nor any misrepresentation attributable to her. It was thus pleaded that, in the absence of any fraudulent act or misrepresentation attributable to the respondent, the amount paid under a mistake could not be recovered, that too in one go.
4. The respondent placed reliance upon the judgments of the Hon'ble Supreme Court in the case of *Daniel Thomas v. State of Kerala*, 2022 SCC OnLine SC 536, and *State of Punjab v. Rafiq Masih*, (2015) 4 SCC 334.
5. The petition was contested by the appellants by contending that the respondent cannot be permitted to retain the benefit received by him under a bona fide mistake of fact.
6. The contention of the respondent that the erroneous payment of family pension was not on account of any act of fraud or misrepresentation committed by her was not disputed.

7. The Writ Court, having considered the rival contentions and perused the material on record, came to the conclusion that, in view of the law laid down by the Hon'ble Supreme Court in case of *Daniel Thomas* and *Rafiq Masih*, it was not permissible for the appellants to recover the excess amount paid to the respondent unless such payment has been drawn by the respondent on account of any fraud or misrepresentation.
8. The Writ Court, however, held the appellants entitled to correct the mistake and refix the family pension.
9. It is this judgment of the Writ Court dated 26.03.2025 which is called in question before us in the instant appeal.
10. Having heard learned counsel for the parties and perused the record, we are of the considered opinion that the judgment passed by the Writ Court is in consonance with the settled position of law and, therefore, does not call for any interference in this appeal.
11. It is not in dispute that the husband of the respondent was serving as a driver with the appellants and, therefore, would fall in Class III/Class IV service.
12. It is also not disputed before us that the excess payment made to the respondent was not on account of any act of fraud or misrepresentation committed by, or attributable to, the respondent.

13.The excess amount was paid to the respondent over a period of time. Having regard to the position of law settled in *Rafiq Masih*, supra, and *Daniel Thomas*, it is a foregone conclusion in law that such payment received by a Class III or Class IV employee over a period of time on account of a mistake of fact committed by the employer cannot be recovered from the pension/family pension.

14.The Writ Court has appreciated the legal position in the context of the factual matrix and has rightly come to the conclusion that it would be too harsh for the respondent if the appellants are permitted to recover the excess amount paid to her over a period of time.

15.The Writ Court, however, permitted the appellants to refix the pension so as to correct the error that had resulted in the payment of excess family pension to the respondent. This was the only view that could have been taken in the given facts and circumstances of the case.

16.For the foregoing reasons, we find no merit in this appeal. The same is, accordingly, *dismissed*.

(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (Acting)

SRINAGAR:

11.08.2026

Shaista