

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

WP(C) No. 2416/2024 c/w
WP(C) No. 3034/2024

Reserved on: 24.03.2025
Pronounced on: 04.04.2025

WP(C) No. 2416/2024

1. Sita Ram, Age 62 years S/o Munshi Ram R/o Manoh, Tehsil Mera-Mandrian and District Jammu
2. Naresh Pal, Age 59 years S/o Chuni Lal R/o Keour Tehsil Mera-Mandrian and District Jammu
3. Madan Lal, Age 58 years S/o Dhani Ram R/o Chowki Choura, Tehsil Chowki Choura, District Jammu
4. Dewan Chand, Age 58 years S/o Chuni Lal R/o Balsaro Thoumi, Tehsil Chowki Choura, District Jammu
5. Bal Krishan, Age 57 years, S/o Chattru Ram R/o Hardu Malada, Tehsil Chowki Choura, District Jammu
6. Ashok Kumar, Age 57 years S/o Kashmir Singh R/o Nikiya Camp, Tehsil Khour, District Jammu
7. Sukhdev Raj S/o Kunj Lal, R/o Manoh Tehsil Mera-Mandrian and District Jammu
8. Suram Chand, Age 56 years S/o Munshi Ram, R/o Khour Tehsil Khour, District Jammu
9. Sat Pal, Age 56 years, S/o Badhri Nath R/o Chowki Choura Tehsil Chowki Choura, District Jammu
10. Suram Chand, Age 56 years, S/o Gian Chand R/o Gurha Brahmana, Tehsil Pargwal, District Jammu
11. Madan Lal, Age 55 years, S/o Ganga Ram R/o Gandarwan, Tehsil Akhnoor, District Jammu
12. Ravinder Kumar, Age 55 years S/o Paras Ram, R/o Kharoti Tehsil Pouni, District Jammu
13. Romesh Kumar, Age 55 years S/o Sh. Dharm Chand, R/o Keour Tehsil Mera-Mandrian and District Jammu
14. Ram Krishan Age 54 years S/o Gogi Ram, R/o Malpur Teshil Bhalwal District Jammu
15. Gopal Dass, Age 50 years S/o Nikk Ram, R/o Rah Siote Tehsil Chowki Choura, District Jammu

Vs.

UT of Jammu and Kashmir and ors

WP(C) No. 3034/2024

Karan Kumar son of Raj Kumar resident of House No. 116, Lane No. 1
Main Stop Janipur Tehsil and District Jammu

Vs.

UT of J&K and others

For the petitioners: Mr. Ajay Bakshi Advocate.

For the respondents: Ms Monika Kohli Sr. AAG

Ms. Monika Thakur Advocate.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Sanjeev Kumar J

WP(C) No. 2416/2024

1 Petitioners, 15 in number, have invoked the extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India to seek quashment of an order and judgment dated 04.04.2024 passed by the Central Administrative Tribunal Jammu Bench, Jammu ['the Tribunal'] in OA No. 61/1127/2021 titled 'Sita Ram and others vs. UT of Jammu and Kashmir and others' along with other connected OAs, whereby the Tribunal has disposed of all the OAs filed by the petitioners with a direction to the respondents herein to re-fix the pay structure of the petitioners by denying the higher pay scale to them. The Tribunal has, however, directed the respondents not to recover any amount already paid to the petitioners, with a further direction to re-refund to the petitioners the amount, if any, already recovered, either from their salary or pension/gratuity.

2 The petitioners are aggrieved of the judgment impugned only to the extent it provides for the re-fixation of their pay structure by denying the higher pay scale.

3 Before we advert to the grounds of challenge urged by Mr. Bakshi, learned counsel for the petitioners, to assail the impugned judgment of the Tribunal, a brief narration of facts leading to the filing of instant petition would be advantageous.

