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

Case No. WP(C) No. 936/2025

c/w

WP(C) No. 1009/2025, WP(C) No. 1029/2025, WP(C) No. 1099/2025, WP(C) No. 1178/2025, WP(C) No. 1375/2025, WP(C) No. 1377/2025, WP(C) No. 1378/2025, WP(C) No. 1525/2025, WP(C) No. 1610/2025, WP(C) No. 1614/2025, WP(C) No. 1615/2025, WP(C) No. 1618/2025, WP(C) No. 1684/2025, WP(C) No. 1723/2025, WP(C) No. 1891/2025, WP(C) No. 1896/2025, WP(C) No. 2129/2025, WP(C) No. 2390/2025, WP(C) No. 2478/2025, WP(C) No. 2482/2025, WP(C) No. 2484/2025, WP(C) No. 2498/2025, WP(C) No. 2547/2025, WP(C) No. 2557/2025, WP(C) No. 2598/2025, WP(C) No. 2675/2025, WP(C) No. 2738/2025, WP(C) No. 2739/2025, WP(C) No. 2901/2025, WP(C) No. 2932/2025, WP(C) No. 3008/2025, WP(C) No. 3068/2025, WP(C) No. 3072/2025, WP(C) No. 326/2025 and WP(C) No. 3263/2025.

Reserved on: 18.12.2025
Pronounced on:06 .03.2026
Uploaded on:06 .03.2026

Whether the operative part or full Judgment is pronounced ***: Full***

UT of J&K and others

a/w connected matters

…Petitioner(s)/Appellant(s)

Through: Ms. Monika Kohli, Sr.AAG

V/s

Maqbool Sheikh

a/w connected matters.

Through:

Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhirash Sharma, Advocate.
Ms. Surinder Kour, Sr. Advocate with
Ms. Manpreet Kour, Advocate.
Mr. Sheikh Najeeb, Advocate.
Mr. Rupinder Singh, Advocate.
Mr. Pawan Choudhary, Advocate.
Mr. M K Raina, Advocate.
Mr. R S Parihar, Advocate.
Ms. Monika Thakur, Advocate.
Ms. Himani Khajuria, Advocate.

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

PER OSWAL-J

1. Since these writ petitions involve common issues, they were heard together and are being disposed of by this common judgment.

2. Learned Central Administrative Tribunal, Jammu (for short- the Tribunal'), vide different orders disposed of the Original as well as Transfer Applications, (writ petitions transferred by this Court to learned Tribunal after its establishment in the year 2020). Applications filed by the respondents, who were either in service or had attained the superannuation were disposed of vide orders of different dates by the learned Tribunal in terms of the following similar directions:-

> "In view of the above discussions and facts and circumstances of the case, the following directions are passed:-
>
> (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 the applicants have already retired, the respondents shall pay pension to the applicants on the basis of last pay drawn by the applicants."

Arguments:

3. Ms. Monika Kohli, learned Senior A.A.G., submits that upon the implementation of SRO 14 of 1996, SRO 59 stood substituted, thereby disentitling the respondents to any further benefits thereunder w.e.f. 15.01.1996. She emphasizes that the simultaneous drawal of benefits under both SROs constitutes an illegal 'dual benefit' resulting in a recurring loss to the public exchequer. To address this, the Finance Department mandated a verification process vide its Circular dated 11.02.2021. The learned counsel further argues that by virtue of S.O. 129, the 24-month bar contained in Instruction No. 1 is waived for benefits granted under repealed orders. Alternatively, she maintains that Instruction No. 1 cannot rescue the respondents, as it pertains to the calculation of emoluments rather than the fundamental entitlement to overlapping benefits.

4. Countering these submissions, Mr. Abhinav Sharma, learned Senior Counsel for the respondents, asserts that the mandate of Government Instruction No. 1 to Article 242 operates as a bar against re-opening emolument records older than 24 months preceding the date of superannuation. He urges that the petitioners' reliance on S.O. 129 is misplaced, given that the respondents retired before its inception.

Moreover, he has pointed out a procedural lapse contending that the petitioners did not rely upon S.O. 129 before the learned Tribunal and therefore cannot be permitted to introduce the same at this stage. He has further argued that, once the respondents were not granted any benefits under SRO-59, there was no occasion for the petitioners to re-examine the pay scale granted to the respondents pursuant to the circulars issued by the Chief Engineer in 1993, or to effect recoveries from them on that basis. The other learned counsel appearing for the respondents have adopted the arguments advanced by Mr. Sharma, learned Senior Counsel.

