Sr.No. 28

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

WP(C) No. 778/2025
CM No. 1872/2025
CAV No. 238/2025

1. UT of J&K through its Commissioner/Secretary, PHE/Jal Shakti Department, Civil Secretariat, Jammu. ….. Petitioner(s)
2. Chief Engineer, Jal Shakti Department, Jammu.
3. Executive Engineer, Irrigation Division, Udhampur.
4. Accountant General, A&E Shakti Nagar, Jammu.
5. Sr. Accounts Officer Office of the Accountant General A&E Shakti Nagar, Jammu.

Through: Mrs. Monika Kohli, Sr. AAG.

Vs

Kashmiri Lal, ….. Respondent(s)
S/O Sh. Thakar Dass,
R/O 176-A Ward No.04
Peer Baba Gali, Shah Market, Court Road,
Udhampur

Through: Mr. Mohinder Kumar, Advocate.

**Coram: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE**

ORDER
02.04.2025

TASHI RABSTAN, CJ:

CAV No. 238/2025

With the appearance of Mr. Mohinder Kumar, learned counsel appearing on behalf of the caveator, CAV No.238/2025 stands discharged.

WP(C) No. 778/2025 & CM No. 1872/2025

01. The present writ petition has been filed by the writ petitioners under Article 226 of the Constitution of India challenging the order dated 17.10.2024 passed by learned Central Administrative Tribunal in OA No.513/2024 titled *Kashmiri Lal versus Union Territory of J&K and others*.

02. The respondent-applicant before the Central Administrative Tribunal, Jammu Bench (hereinafter called as, ***"the Tribunal"***) is Class-C/D employee of the Jal Shakti (Public Health Engineering) Department, who were initially granted benefits under SRO 87 of 1968 and SRO 149 of 1973 as well as SRO 193. The department discovered that he was incorrectly granted benefits under SRO 149 of 1973 that had been repealed, after December 1982. The respondent was superannuated on 30.11.2023. The writ petitioners after verification of the service book/record of the respondent found that he was not eligible for the extension of benefits of SRO 149 of 1973 on the date he was given the benefit of the said SRO. It is averred that the pension case of the of the respondent was settled by the Accountant General after withholding the gratuity due to extension of benefit of SRO 149 of 1973 and the excess amount drawn by the respondent was deducted by the office of Accountant General, Jammu.

03. The applicant/respondent herein was getting the benefit of revised pay scale/enhanced salaries in terms of SRO 87 of 1968 and SRO 149 of 1973 and he was issued show cause notices in this regard for incorrect implementation SRO 149 to effect recoveries in line with the court orders referred in the notice and the applicant was directed to explain as to why the aforesaid benefits availed by him may not be withdrawn and why necessary recovery may not be effected from his salary, to which the applicant filed reply, however, the respondents without considering the reply have straight-way effected the recoveries. Aggrieved of the action of the petitioners herein for recovery, the applicant-respondent herein approached the Tribunal by filing Original Application No. 513/2024 titled '***Kashmiri Lal v. UT of J&K and Ors***.', on the ground that as per law settled by the Apex Court in case of ***"State of Punjab v. Rafiq Masih",***

AIR 2015 SC 696, no recoveries against any benefit so drawn by a Class-C/D employee can be initiated, if the same has been provided by the department on their own and there is no malafide or foul play on the part of the employees.

04. Respondents-writ petitioners herein have admitted that the grant of benefits of higher pay scale have wrongly been granted in favour of the applicant-respondent herein and after realizing they initiated the process of recovery from them.

05. The case of the applicant-respondent herein is that he has not played any fraud or mischief for receiving the benefits under SROs 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.

06. The Tribunal vide judgment/order dated 17.10.2024 (impugned herein) by observing that the issued involved in this application has squarely been covered by the judgment rendered by learned Tribunal in OA No.61/1284/2021 being the lead case, titled 'Parveen Singh v. UT of J&K and Ors.' decided on 18.09.2024 and has held as under:

i. The impugned order of recovery qua the applicants is quashed and set aside and the respondents are directed not to recover any amount from the pay/pensionary benefits of the applicants.

ii. The respondents are directed to restore the pay/pension of the applicants which they were getting prior to the issuance of the impugned order.

iii. The amount recovered from the pay/pensionary benefits of the applicants, shall be refunded preferably within two months from the date of receipt of a certified copy of this order.

iv. In the cases, where applicants have already retired, the respondents shall pay pension to the applicants on the basis of last pay drawn by the applicants.

The Tribunal further directed respondents to grant similar benefits to the respondent herein, as has been granted to the applicant(s) in aforementioned judgment dated 18.09.2024 passed in OA No.61/1284/2021. The said exercise shall be undertaken within a period of two months from the date of receipt of certified copy of this order.

07. Aggrieved of the order passed by the Tribunal, the present writ petition has been filed.

08. Heard learned counsel for the parties.

09. Admittedly, the benefits under SRO 87 and SRO 149 (*supra*) were granted voluntarily by the writ-petitioners in favour of the applicant-respondent herein and subsequently, the said benefits have been withdrawn and initiated recovery from the salary of the respondent herein. It is not the case of the writ-petitioners that the benefits have been received by the applicant-respondent 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.

10. The learned Tribunal has also relied upon the judgment passed by the Hon'ble Supreme Court in **2022 Live Law (SC) 438 titled – <u>"Thomas Daniel Vs State of Kerala & Ors."</u>**. 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."

11. 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 with the impugned judgment/order passed by the Tribunal.

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

(MA Chowdhary)
Judge

(Tashi Rabstan)
Chief Justice

Jammu
02.04.2025
Raj Kumar

Whether the order is speaking? : Yes/No.
Whether the order is reprortable? Yes/No.