

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

Reserved on: 20.04.2026

Pronounced on: 08.05.2026

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

WP(C) No.1803/2025

GHULAM MOHAMMAD LONE ...PETITIONER(S)/APPELLANT

Through: - Mr. M. A. Beigh, Advocate.

Vs.

UT OF J&K AND OTHERS ...RESPONDENT(S)

Through: - Mr. Ilyas Laway, GA.

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

JUDGMENT

1) The petitioner has challenged order No.DULB/Acctts/224 of 2025 dated 08.03.2025, issued by respondent No.2, whereby retrospective effect to promotion of the petitioner as Secretary granted vide Order No.DULB/Estt/1704 dated 15.11.2010 with effect from 07.08.1996, has been rescinded *ab initio* and the excess amount drawn by the petitioner on account on retrospective effect of his promotion has been directed to be recovered from his DCRG emoluments.

2) It appears that the petitioner was initially appointed as Junior Assistant in the pay scale of Rs.800-1500/ for 89

days vide order No.511/DLB/Estt of 1988 dated 28.03.1988. The said order was continued in terms of Order No.NAC/G/88/176-77 dated 02.07.1988 with effect from 29.06.1988 and later on it was confirmed by Director, Local Bodies, Kashmir, vide No.DLB/Estt/1708/3407 dated 21.02.1991. Vide order No.DLB/Estt/1708/236 of 1995 dated 30.08.1995, the petitioner was promoted as Senior Assistant in the pay scale of Rs.1200-2040 retrospectively with effect from 12.08.1994. Thereafter he was further adjusted as Secretary-cum-Clerk in NAC, Sumbal, by the Administrator, vide order No.NAC/S/96/435-36 dated 07.08.1996 followed by order No.DLB/Estt/1708/3711 dated 05.11.1996 in the pay scale of Rs.1400-2600 with effect from 07.08.1996.

3) The petitioner availed in-situ promotion under SRO 14 dated 15.01.1996 from the pay scale of Rs.5000-8000 to the pay scale of Rs.5150-8300 vide order No.DULB/Estt/NF/321 of 2006 dated 11.05.2006 with effect from 01.09.2005. Thereafter the petitioner was placed as I/C Secretary in his own pay and grade vide order No.DULB/Estt/1485/811 of 2009 dated 15.12.2009 read with order No.DULB/Estt/820 of 2009 dated 18.12.2009. The petitioner was thereafter given the look after charge of the post of Executive Officer in MC, Wattergam, vide

Government Order No.162-HUD of 2010 dated 23.04.2010 and thereafter he was placed in the pay scale of Rs.6500-10500 attached to the post of Secretary, in terms of order No.DULB/Estt/1708-II dated 15.11.2010 retrospectively from 07.08.1996.

4) The petitioner was finally prematurely retired from his service in terms of Government Order No.365-JK/GAD of 2022 dated 31.03.2022, when he was functioning as Incharge Executive Officer, Municipal Committee, Frisal.

5) It is further case of the petitioner that in the year 1992, in terms of Government Order No.160-HUD/LSG of 1992 dated 30.11.1992, he along with his other colleagues was deputed to New Delhi for attending a course called 'Diploma in Local Self Govt. (LSGD)'. The petitioner is stated to have qualified the said course and after his return, he as well as his other colleagues were granted benefit of two advance increments by the respondents on the basis of Government Order No.760-HUD/LSG of 1981 dated 29.10.1981.

6) The petitioner has challenged the impugned order on the grounds that the same has been passed in derogation of the rules and the legal position without following the principles of natural justice, that too after he had already

superannuated from service. It has been contended that the orders of promotion and release of grades in favour of the petitioner were issued more than 15 years back, therefore, no recovery could have been effected from him, that too from his retiral benefits which is otherwise forbidden in terms of the law laid down by the Supreme Court.

7) It has been further contended that the action of the respondents with regard to cancellation of two advance increments granted to the petitioner and initiation of recovery of the same by making fresh entry in his service book is illegal and unjustified. It has been submitted that pension case of the petitioner was forwarded with the benefit of said two increments and now refixing of the same after his retirement is impermissible as the same amounts to violation of rules and regulations on the subject. It has been submitted that the respondents have fixed the monthly pension of the petitioner without the benefit of promotions granted to him during his active service, after withdrawing the benefit of two advance increments which has put the petitioner to great financial loss.

8) The respondents, in their reply to the writ petition, have submitted that the petitioner was illegally placed in the pay scale of Rs.6500-10500/ in terms of order dated

15.11.2010 and he got retrospective effective of promotion from 07.08.1996 in an illegal manner against the rules. Regarding drawl of two advance increments, the respondents have submitted that the matter was taken up with the Administrative Department vide communication dated 02.01.2023 and the Administrative Department, vide communication dated 29.01.2024, has clarified that the said the Government Order was applicable in respect of the candidates who have already passed the course before issuance of the said Government Order and that there is no mention in the said order that the benefit will also be given to the candidates who will pass LSGD course in future. Pursuant to this clarification, a circular was issued to all ULBs vide communication dated 22.02.2024 that Government Order granting two increments is applicable only in respect of such officials who have already undergone the course before the issuance of said order. It is being claimed that the petitioner was not falling in that category. Consequently, case of the petitioner was reviewed and the advance increments were withdrawn/cancelled.