5. Heard learned counsel appearing for the parties and perused the record.

Analysis:

6. We propose to address the controversy in two parts: **Part-A** covers the applications/petitions filed after the respondents reached the age of superannuation, while **Part-B** deals with petitions/applications filed by the respondents while still in service..

PART-A:

7. For the sake of brevity, the relevant facts are extracted from the lead case, **WP(C) No. 1610/2025**, titled "***UT of J&K and others vs. Bishamber Dass and another***."

8. In this matter, the respondents approached the learned Tribunal seeking directions for the petitioners to release their pensionary and retiral benefits including full monthly pension, commuted value, and

gratuity. They further sought to restrain the petitioners from effecting any recoveries on the pretext that the benefits granted under SRO-149/SRO-59 decades earlier, were illegal. The respondents relied on Government Instruction No. 1 to Article 242 of the CSRs. The petitioners resisted the claim, contending that the respondents had already availed themselves of the three in-situ promotions under SRO-14, making them ineligible for the simultaneous benefit of higher pay scales under SRO-59. Consequently, the petitioners asserted that the respondents' pay/pension required re-fixation. The learned Tribunal, however, rejected these contentions and allowed the respondents' original application in terms of directions as extracted above.

9. Now, the matter for adjudication is whether the 24-month limitation on verifying the **'correctness of emoluments'** applies to the petitioners in the context of pension fixation.

10. Government Instruction No. 1 to Article 242 of the J&K Civil Service Regulations, Vol-I, mandates that from January 1, 1976, average emoluments for pension purposes shall be determined based on the last ten complete months of service. Critically, any verification of past emoluments, whether by the office preparing the pension papers or the office issuing the Pension Payment Order, must not lead to an extensive examination of the distant past. Such checks should be limited to the minimum necessary and must not extend beyond 24 months preceding the date of retirement. Effectively, this instruction serves as a bar, preventing authorities from questioning the correctness of emoluments beyond that 24-month period.

11. A similar issue arose regarding SRO 149, which was withdrawn vide Government Circular No. 227 dated 08.06.2010. It appears that to bypass the restrictions of Government Instruction No. 1, which prohibits examining the correctness of emoluments beyond 24 months preceding retirement, the Government issued **S.O. 129 dated 28.03.2022**. This order incorporated **Government Instruction No. 2**, which is extracted below:

> "**S.O.-129.—** In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Lieutenant Governor is pleased to direct that the following amendments shall be made in the Jammu and Kashmir Civil Service Regulations, Vol-I; namely:—
>
> In **Article 242**—(i) Government Instructions shall be renumbered as Government Instruction No. 1;
>
> (ii) **After Government Instructions No. 1, the following shall be inserted as Government Instruction No. 2; namely:**
>
> **"Government Instruction No. 2.—** It has been observed that departments have been extending benefit of deleted/withdrawn SROs/Government Orders etc. to the employees beyond the date of deletion/withdrawal due to which a huge loss is being inflicted on the Government exchequer.
>
> In order to safeguard the Government exchequer against the loss, the restriction of limiting the exercise of checking the correctness of the Pay emoluments to 24 months preceding the date of retirement by the office of Accountant General shall not be applied in the cases where undue benefit of deleted/withdrawn SROs/Government Orders etc. beyond the date of deletion/withdrawal has been granted to employee."

12. As is evident, the Govt. Instruction No.1 to Article 242 places restraint upon the employee/pension sanctioning authority from undertaking exercise of examining the correctness of the employments for a period more than 24 months preceding the date of retirement.

13. The term **'correctness of emoluments'** applies to instances where an employee was assigned an incorrect pay scale or where arithmetical

and clerical errors occurred during pay fixation. However, it does not extend to cases where an employee was granted unauthorized dual benefits, nor does it apply to a broad class of employees; its scope is limited to the individual level. The Government Instruction No.1 would cover a situation where the employee was granted the benefit of wrong pay scale for instance in terms of SRO 59 or granted wrong in-situ promotion thereby resulting into grant of higher pay scale and in these cases, the employer would be debarred from undertaking any exercise to examine the correctness of the emoluments beyond 24 months prior to the date of retirement, but in cases where a particular class of employees has been granted dual benefits to which it was never entitled to, it would not fall within the meaning of 'correctness of emoluments' so as to restrict the employer from undertaking any exercise to examine the correctness of the emoluments beyond 24 months prior to the date of retirement and the employer would be within its right to examine and point out any such mistake. The respondents cannot be allowed to benefit indefinitely from an administrative error; such unjust enrichment is legally unsustainable putting unnecessary burden on the state exchequer and must be rectified.