4 The petitioners herein, along with one more person, filed Original Application No. 61/1127/2021 before the Tribunal under Section 19 of the Administrative Tribunal Act, 1985 seeking, *inter alia*, quashing of order No.SE/HYD/2747-60 dated 08.07.2021 issued by the respondent No.4, which provided for recovery to be effected from the petitioners from the month of August, 2021. The petitioners also prayed for a direction to the respondents No. 2 and 3 not to re-fix their pay or recover the benefits already availed by the petitioners. The OA was premised on the following factual matrix:

The petitioners, who were earlier engaged as Daily Wagers in the PHE/I&FC (now Jal Shakti) Department, came to be regularized as Class-IV employees. As is pleaded by the petitioners in the OA, they were initially placed in the pay scale of Rs.750-940. Some of the similarly situated Class-IV employees of the Department, including the petitioner Ramesh Kumar, filed a writ petition before this Court seeking the benefit of Circular No. PHEJ-20094-20113 dated 18.03.1993, as modified by order No. PHEJ/3417-36 dated 11.06.1993. The said writ petition, it is pleaded in the OA, was disposed of by this Court vide order dated 23.12.2015, directing the respondents to accord consideration to the claim of the petitioners. It is pleaded that, in compliance with the order passed by this Court, respondent No.3 issued a Circular dated 18.03.1993 (*supra*), whereby the petitioners, along

with other similarly situated persons, were placed in the higher pay scale of Rs.950-1500. The Circular dated 18.03.1993 was later partially modified vide office circular dated 11.06.1993, in terms whereof it came to be provided that all those employees, who had notionally completed three years of service in the lower grade and have physically worked against the post for at least one year would be eligible for promotion to the next higher grade. In view of the circulars issued by respondent No.2, the respondent No.5 issued individual orders giving notional benefits w.e.f 01.04.1998 to 01.07.2015 and monetary w.e.f 01.07.2015. This is how all the petitioners came to be placed in the higher pay scale of Rs.950-1500 notionally w.e.f 01.04.1998 and monetarily w.e.f 01.07.2015. The petitioners continued to avail the benefit of the higher pay scale till the impugned order dated 08.07.2021 was issued by the respondent No.4, initiating recoveries from the salary/pension of the petitioners w.e.f August, 2021.

5 In the backdrop of the aforesaid facts and feeling aggrieved by the withdrawal of the higher pay scale and initiation of recovery, the petitioners filed OA No. 61/1127/2021 before the Tribunal.

6 The impugned order of respondent No.4 was assailed by the petitioners primarily on the ground that the higher pay scale came to be granted to the petitioners without any mistake or misrepresentation on their part, and, therefore, it was not permissible for the respondents to re-fix the pay in the lower pay scale and initiate recoveries for the benefits already availed by the petitioners. It was also pleaded before the Tribunal that most of the petitioners were at the verge of retirement and, therefore, as per Article 242 of CSR, any check on the correctness of the emoluments should not go back to the period of 24 months preceding the date of retirement. The judgment passed by the Supreme Court in the case of **State of Punjab and**

others vs. Rafiq Masih, (2015)4 SCC 334, was also relied upon by the petitioners to bolster their submissions made in support of their grounds of challenge urged before the Tribunal.

8 The aforesaid OA was contested by the respondents. In the objections filed on behalf of the Jal Shakti Department through the Executive Engineer, PHE Division Akhnoor, it was submitted that the benefit of SRO 59 of 1990 dated 06.02.1990 stood withdrawn by the Government on 15.01.1996. The Department of Finance, Government of Jammu and Kashmir, vide Circular No. A/Codes/Pension/2020/66 dated 11.02.2021, directed all the concerned to strictly comply with the instructions related to the grant of benefit under SRO 59 (supra). It was further submitted that at the time of release of the higher pay scale, all the petitioners had given affidavits duly verified by the 1st Class Magistrate, stipulating therein that they would refund/surrender the amount received in case any adverse order was issued by the competent authority taking away the benefits conferred at any time.

9 The Tribunal considered the rival contentions and the material on record and vide its judgment, impugned in this petition, came to the conclusion that no fault could be found with the power of the Executive Government to correct its error and that the petitioners had no legal right to claim and retain the benefit under a mistake of fact. The Tribunal, though did not find anything wrong with the Government re-fixing the pay structure of the petitioners for giving them the higher pay scale, erroneously paid to them, yet, in the given facts and circumstances, directed the respondents not to recover any amount already paid to the petitioners, either from their salary or

pension/gratuity received by the petitioners under a mistake of fact. It is this order of the Tribunal which has been called in question before us by the petitioners.

10 Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Tribunal, in the given facts and circumstances of the case, is correct and does not call for any interference by us in this appeal.

