

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 1390/2020

Reserved on: 13.02.2026
Pronounced on : 20.02.2026
Uploaded on : 20.02.2026
Whether the operative part or full
judgment is pronounced: Full

Bal Krishan Sharma

....Petitioners

Through:- Mr. Abhirash Sharma, Advocate.

V/s

UT of J&K & Ors

.....Respondents

Through:- Mr. P.D. Singh, Dy. AG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(JUDGMENT)

01. The petitioner, through the medium of the present petition, has challenged Circular No. RCS/Accounts/Adm./G-107/386-1531 dated 11.07.2020 to the extent it provides for retirement of employees of Jammu Cooperative Wholesale Limited (Super Bazaar), Jammu at the age of 58 years instead of 60 years and to the extent it provides for recovery of amount/salary drawn by the petitioner beyond 58 years of age along with interest. The petitioner has also sought a direction upon the respondents to allow him to continue in service until

he attains the age of 60 years; with a further direction to release the salary, which according to the petitioner has been withheld w.e.f., July, 2020.

02. According to the petitioner, he was initially appointed as Helper in the Jammu Cooperative, Wholesale Limited (Super Bazaar), Jammu (hereinafter to be referred to as **“respondent-Cooperative Society”**) and at the time of filing of the writ petition, he was serving on the post of Senior Salesman. It has been submitted that the respondent-Cooperative Society framed its bye laws pursuant to the approval of Board of Administrators vide resolution dated 28.05.2017, which was subsequently registered and recommended by Registrar Cooperative Societies vide his communication dated 25.05.2017 whereafter the State Government vide order bearing No. 20 Coop of 2017 dated 31.05.2017 granted sanction to the enhancement of age of retirement of the employees of the respondent-Cooperative Society from existing 58 years to 60 years.

03. It is being claimed that on the basis of the aforesaid order dated 31.05.2017, many employees including the petitioner continued to serve beyond 58 years of age and they were expecting their superannuation at the age of 60 years. However, the respondents issued the impugned Circular dated 11.07.2020 whereby all Cooperative Societies including the respondent-Cooperative Society was directed to retire all employees at the age of 58 years and to effect recovery of the

amount of salary drawn beyond 58 years of age along with interest.

04. Learned counsel for the petitioner during the course of hearing has submitted that in view of the settled position of law that employees of Cooperative Society have to retire at the age of 58 years, the petitioner does not press for the challenge to impugned Circular to the extent it provides for retirement of employees at the age of 58 years but is confining the challenge to the said Circular to the extent it directs recovery of salary drawn by the petitioner for the period he has served with the respondent-Cooperative Society beyond the age of 58 years.

05. In view of the aforesaid submission of learned counsel for the petitioner, the grounds urged by the petitioner for assailing the impugned Circular to the extent it provides for retirement of employees of respondent-Cooperative Society at the age of 58 years are not being narrated herein. So far as the said Circular provides for recovery of amount drawn as salary by the petitioner after continuing in service beyond 58 years of age is concerned, it has been contended that it is settled position of law that no recovery can be effected from an employee after his retirement unless it is shown that he has drawn emoluments on the basis of any fraud.

06. The respondents have contested the writ petition by filing objections thereto, wherein it has been submitted that the petitioner has furnished an affidavit accepting his age of retirement as 58 years and in this regard, he has furnished an

undertaking. It has been further submitted that as per Rule 13(1) of SRO 233 of 1988 which governs the age of retirement of employees of respondent-Cooperative Society, the petitioner had to retire on attaining the age of 58 years but he continued to serve beyond the said age, therefore, he is not entitled to salary which he has drawn beyond the period of date of his retirement.

07. I have heard learned counsel for the parties and perused record of the case.

08. As already stated, the petitioner has withdrawn his challenge to the impugned Circular to the extent it provides for retirement of employees of respondent-Cooperative Society at the age of 58 years. The only question that remains to be determined is whether the action of the respondents in directing recovery of the amount of salary that has been drawn by the petitioner while serving beyond the age of 58 years is justified in law. In this regard, the legal position has been well settled by the Supreme Court of India in the case of **State of Punjab and ors Vs. Rafiq Masih (White Washer) etc., 2015 (4) SCC 334**. The Supreme Court while considering this aspect of the matter, has summarized few situations wherein recoveries by the employers would be impermissible in law. The same are reproduced as under:

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.”

09. From the above, it is clear that recovery from retired employees or employees, who are due to retire within one year of the order of recovery, is not to be effected unless it is shown that excess payment was made to such an employee on account of some fraud to which he was a privy.

10. Turning to the facts of the present case, Government of J&K had, vide Govt. Order No. 20 Coop of 2017 dated 31.05.2017, accorded sanction to the enhancement of retirement age of the employees of the respondent-Cooperative Society from existing 58 years to 60 years with effect from the issuance of the said order. It is because of this Government order that the petitioner continued to serve the respondent-Cooperative Society even after attaining the age of 58 years. It

is not the case of respondents that petitioner had anything to do with issuance of Government Order dated 31.05.2017 nor is it the case of respondents that issuance of said order is a result of fraud. It appears that respondents after realizing that upon issuance of Government order dated 31.05.2017, the employees have continued to remain in service even after attaining the age of 58 years despite the said order being contrary to SRO 233 dated 08.07.1988, came up with the impugned Circular clarifying the position meaning thereby that an ambiguity with regard to the age of superannuation of employees of respondent-Cooperative Society had arisen on account of issuance of Government Order dated 31.05.2017. It is because of this reason that the petitioner continued to serve even after attaining the age of 58 years. For this, he cannot be held responsible and no oblique motive or malafide intention can be attributed to him. Therefore, effecting recovery of salary which he has drawn for the period for which he has worked beyond the period of 58 years or for that matter in withholding his salary for the period for which he has actually worked beyond 58 years of age is contrary to the law laid down by the Supreme Court in **Rafiq Masih's case** (supra)

11. For what has been discussed hereinabove, the writ petition is partly allowed and impugned Circular dated 11.07.2020 to the extent it provides for recovery of amount drawn by the employees of the respondent-Cooperative Society for having served beyond the age of 58 years is quashed and

the respondents are restrained from effecting any recovery from the pension and pensionary benefits of the petitioner. They are further directed to release the withheld salary for the period for which the petitioner has actually worked with the respondent-Cooperative Society.

12. Disposed of accordingly.

(SANJAY DHAR)
JUDGE

JAMMU
20.02.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **No**