14. The Government, while retaining Government Instruction No. 1 to Article 242 of the CSR, subsequently incorporated Government Instruction No. 2**,** as extracted hereinabove. By doing so, the Government has explicitly excluded the contingencies contemplated under Government Instruction No. 2 from the ambit of Government

Instruction No. 1**,** which exclusion was otherwise only implicit in Government Instruction No. 1.

15. **In Syed Abdul Qadir and others Vs. State of Bihar and** others reported in **2009 (3) SCC 475,** the Hon'ble Supreme Court of India has observed that the relief against the recovery is granted by the courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered.

16. While the recovery of benefits mistakenly granted to an employee is prohibited on the principle of equity to prevent undue hardship, this does not grant the employee a vested right to receive such benefits in perpetuity. An employee has no legal entitlement to continue receiving dual or erroneous benefits in the future once the error is identified.

17. The coordinate bench of this Court in writ petition being **WP(C) No.2416/2024,** decided on **04.04.2025** titled **Sita Ram and others Vs. UT of J&K and others,** where learned Tribunal had permitted the employer to re-fix the pay structure of the petitioners therein, but simultaneously restrained the employer from effecting recovery of excess benefits granted to the petitioners therein, has observed that *once a mistake is always a mistake and no employee including one nearing his superannuation, is entitled to reap the benefit of any error committed by the employer while fixing the pay scale.* After making above observations, the coordinate bench of this Court dismissed the writ petition preferred by the petitioners therein whereby the respondents were left free to re-fix the pay structure of

the petitioners therein while denying the higher pay scale to them. In fact, in the said writ petition also, the similar controversy was involved as involved in these petitions.

18. We have examined the order passed by the learned Tribunal and find that the learned Tribunal has not correctly adjudicated the controversy**.**

PART-B

19. In writ petitions covered by part-B, the respondents are/were in service when OAs/TAs were filed. The facts are extracted from **WP(C) No.1375/2025** titled "*UT of J&K and others Vs. Sat Paul and others".*

20. The respondents, who were still in service when they approached the learned Tribunal, sought to quash circular dated 08.07.2021 issued by petitioner No. 3 (the Superintending Engineer, Hydraulic Circle, Jammu). This circular sought to effect recovery from their salaries beginning in August 2021. Additionally, the respondents sought an order restraining the petitioners from making any such recoveries based on the impugned circular. They asserted that they were wrongly denied the higher pay scale of Rs. 950-1500, arguing that similarly situated Class-IV employees had already been placed in that scale pursuant to the 1993 circular issued by the Chief Engineer and not under SRO-59.

21. Previously, the respondents and other similarly situated individuals filed several writ petitions, which were disposed of with directions to the petitioners to consider their cases in light of specific judicial

precedents. In compliance, the petitioners reviewed the respondents' cases and granted them upgraded pay scales. Subsequently, petitioner No. 2 (the Chief Engineer) issued a circular dated 30.06.2020, directing all Drawing and Disbursing Officers (DDOs) to form Committees to detect pay fixation errors and recover any excess payments. This circular was challenged in two separate applications viz. **OA No. 428/2021** (*Madan Lal & Ors.*), where the circular was stayed, and **OA No. 617/2021** (*Romesh Lal & Ors.*), where the Tribunal directed that no recovery be affected without prior notice and an opportunity for explanation.

22. In another application (**OA No. 61/1093/2021**), the respondents challenged the circular dated 08.07.2021, and an interim order was passed on 02.08.2021. This circular mandated Committees to verify service records, specifically for employees benefiting from SRO-59 and SRO-149 and to initiate recoveries for alleged miscalculations. The respondents contested this, asserting they never received benefits under SRO-59; instead, their higher pay scale was granted under the circular issued by the Chief Engineer in the year 1993.