11 Indisputably, a precise and concise case set up by the petitioners before the Tribunal, as can be culled out from the OA, is that, without there being any misrepresentation or fraud on the part of the petitioners, the benefit of higher pay scale came to be extended to them by the respondents. The benefit of higher pay scale was given to the petitioners notionally w.e.f 01.04.1998 and monetarily w.e.f 01.07.2015. The benefit was, later on, unilaterally withdrawn by the respondents on the ground that the same was not permissible in view of withdrawal of SRO 59 of 1990 w.e.f 15.01.1996. The petitioners do not dispute the fact that the benefit of higher pay scale was granted to them by the respondents erroneously and in ignorance of withdrawal of the SRO 59 of 1990 which alone was the source of giving the benefit of higher pay scale to the petitioners. It is though contended by the petitioners that the benefit was accorded to them in compliance with the judgment passed by this Court on 23.12.2015, yet, on close scrutiny, we find that the direction contained in the order dated 23.12.2015 was only to accord consideration to the claim of the petitioners. There was never ever any direction issued by this Court to necessarily accord the

benefit of a higher pay scale to the petitioners , the withdrawal of SRO 59 of 1990 notwithstanding. It would be pertinent to point out at this place that the petitioners never ever claimed that they were actually entitled to the benefits of SRO 59 of 1990 or that the withdrawal of the benefit by the respondents was *per se* illegal and impermissible. The OA filed by the petitioners proceeds on the assumption that the withdrawal of the benefit by the respondents was permissible and was merely a correction of an error made.

12 The short case that was projected by the petitioners before the Tribunal was that they were nearing their retirement and, therefore, it would be too inequitable and harsh if the respondents were permitted to make recoveries from their pay or pension/gratuity. The Tribunal accepted the plea of the petitioners, though all of them were in service when the OA was filed. However, some of them had retired, while others were nearing their superannuation at the time of disposal of the OA. Placing reliance on the judgment passed by the Supreme Court in **Rafiq Masih's case** (supra), the Tribunal allowed the OA and directed the respondents not to make any recoveries on account of the excess payments erroneously drawn by the petitioners under the orders of respondent No.4. The Tribunal rightly did not restrain the respondents from re-fixing the salary of the petitioners after withdrawing the benefit of higher pay scale given to the petitioners erroneously. *Once a mistake is always a mistake is not the principle* that should be applied in such cases. No employee, including one nearing his superannuation, is entitled to reap the benefit of an error committed by the employer while fixing the pay scale. As already stated, the petitioners never claimed

before the Tribunal that they were entitled to the benefit of higher pay scale extended to them by the respondent No.4 or that SRO 59 of 1909 (supra) could not have been arbitrarily withdrawn by the respondents. Neither, any such pleadings are available in the OA of the petitioners, nor has such a question fallen for determination before the Tribunal. In the absence of a challenge to the withdrawal of SRO 59 of 1990 and in the absence of a claim that the petitioners were entitled to a higher pay scale under SRO 59 of 1990, the only question that was required to be determined by the Tribunal was as to whether the benefit of the higher pay grade already availed of the petitioners could be withdrawn by the respondents, that too, at the fag end of their careers. This question has been answered by the Tribunal in their favour.

13 The plea of Mr. Bakshi, learned counsel for the petitioners, that since the mistake of granting higher pay scale was committed by the respondents and not by the petitioners, and, therefore the benefit of such a mistake should be allowed to be availed by the petitioners, does not have any substance and, therefore, cannot be accepted. During the course of employment, many a times, *bona fide* mistakes in granting pay scales, or fixing salaries are committed by the employers. Sometimes, these mistakes are detected by the employers themselves and sometimes by the office of Accountant General. There is nothing that prevents the employer from correcting such mistakes. However, in a case where the employee resists such correction, it is incumbent upon the employer to provide such employee an opportunity of being heard.

14 In the instant case, as we have pointed out earlier, the petitioners never disputed that the benefit which was given to them was under a mistake of fact and was, therefore, capable of being corrected by the respondents. The entire emphasis of the petitioners in the OA was to prevent the respondents from recovering the benefits already availed of. The Tribunal accepted their plea and granted the relief aforesaid. However, the claim of the petitioners to avail the benefit of a mistake of fact despite the mistake having been detected and corrected, is totally misconceived and, therefore, rightly not accepted by the Tribunal. We, therefore, find no fault with the judgment impugned passed by the Tribunal.

15 For all these reasons, we find no merit in this appeal and the same is, accordingly, dismissed.

WP(C) No. 3034/2024:

16 The order passed in WP(C) No.2416/2024 shall govern the disposal of this petition. Accordingly, this petition is dismissed as well.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar
04.04.2025
Sanjeev

Whether the order is reportable: Yes