9) It has been further contended that the petitioner has unilaterally availed the grade benefit retrospectively from 07.08.1996, even though there was no mention of grant of retrospective effect in order dated 15.11.2010. Accordingly,

the order granting retrospective effect to the promotion of the petitioner as Secretary has been rescinded in terms of impugned order dated 08.03.2025 with a direction to recover the excess amount drawn by him.

10) Heard and considered.

11) The question which is required to be determined in this case is as to whether the respondents are legally justified in effecting recovery from the pension and pensionary dues of the petitioner after he has retired from service. The Supreme Court in has, in the case of **State of Punjab & Ors vs. Rafiq Masih (White Washer)**, AIR 2015 SC 696, while dealing with the aforesaid issue, summarized the situations wherein recovery by the employer would be impermissible in law. The situations enumerated by the Supreme Court are 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.

12) In view of the aforesaid legal position laid down by the Supreme Court, it is clear that recovery of the excess amount drawn by an employee, who has already retired from service, is impermissible in law.

13) Admittedly, the petitioner has superannuated from service on 31.03.2022 whereas the impugned order of recovery has been issued on 08.03.2025. Therefore, so far as the recovery of excess pay drawn by the petitioner on account of his alleged illegal promotion to the post of Secretary with retrospective effect with effect from 07.08.1996 or on account of drawl of two advance increments cannot be effected against him, particularly when there is nothing on record to show that the petitioner connived with the concerned officers at the time when he was given promotion to the post of Secretary retrospectively or when two advance increments were released in his favour.

14) So far as fixation of pension of the petitioner is concerned, Government Instruction No.1 to Article 242 of J&K CSR provides that there is an absolute bar to check the correctness or otherwise of the past emoluments

beyond 24 months preceding the date of retirement. However, vide S.O.129 dated 28.03.2022, Government Instruction No.2 has been incorporated to Article 242 of the J&K CSR, which reads as under:

"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."

15) The aforesaid Government Instruction came up for interpretation before the Division Bench of this Court in the case of **UT of J&K & Ors. Vs. Maqbool Sheikh & Ors.** (WP(C) No.936/2025 with connected cases decided on 06.03.2026.) The Division Bench, while interpreting Government Instructions 1 and 2 incorporated to Article 242 of the J&K CSR, observed as under:

"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.”

16) From the foregoing analysis of the legal position, it is clear that in a case where benefit has been extended to a government employee under deleted/withdrawn SRO/Government Order etc. beyond the date of deletion/withdrawal, the restriction of limiting the exercise of checking the correctness of pay emoluments to 24

months preceding date of retirement by the office of Accountant General is not attracted. However, in all other cases, Government Instruction No.1, which restricts checking of correctness of pay emoluments 24 months preceding the date of retirement would certainly apply. Had it been the intention of the rule making authority to permit verification of correctness of pay emoluments of a retiree without any restriction in time period, in that case, while incorporating Government Instruction No.2 to Article 242, the 1st Government Instruction would have been deleted by it. The fact that Government Instruction No.1 has been retained, means that restriction regarding check period of 24 months would continue to apply in all cases other than those covered under Government Instruction No.2

17) Turning to the facts of the present case, the respondents by virtue of the impugned order have sought to recover the excess amount drawn by the petitioner and to re-fix his pension in view of cancellation of his promotion order dated 15.01.2010, which the petitioner has availed retrospectively with effect from 07.08.1996. Thus, it is not a case where because of cancellation or modification of a Government Order or SRO has resulted in withdrawal of benefit of promotion to the petitioner but it is a case where the respondents have sought to withdraw/rescind the

promotion of the petitioner on the ground that the same was not legally due to him. This has been done without issuing any prior notice and without giving an opportunity of hearing to the petitioner. Therefore, the Government Instruction No.2 cannot be made applicable to the case of petitioner. In view of Government Instruction No.1, while calculating pay and pension of the petitioner, the respondents cannot check correctness of his emoluments beyond 24 months prior to the date of his retirement.

18) In the present case, the respondents, by passing the impugned order, are seeking to undo the promotion granted in favour of the petitioner in the year 2010, which is about 12 years prior to his superannuation. Thus, the respondents cannot either re-fix pay of the petitioner or re-fix his pension by taking into account impugned order dated 08.03.2025, which is not only in the teeth of law laid down by the Supreme Court in **Rafiq Masih's** case (supra) but it is contrary to Government Instruction No.1 to Article 242 of J&K CSR besides being violative of principles of natural justice.

19) For what has been discussed hereinbefore, the writ petition is **allowed** and the impugned order dated 08.03.2025 is set aside. The respondents are prohibited from making any recovery from the pension and retiral

benefits of the petitioner and they are further directed to process the pension case of the petitioner on the basis of the pay last drawn by him.

(Sanjay Dhar)
Judge

SRINAGAR

08.05.2026

"Bhat Altaf-Secy"

Whether the **judgment** is reportable: **YES/NO**