23. The petitioners opposed the claim, contending that upon the commencement of SRO-14 of 1996, the respondents were no longer entitled to the benefits of SRO-59 with effect from 15.01.1996. After hearing the parties, the learned Tribunal disposed of the applications in accordance with the directions previously detailed herein.

24. To provide context for our adjudication, we first set out the facts necessary for resolving the controversy.

25. The record indicates that under SRO 59 of February 6, 1990, common posts and pay scales in Appendix '2-A' were incorporated into the J&K Civil Services (Revised Pay) Rules, 1987. This SRO was applicable to Public Works Department which included Roads & Building/PHE, Irrigation and Flood Control (now Jal Shakti), Urban Environmental Engineering Department. Notably, the pay scales prescribed therein do not include the scale of Rs. 950-1500. In fact, vide Government Order No. 78-PDD of 1995 dated 20.03.1995, as is evident from the subject of the said order, the pay scale of the field staff of the Power Development Department was rationalized on the pattern of SRO-59 of 1990.

26. The petitioners argue that the respondents were granted benefits under this SRO, whereas the respondents contend that they received the higher grade (₹950-1500) vide the Chief Engineer's circulars dated March 18, 1993, and June 11, 1993. Notably, these circulars are not independent sources of the benefit; they merely prescribe the conditions for its grant, with the substantive right originating from SRO 59.

27. It is the petitioners' contention that SRO 59 was superseded by SRO 14 of 1996, the latter providing for time-bound promotions at intervals of 9, 18, and 27 years. Relying on Rule 3(g), which excludes posts with 'special treatment' from its ambit, the petitioners urge that the benefits of SRO 59 and SRO 14 are mutually exclusive. As such, they assert that no employee could be granted the benefit of SRO 59 after the implementation of SRO 14 on January 15, 1996.

28. The record further indicates that SRO-59 stood withdrawn as of August 11, 2003, vide Order No. 165-F, with the withdrawal made effective from January 15, 1996. Upon taking cognizance of persistent irregularities in the year 2021, the Finance Department directed all the administrative Heads and Drawing and Disbursing Officers to furnish a verification certificate. The said certificate is required to affirm that any benefit extended to an employee under SRO-59 is legally valid and in accordance with the governing rules before the employee's pension papers are processed.

29. As already mentioned above, the pay scale of Rs. 950-1500 finds mention in Order No. 78-PDD of 1995, which pertains exclusively to the Power Development Department, and not in SRO-59. In fact, neither of the parties was able to establish before us as to how the benefit of the pay scale of Rs. 950-1500 came to be granted, when the same does not find mention in the prescribed pay scales of the PHE (Jal Shakti) Department. It appears that a number of writ petitions were filed by the employees seeking grant of the benefit of a higher pay scale, pursuant to which the petitioners were directed to consider the cases of the employees for such grant. The petitioners thereafter considered the claims and extended the benefit of a higher pay scale, apparently oblivious to the issuance of SRO-14**.** The respondents have admitted that they availed the benefit of the higher pay scale; however, according to their version, as already noticed hereinabove, the said benefit was accorded in terms of the circulars issued by the Chief Engineer, PHE, in the year 1993**.**

30. Be that as it may, the genesis of the upgraded pay scale can be traced **to** SRO-59 of 1990**,** though it appears that the pay scale of Rs. 950-1500 was borrowed from the pay structure applicable to the Power Development Department, as the pay scales were rationalized by the Power Development Department on the pattern of SRO-59. SRO-14 issued on 15.01.1996, provides for grant of three in-situ promotions, and the petitioners are justified in submitting that the object and intent underlying the issuance of both SRO-14 and SRO-59 was the same i.e., to grant higher pay scales.

31. Rule 3(iii) (g) excluded the categories of employees for which special treatment is expressly provided or may be provided under any law or rules or Notification or order for the time being in force. These rules were in fact not meant for the employees who were getting specialized treatment. Notwithstanding the inapplicability of SRO-14 to the respondents, the benefit under SRO-14 was granted to respondents simultaneously with the benefits under SRO-59.

32. Be that as it may, it is evident that the object and intent underlying SRO-5**9** and SRO-14 were the same. Although SRO-59 does not explicitly provide for the Rs. 950-1500 scale, this specific bracket appears to have been adopted from the pay structure of the Power Development Department. Consequently, we find no merit in the respondents' submission that this higher scale was granted pursuant to the circular issued by the Chief Engineer in the year 1993. That contention is accordingly rejected.

33. We hold that the respondents were erroneously extended dual benefits under both SRO-59 and SRO-14. It is manifest that this unintended

windfall arose directly from the oversight and lapse on the part of the petitioners; consequently, the respondents came to receive benefits to which they were otherwise not legally entitled.

34. As established in **Part-A** of this judgment, the petitioners retain the authority to re-fix pensions notwithstanding the Government Instruction No. 1 appended to Article 242 of the CSR. It follows that where respondents have erroneously received dual benefits, there is no legal justification to divest the employer of its right to rectify pay scales. Notably, no statutory provision prohibits an employer from withdrawing an erroneously conferred benefit. Accordingly, we hold that the petitioners may re-fix the pay/pension by deducting the benefits wrongly granted.

35. The contention of the respondents that the aforesaid benefits were granted pursuant to directions issued by this Court is devoid of merit. The respondents themselves admit that the earlier judicial directions were confined merely to consideration of their cases on the principle of parity. There was neither any formal adjudication with regard to their substantive entitlement to the upgraded pay scales, nor has any such determination been brought to our notice. In the absence thereof, the petitioners are not precluded from effecting correction in accordance with law.

36. The issue that now remains for adjudication is whether the petitioners are entitled to affect recovery from the respondents. It is an admitted position that all the respondents belong to **Group 'C'** and **Group 'D'** services.

37. It would be apposite to take note of the judgment of the Hon'ble Supreme Court **State of Punjab v. Rafiq Masih (White Washer), 2015 AIR (SC) 696**, wherein in para No.18 it is held as under:

> **"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 an employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers would be **impermissible in law:**
>
> **(i)** Recovery from employees belonging to **Class-III and Class-IV (or Group 'C' and Group 'D') services.**
>
> **(ii)** Recovery from **retired employees**, or employees who are **due to retire within one year,** of the order of recovery.
>
> **(iii)** Recovery from employees, where 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 a lower post.
>
> **(v)** Recovery in any other case, where the Court arrives at the conclusion that recovery, if made from the employee, would be **harsh or arbitrary**, so as to far outweigh the equitable balance of the employer's right to recover."

38. It would also be apt to take note of the observations made by the Hon'ble Supreme Court of India in **ITC Ltd. v. State of U.P. & Others,** reported in **(2007) 11 SCC 493**, in para 108 which is extracted as under:-

> "108. **We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, courts have recognized the need to give limited relief in**

> **regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation.**"
>
> **(emphasis added)**

39. Based on the aforementioned judgments, excess payments made to employees due to misinterpretation of rules over a long period cannot be recovered. Such recovery would be iniquitous, particularly for Group-C and Group-D employees who typically utilize their entire earnings for essential needs such as food, clothing, shelter, and education. Since the petitioners admit the respondents belong to these groups, attempting to recover funds paid out over several decades would impose an undue and inequitable hardship.

40. Interestingly, in "*Sita Ram and others Vs. UT of J&K and others",* identical issue was decided by the coordinate Bench of this Court wherein the petitioners were allowed to re-fix the pay, however, were restrained from effecting recoveries from the employees and in that case also the same circular was impugned by the petitioners therein which was impugned by the respondents herein, before the learned Tribunal. That judgment appears to have attained the finality as the learned counsel representing the parties did not bring to the notice of this Court that the said judgment has been challenged by either of the parties.

41. We find that the learned Tribunal's order did not adequately address the underlying issues in their correct legal and factual perspective.

Conclusion:

42. Accordingly, all these writ petitions are **disposed of** by modifying the impugned order(s) to the extent that the petitioners shall not affect any

recovery of the excess amount already paid to the respondents and, if any such amount has been recovered, the same shall be refunded to them within the period prescribed by the learned Tribunal. However, the petitioners shall be at liberty to re-fix the pay/pension of the respondents by excluding the benefit wrongly granted to them.

43. The Registry shall place a copy of this judgment on the record of each of the above-captioned matters.

(Rajnesh Oswal)
Judge

(Arun Palli)
Chief Justice

Jammu
06 .03.2026
Madan Verma-Secy

Whether order is speaking? **Yes**
Whether order is reportable**?** **Yes**